



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



December 6, 2019

Governor's Office of Planning & Research

DEC 09 2019

## STATE CLEARINGHOUSE

Mr. Brian Bordona  
Napa County  
1195 Third Street  
Napa, CA 94559

Subject: Soscol Ferry Solar Project, Draft Mitigated Negative Declaration, SCH #2019119057,  
Napa County

Dear Mr. Bordona:

California Department of Fish and Wildlife (CDFW) personnel have reviewed the draft Mitigated Negative Declaration (MND) for the Soscol Ferry Solar Project (Project). CDFW is submitting comments on the draft MND to inform Napa County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386 and is responsible for the conservation, protection, and management of the State's biological resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration Agreement (LSAA) and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

### Project Description and Environmental Setting

The Project is on a 22.4-acre property located on the south side of Suscol Creek, south of Soscol Ferry Road. The Napa Sanitation District treated effluent spray fields and the Napa River lie directly to the west of the Project site, while the Napa Airport lies less than a mile to the south. Sixteen acres of the property is vineyard, while the surrounding vegetation communities are annual grassland and riparian. A row of mature eucalyptus trees run along the western boundary of the Project site and an unnamed ephemeral drainage bisects the property and flows through a culvert (presumably into Suscol Creek). Site topography ranges from 50 feet above sea level in the northeast to 22 feet above sea level in the northwest corner.

The Project will convert 15 acres of existing vineyard to a commercial renewable energy facility (solar farm). The Project will utilize approximately 7,896 solar modules and 16 string inverters for converting solar energy into usable AC power. The overall height of the array will be no more than 8 feet tall. Chain link security fencing will be installed along the southern, eastern, and western property lines, and along the 150-foot stream setback boundary located within the northern portion of the site. The Project also proposes that the areas in between solar panels be used for pollinator habitat and limited animal grazing.

## Comments and Concerns

### *Swainson's hawk (Buteo swainsoni)*

The draft MND mentions that two adult and two recently fledged Swainson's hawk (SWHA) were observed in flight over the Project site and perched near a nest in a eucalyptus tree on the northwest corner of the Project area during a field survey on July 17, 2019. Additionally, the *Biological Resources Reconnaissance Survey Report for the Soscot Ferry Solar Project, Napa County, California*, prepared by Garcia and Associates, dated August 2019, states that SWHA vocalizations were heard coming from a known nest tree southeast of the Project area, indicating the Project area is active SWHA habitat.

CDFW is concerned that, as written in the MND, the Project could result in direct and/or indirect impacts to the species. Potential direct impacts include construction disturbance (e.g. visual and noise disturbance) in close proximity to an active nest during nesting season. This disturbance can cause failed nesting attempts or nest abandonment, leading to take<sup>1</sup>. Potential indirect impacts include habitat modification leading to future SWHA abandonment of known active nest sites, and injury/mortality associated with solar panel collisions.

In order to reduce project impacts to a level of less-than-significant, CDFW recommends that **Measure Bio-9** be altered to state that:

Project activities shall occur outside of the breeding season for SWHA (i.e. September 1 – February 28/29). If Project activities must occur during the breeding season (March 1 – August 31), a qualified biologist should conduct several surveys according to the Swainson's Hawk Technical Advisory Committee's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys In California's Central Valley*. If active SWHA nests are observed within 0.5 miles of the Project site during surveys, Project activities shall wait until a qualified biologist determines that all young have fledged, or the nest is no longer active. Alternatively, the Project proponent can obtain a California Endangered Species Act (CESA) Incidental Take Permit (ITP) from CDFW prior to starting Project activities, to cover all potential take that may occur during construction and over the life of the Project.

### *White-tailed kite (Elanus leucurus) and golden eagle (Aquila chrysaetos)*

The draft MND states that the Project site has a moderate to high potential to support nesting white-tailed kite and golden eagle. Both species are State fully protected species, and therefore, the species cannot be taken or possessed at any time. No licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of bird species for protection of livestock.

In order to reduce project impacts to a level of less-than-significant, CDFW recommends that **Measure Bio-9** be altered to state:

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<sup>1</sup> Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.



If golden eagle or white-tailed kite is observed nesting in the Project area during pre-construction surveys, Project activities shall be delayed until a qualified biologist determines that the young have fledged or that the nest is no longer active. If Project activities must occur during the nesting season, the Project proponent shall consult with CDFW on appropriate avoidance measures to ensure no take occurs.

#### *Tree Removal*

The proposed Project will remove approximately 168 trees from the property, many of which are non-native mature black locust (*Robinia pseudoacacia*) and eucalyptus trees. These trees may provide suitable nesting habitat for SWHA, white-tailed kite, and other protected raptors and passerines, and therefore, their removal is a significant impact. In order to reduce impacts to a level of less-than-significant, CDFW recommends that a mitigation measure be added to the draft MND requiring the Project proponent to plant native trees on-site and/or at an off-site location. CDFW requests to review and approve a project-specific Planting Plan. The Planting Plan should include a 1:1 replacement to removal ratio for each non-native tree removed and a 3:1 replacement to removal ratio for each native tree removed. All tree plantings should be monitored for a minimum of five years to ensure their survival. A successful replanting effort should be considered when all plantings achieve a minimum 75% survival after five years. CDFW is available to work with the Project proponent on a Planting Plan for the Project.

#### **Regulatory Requirements**

##### *California Endangered Species Act*

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take of SWHA or any other species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA ITP must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

##### *Lake and Streambed Alteration Agreement*

CDFW requires an entity to notify CDFW before commencing any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream or use material from a streambed. Ephemeral and/or intermittent streams and drainages (that are dry for periods of time or only flow during periods of rainfall) are also subject to Fish and Game Code section 1602.

Issuance of an LSAA is subject to CEQA. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. The CEQA document should identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for completion of the agreement. To obtain information

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about the LSAA notification process, please access our website at <https://www.wildlife.ca.gov/conservation/lsa> or to request a notification package, contact CDFW's Bay Delta Regional Office at (707) 428-2002.

### **Filing Fees**

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

CDFW appreciates the opportunity to provide comments on the draft MND for the proposed Project and is available to meet with you to further discuss our concerns. Additionally, CDFW is available to work with the Project applicant in order to complete their LSAA Notification. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at (707) 428-2076 or [garrett.allen@wildlife.ca.gov](mailto:garrett.allen@wildlife.ca.gov); or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 428-2090 or [karen.weiss@wildlife.ca.gov](mailto:karen.weiss@wildlife.ca.gov).

Sincerely,



Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse