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Governor's Office of Planning & Research

Oct 17 2022

STATE CLEARINGHOUSE

October 17, 2022

Terrance Smalls
Kern County Planning and Natural Resources
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**Subject: Azalea Solar Project by SF Azalea, LLC (Project)
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
State Clearinghouse No. 2021090602**

Dear Terrance Smalls:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from Kern County Planning and Natural Resources (Kern County), as Lead Agency, for the Azalea Solar Project by SF Azalea, LCC (Project) pursuant to 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 the 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

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.

Terrance Smalls
Kern County
October 17, 2022
Page 2

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 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. 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.), related authorization as provided by the Fish and Game Code will be required.

Fully Protected Species: CDFW has jurisdiction over species of birds, mammals, amphibians, reptiles, and fish designated by statute as “fully protected” pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take except as specifically provided for in Fish and Game Code; none of those specific exceptions are applicable to this project.

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).

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.

As a responsible agency, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

Terrance Smalls
Kern County
October 17, 2022
Page 3

PROJECT DESCRIPTION SUMMARY

Proponent: SF Azalea, LLC

Objective:

The Project proposes to develop a photovoltaic solar facility and associated infrastructure necessary to generate up to 60 megawatt-alternating current (MW-AC) of renewable energy, on approximately 640 acres of privately-owned land. The project site consists of 1 site located on 2 parcels. The project would be supported by a 230-kilovolt (kV) gen-tie overhead and/or underground electrical transmission line(s) originating from one or more on-site substations and terminating at the nearby PG&E Arco Substation. The project's permanent facilities would include, but are not limited to, service roads, a power collection system, inverter stations, transformer systems, transmission lines, electrical switchyards, project substations, energy (battery) storage system, and operations and maintenance facilities.

Location: The proposed project is located approximately 2.5 miles northeast of Twisselman Road and Kings Road, approximately 16 miles south of Kettleman City, approximately 14 miles northwest of the community of Lost Hills, approximately 6 miles west of the Interstate 5, and approximately 4 miles east of the State Route 33. The proposed Project is generally located in the northwest portion of the Southern San Joaquin Valley.

Timeframe: Beginning of 2023 for Arco substation, approximately 12 months beginning in 2024 for the remainder of the project.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Kern 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 improve the CEQA document.

Aerial imagery of the Project boundary and its surroundings show the area contains undeveloped land that may have suitable habitat for special-status species. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records, the surrounding habitat, several special-status species could potentially be impacted by Project activities.

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special-status animal species and proposes specific mitigation measures to

Terrance Smalls
Kern County
October 17, 2022
Page 4

reduce impacts to less than significant. CDFW has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State and federally endangered giant kangaroo rat (*Dipodomys ingens*); the State threatened Swainson's hawk (*Buteo swainsoni*); the State and federally endangered and State fully protected blunt-nosed leopard lizard (*Gambelia sila*); the State candidate-listed as endangered Crotch bumble bee (*Bombus crotchii*); the State species of special concern short-nosed kangaroo rat (*Dipodomys nitratooides brevinasus*); the State species of special concern burrowing owl (*Athene cunicularia*); the State species of special concern San Joaquin coachwhip (*Coluber flagellum ruddocki*); and the State species of special concern western spadefoot (*Spea hammondi*).

CDFW also has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status plant species including the State and federally endangered and California rare plant rank (CRPR) 1B.1 California jewelflower (*Caulanthus californicus*); the federally endangered and CRPR 1B.2 San Joaquin woollythreads (*Monolopia congdonii*) and the CRPR 1.2 Lost Hills crownscale (*Atriplex coronata var. vallicola*); Finally, CDFW is concerned with potential impacts to migratory and non-migratory nesting birds.

RECOMMENDED MITIGATION MEASURE 1: Blunt-nosed Leopard Lizard (BNLL)

As mentioned previously in CDFW's December 6, 2021, Notice of Preparation (NOP) comment letter to this Project, there is a high likelihood that BNLL are present within the Project Area, and no take incidental or otherwise can be authorized by CDFW, as BNLL are a State Fully Protected species. CDFW is concerned that the Project, even with the implementation of the mitigation measures outlined in the DEIR, would likely result in "take" if the species is present within or adjacent to the Project footprint and reiterates the recommendation of early consultation with CDFW to discuss BNLL. Please see below for comments to BNLL specific measures, Mitigation Measures 4.4-8 and 4.4-9.

Mitigation Measure 4.4-8 states that, "If BNLL or antelope squirrels are identified during the focused surveys, USFWS and CDFW shall be consulted to obtain the necessary permit authorizations before proceeding. If burrow avoidance is not possible within the project site, a Management Plan for the appropriate species will be prepared in consultation with the agencies." No take incidental or otherwise can be authorized by CDFW, as BNLL are a State Fully Protected species. CDFW reiterates the recommendation of early consultation with CDFW to discuss BNLL and full avoidance.

Terrance Smalls
Kern County
October 17, 2022
Page 5

Mitigation Measure 4.4-9 states that, "Protocol level surveys for the BNLL shall be conducted by a qualified biologist at the project site from April to July, in suitable habitat that will be disturbed by construction, to determine the potential for occupancy by BNLL. Surveys may be conducted in areas of disturbance and needed buffers as work progresses or in stages as needed during the construction phase. If surveys indicate that BNLL and appropriate burrow habitat are absent, the construction area(s) can be fenced using materials and installing fencing in compliance with agency specifications to prevent potential future occupancy of BNLL." CDFW does not recognize this survey methodology as sufficient for the detection of BNLL and recommends that surveys are conducted in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019) and that these surveys are completed no more than one year prior to initiation of ground and/or vegetation disturbance. It should be noted that the approved methodology for projects with construction activities that remove suitable habitat requires surveys during the adult optimal survey period (April 15th to July 31st) and the hatchling optimal survey period between August 15th and September 30th (CDFW 2019). To satisfy the protocol, surveys would need to be conducted during this time.

Mitigation Measure 4.4-9 also states, "Project actions in areas where BNLL are located shall be restricted to the species active period (April to early November) to ensure that no aestivating BNLL in burrows are impacted while in their burrows. In conjunction with CDFW or other involved agencies, sensitive areas shall be established and protected with appropriate signage." CDFW does not agree that restricting work within occupied BNLL habitat to the species active period would be sufficient to prevent "take". To avoid "take," construction and operations activities would have to avoid all observed lizards by a distance of no less than the distance that BNLL are known or expected to travel within their home range, based on telemetry, mark-recapture, or other data, and regardless of the time of year. As mentioned previously, no take, incidental or otherwise, can be authorized by CDFW, as BNLL are a State Fully Protected species. CDFW reiterates the recommendation of early consultation with CDFW to discuss BNLL.

Mitigation Measure 4.4-9 continues with the proposal to establish and maintain "50-foot no work buffers around burrows and egg clutch sites identified during surveys. The 50 foot no-work buffers will be established around burrows in a manner that allows for a connection between the burrow site and the suitable natural habitat adjacent to the Construction Footprint so that blunt-nosed leopard lizards and/or hatchlings may leave the area after eggs have hatched. Construction activities will not occur within the 50-foot no-work buffers until such time as the eggs have hatched and blunt-nosed leopard lizards have left the area." The measure mentions these buffers would be installed during the active period when BNLL are moving above ground. CDFW does not recognize the 50-foot no work buffer distance as appropriate for protection of the species and to avoid take. As CDFW mentioned

Terrance Smalls
Kern County
October 17, 2022
Page 6

previously in the project's NOP comment letter, it is recommended that any BNLL detection, known burrows, or egg clutch sites have "a minimum 395-acre buffer". This buffer is based on unpublished data from Dr. David Germano documenting that "male BNLL have home ranges up to 52 acres and that female BNLL have home ranges exceeding 98 acres, the known maximum home range sizes observed for the species, the unknown specific footprint of the individual BNLL's home range relative to where the lizard was observed on the surface, and the unknown location of the lizard underground when construction commences." Given the size of this recommended buffer relative to the overall size of the proposed Project, CDFW reiterates the recommendation of early consultation with CDFW to discuss BNLL.

Finally, Mitigation Measure 4.4-9 states that wildlife exclusion fence (WEF) will be installed "during the active season in areas where BNLL or signs of BNLL have been observed" and "the project biologist will confirm that no blunt-nosed leopard lizard are present within a Work Area by conducting focused blunt-nosed leopard lizard observational surveys for 12 days over the course of a 30 to 60-day period. At least one survey session will occur over 4 consecutive days. These observational surveys may be paired with scent detection dog surveys for blunt-nosed leopard lizard scat." As mentioned above, CDFW cannot authorize "take" of BNLL and complete avoidance of all observed lizards, known burrows, or egg clutch sites by a distance of no less than the distance that BNLL are known or expected to travel within their home range is required. BNLL are often difficult to detect as activity patterns can vary considerably daily and seasonally (Tollestrup 1976) and there is the potential that the installation and implementation of WEF within areas where BNLL and BNLL sign have been observed would result in "take". As such, CDFW reiterates the recommendation of early consultation with CDFW to discuss BNLL. We are unaware of successful trials using scent dogs to detect BNLL or their scat, though scent dogs have been used successfully with other species such as San Joaquin kit fox (SJKF).

RECOMMENDED MITIGATION MEASURE 2: Burrowing Owl (BUOW)

Mitigation Measure 4.4-7 states that, "If burrowing owls are detected onsite, no ground-disturbing activities shall be permitted within a buffer of no fewer than 100 meters (330 feet) from an active burrow during the breeding season (i.e., February 1 to August 31), unless otherwise authorized by CDFW. During the non-breeding (winter) season (i.e., September 1 to January 31), ground-disturbing work can proceed as long as the work occurs no closer than 50 meters (165 feet) from the burrow. Depending on the level of disturbance, a smaller buffer may be established in consultation with CDFW." CDFW does not agree that these buffer distances would be sufficient to prevent the take of burrowing owls within occupied habitat. Human-related disturbances were documented to cause degradation and abandonment of active burrows at distances up to 500 meters (Scobie and Faminow

Terrance Smalls
 Kern County
 October 17, 2022
 Page 7

2000, Lehman et al. 1999). As such, CDFW reiterates the recommendation outlined in CDFW's NOP comment letter that no-disturbance buffers follow the buffer distances outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), and that these buffers be implemented prior to and during any ground-disturbing activities. 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)

Mitigation Measure 4.4-7 also states that, "If burrow avoidance is infeasible during the non-breeding season or during the breeding season (February 1 through August 31) where resident owls have not yet begun egg laying or incubation, or where the juveniles are foraging independently and capable of independent survival, a qualified biologist shall implement a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 CDFW Staff Report on Burrowing Owl Mitigation." CDFW does not recognize the method of passively relocating BUOW from active burrows during the breeding season as appropriate and recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance.

RECOMMENDED MITIGATION MEASURE 3: Giant Kangaroo Rat (GKR) and Short-nosed Kangaroo Rat (SNKR)

The DEIR states that, "suitable foraging and denning habitat is present within the Project area" for GKR and several occurrences of SNKR were documented within five miles of the project area (CDFW 2022). Additionally, an unidentified kangaroo rat was documented with remote cameras during reconnaissance level biological surveys, yet no mitigation measures were included within the DEIR to determine presence of GKR and SNKR and avoid project-related impacts.

Terrance Smalls
Kern County
October 17, 2022
Page 8

CDFW recommends that a trapping plan for determining presence of GKR and SNKR be submitted to and approved by CDFW prior to subsequent trapping efforts. CDFW recommends these surveys be conducted by a qualified biologist who holds a CDFW Memorandum of Understanding for GKR and SNKR, and any appropriate USFWS permit(s). CDFW further recommends that these surveys be conducted between April 1 and October 31, when kangaroo rats are most active and before nighttime temperatures become prohibitively cold in late fall and winter. These trapping surveys should be conducted well in advance of ground- and/or vegetation-disturbing activities in order to determine if impacts to GKR and SNKR could occur. Once completed, all survey results would be sent to CDFW.

In addition to trapping surveys, CDFW advises maintenance of a 50-foot minimum no-disturbance buffer around all small mammal burrow entrances where feasible. Although these recommended buffer distances may be sufficient to avoid direct mortality from crushing or burrow destruction, encircling a burrow with development activities would inhibit the ability of GKR and SNKR to freely disperse to and from burrows and has the potential to be considered "capture" and/or ultimately result in take in the form of mortality. Therefore, CDFW recommends that in addition to the buffer distances, that no burrow is surrounded more than 180 degrees by development activities.

Finally, If GKR are found within the Project area during trapping as described above, preconstruction surveys, or construction activities, consultation with CDFW is advised to occur immediately to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to any ground-disturbing activities, pursuant Fish and Game Code section 2081 subdivision (b).

RECOMMENDED MITIGATION MEASURE 4: San Joaquin Kit Fox (SJKF)

Mitigation Measure 4.4-5 states that, "preconstruction surveys shall be conducted by a qualified biologist for the presence of American badger or San Joaquin kit fox dens within 14 days prior to commencement of construction activities". As it is likely that SJKF are utilizing the project site, CDFW agrees that preconstruction presence/absence surveys be conducted and recommends the surveys follow the USFWS' "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011). Specifically, CDFW advises conducting these surveys in all areas of potentially suitable habitat within Project areas and a 500-foot buffer of Project areas no less than 14-days and no more than 30-days prior to beginning of ground and/or vegetation disturbing activities. While these surveys will identify if there are SJKF dens on site, a lack of den detection does not mean that SJKF are not foraging and otherwise utilizing the site. As such, CDFW also recommends assuming presence of SJKF and acquiring an ITP prior to

Terrance Smalls
Kern County
October 17, 2022
Page 9

ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

Mitigation Measure 4.4-5 also states that, “If avoidance of the potential dens is not possible, the following measures are required to avoid potential adverse effects to the American badger and San Joaquin kit fox:

a. If the qualified biologist determines that potential dens are inactive, the biologist shall excavate these dens by hand with a shovel to prevent American badgers or San Joaquin kit foxes from re-using them during construction.

b. If the qualified biologist determines that potential dens may be active, an onsite passive relocation program shall be implemented. This program shall consist of excluding American badgers or San Joaquin kit foxes from occupied burrows by installation of one-way doors at burrow entrances, monitoring of the burrow for 7 days to confirm usage has been discontinued, and excavation and collapse of the burrow to prevent reoccupation. After the qualified biologist determines that American badgers or San Joaquin kit foxes have stopped using the dens within the project boundary, the dens shall be hand-excavated with a shovel to prevent re-use during construction.”

The passive relocation of active dens would result in “take” of SJKF. As there is a high likelihood that SJKF occupy the Project site and measures are proposed to exclude SJKF from active and/or occupied burrows, CDFW recommends acquiring an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

RECOMMENDED MITIGATION MEASURE 5: Swainson’s Hawk (SWHA)

Mitigation Measure 4.4-10 states that, “Swainson’s hawk nest survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 5-mile buffer around the project site and follow the 2010 Swainson’s hawk protocol surveys. Surveys shall be conducted no more than 14 days prior to construction activities”. As mentioned in CDFW’s NOP commented letter, SWHA have the potential to nest near the Project site, and forage within the Project site. SWHA have been documented to occur approximately 2 miles from the Project site (CDFW 2022). As such, CDFW recommends focused SWHA surveys to document known nesting sites and evaluate potential Project-related impacts prior to conducting pre-construction surveys. Surveys would need to be conducted for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project implementation (during CEQA analysis). SWHA detection during protocol-level surveys warrants consultation with CDFW to discuss how to implement Project activities and avoid take.

Terrance Smalls
Kern County
October 17, 2022
Page 10

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 warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. Finally, CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of ¾ acre of HM land for each acre of development is advised.

For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of ½ acre of HM land for each acre of development is advised.

RECOMMENDED MITIGATION MEASURE 6: Crotch Bumble Bee (CBB)

On June 28, 2019, the Fish and Game Commission published findings of its decision to advance CBB to candidacy as endangered. The Commission's candidacy determination was challenged in the Sacramento County Superior Court on November 13, 2020, and candidacy and the take prohibition were stayed for litigation through May 2022. On May 31, 2022, the Third Appellate Court District in California upheld the listing, and the state Supreme Court subsequently declined to review the case on September 21, 2022. Candidacy was reinstated on September 30th, 2022, when the California Supreme Court of appeal issued remittitur in the litigation. With Candidacy of CBB reinstated, pursuant to Fish and Game Code section 2074.6, CDFW has initiated a status review report to inform the Commission's decision on whether listing of CBB, pursuant to CESA, is warranted. During the candidacy period, consistent with CEQA Guidelines section 15380, the status of the CBB as an endangered candidate species under CESA (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. It is unlawful to import into California, export out of California, or take, possess, purchase, or sell within California, CBB and any part or product thereof, or attempt any of those acts, except as authorized pursuant to CESA. Under Fish and Game Code section 86, take means to hunt, pursue, catch, capture, or kill, or to attempt to hunt pursue, catch, capture, or kill. Consequently, take of CBB during the status review period is prohibited unless authorization pursuant to CESA is obtained.

Terrance Smalls
Kern County
October 17, 2022
Page 11

The Project site is within the range of CBB and the DEIR did not analyze and address potential Project related impacts to this species. Without appropriate avoidance and minimization measures for CBB, potentially significant impacts associated with ground- and vegetation-disturbing activities associated with construction of the Project include loss of foraging plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young and/or queens, in addition to direct mortality in violation of Fish and Game Code. CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features to evaluate potential suitable foraging and overwintering habitat and potential impacts resulting from ground- and vegetation-disturbance associated with the proposed Project. If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take. If take cannot be avoided, take authorization prior to any ground disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

RECOMMENDED MITIGATION MEASURE 7: Other State Species of Special Concern

Mitigation Measure 4.4-5 states that, "Preconstruction surveys for special-status species shall be conducted within the project boundaries by the Lead Biologist or approved biological monitor within 14 days of the start of any vegetation clearing or grading activities. Methodology for preconstruction surveys shall be appropriate for each potentially occurring special-status species and shall follow U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife preconstruction survey guidelines where appropriate." This measure continues by listing specific buffer distances for SJKF and American Badger (AMBA). There is no mention of buffer distances for other species of special concern and their burrows that may be found during Project construction such as San Joaquin coachwhip and western spadefoot. San Joaquin coachwhip was documented within the Project footprint during 2022 surveys and suitable grassland habitat elements for western spadefoot were also documented (CDFW 2022). CDFW recommends that a qualified biologist conduct focused surveys for other species of special concern and that a 50-foot no-disturbance buffer is implemented around the entrances of burrows that can provide refuge for San Joaquin coachwhip, western spadefoot, and other special-status small mammals.

Terrance Smalls
Kern County
October 17, 2022
Page 12

RECOMMENDED MITIGATION MEASURE 8: Special-status Plants

Mitigation Measure 4.4-6 states that, “Within 14 days prior to the commencement of any ground-disturbing activities, the project operator shall conduct preconstruction surveys for special-status and protected plant species within the project area, including but not limited to crownscale, Lost Hills crownscale and San Joaquin Bluecurls, San Joaquin woollythreads and California jewelflower.” The DEIR states that surveys were done in September 2020 and March 2021 and that the access road, “was added to the BSA prior to March 2021”. As the access road was only surveyed for spring blooming plants and the entirety of the site was surveyed during a drought year, CDFW recommends the Project site be resurveyed by a qualified botanist with experience identifying crownscale, Lost Hills crownscale, San Joaquin Bluecurls, San Joaquin woollythreads, and California jewelflower prior to construction. CDFW recommends following the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (March 20, 2018). This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Mitigation Measure 4.4-6 also states that, “The project proponent/operator shall work with a qualified biologist to determine the presence of crownscale, Lost Hills crownscale and San Joaquin Bluecurls, San Joaquin woollythreads and California jewelflower and identify all known locations of special-status plant species to establish “avoidance areas”. All special-status plants found within the project site shall be avoided by a buffer of 25 feet. Sturdy, highly visible, orange plastic construction fencing (or equivalent material verified by the authorized biologist) shall be installed around all locations of detected special-status plants to protect from impacts during the construction phase, until they can be relocated. The fence shall be securely staked and installed in a durable manner that would be reasonably expected to withstand wind and weather events and last at least through the construction period. Fencing shall be removed upon completion of the project construction.” CDFW does not recognize the buffer distances as appropriate for protection of the species and recommends delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by the special status plant species.

Finally, Mitigation Measure 4.4-6 states that, “Any crownscale, Lost Hills crownscale, San Joaquin Bluecurls, San Joaquin woollythreads or California jewelflower onsite individuals or populations that cannot feasibly be avoided in final project design shall have seed collected prior to construction for sowing into suitable onsite habitat or in nearby suitable offsite habitat covered with a conservation easement. A seed

Terrance Smalls
Kern County
October 17, 2022
Page 13

harvesting and storage plan including a planting plan shall be prepared and approved by the County, prior to ground disturbance of these areas.” As California jewelflower is State and federally endangered, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization is warranted. Take authorization would occur through acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

RECOMMENDED MITIGATION MEASURE 9: Nesting Birds

Mitigation Measure 4.4-10 states that, “If construction is scheduled to commence during the non-nesting season (i.e., September 1 to January 31), no preconstruction surveys or additional measures are required. To avoid impacts to nesting birds in the project area, a qualified wildlife biologist shall conduct preconstruction surveys of all potential nesting habitat within the project site for construction activities that are initiated during the breeding season (i.e., February 1 to August 31). The raptor survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 0.5-mile buffer around the project site. Swainson’s hawk nest survey shall focus on potential nest sites (e.g., cliffs, large trees, windrows) within a 5-mile buffer around the project site and follow the 2010 Swainson’s hawk protocol surveys (CEC and CDFW 2010). Surveys shall be conducted no more than 14 days prior to construction activities. Surveys need not be conducted for the entire project site at one time; they may be phased so that surveys occur shortly before a portion of the project site is disturbed. The surveying biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance. If active nests are found, a suitable no disturbance buffer (e.g., 200–300 feet for common raptors; 0.5 mile for Swainson’s hawk; 30–50 feet for passerine species) shall be established around active nests until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). For nonlisted species, encroachment into the avoidance buffer may occur at the discretion of a qualified biologist; however, for State-listed species, consultation with CDFW shall occur prior to encroachment into the aforementioned buffers.” Except for SWHA, CDFW does not recognize the buffer distances as appropriate for protection of the species and recommends the measures below to mitigate for impacts to nesting birds.

If ground-disturbing activities occur during the nesting bird season, CDFW recommends that a qualified 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 work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests.

Terrance Smalls
Kern County
October 17, 2022
Page 14

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 consulted 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 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. 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 biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to the blunt-nosed leopard lizard, giant kangaroo rat, San Joaquin kit fox, California jewelflower, and San Joaquin woollythreads. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA 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 FESA is advised well in advance of any Project activities.

Lake and Streambed Alteration: Based on the drainages map provided in the DEIR, the Project site appears to contain multiple drainages. Project activities may be 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. CDFW recommends coordination with CDFW staff prior to ground-breaking activities on-site or submit a Lake or Streambed Alteration Notification to determine if the activities proposed within the streams are

Terrance Smalls
Kern County
October 17, 2022
Page 15

subject to CDFW's jurisdiction. Please note that CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement; 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.

Project Alternatives Analysis: CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the project's CEQA document in addition to these and other agency and public comments be used to develop and modify the project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources should be mitigated to reduce impacts to a less than significant level, if feasible.

Cumulative Impacts: Currently, the DEIR has a very broad analysis of cumulative impacts to biological resources and does not adequately evaluate impacts to specific resources. CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e., less than significant). CDFW recommends cumulative impacts be analyzed for the following species using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area should be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW recommends a scientifically sound cumulative impacts analysis be conducted for the following species as part of this DEIR: BNLL, BUOW, GKR, SNKR, SWHA, CBB, San Joaquin coachwhip, western spadefoot, California jewelflower, Lost Hills crowscale, San Joaquin woollythreads, and nesting birds such as prairie falcon (*Falco mexicanus*) and loggerhead shrike (*Lanius ludovicianus*). CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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

Terrance Smalls
Kern County
October 17, 2022
Page 16

communities detected during Project surveys to the 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 mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

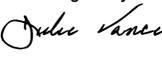
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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

CDFW appreciates the opportunity to comment on the DEIR to assist Kern County Planning and Natural Resources in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Jeremy Pohlman, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (805) 588-5674 or by electronic mail at Jeremy.pohlman@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Terrance Smalls
Kern County
October 17, 2022
Page 17

REFERENCES

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<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=174900&inline>.
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- Swainson's Hawk Technical Advisory Committee (SWHA TAC), 2000. *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California*. Swainson's Hawk Technical Advisory Committee. May 31, 2000.
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- USFWS, 2011. *Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance*. United States Fish and Wildlife Service. January 2011.

Attachment 1

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

PROJECT: Azalea Solar Project

SCH No.: 2021090602

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Recommended Mitigation Measure 1: BNLL	
BNLL consultation	
BNLL surveys	
Recommended Mitigation Measure 3: GKR and SNKR	
GKR and SNKR trapping plan	
GKR take authorization	
Recommended Mitigation Measure 4: SJKF	
SJKF surveys	
SJKF take authorization	
Recommended Mitigation Measure 5: SWHA	
SWHA surveys	
SWHA take authorization	
SWHA foraging habitat mitigation	
Recommended Mitigation Measure 6: CBB	
CBB survey	
CBB take authorization	
Recommended Mitigation Measure 7: Other State Species of Special Concern	
Special-Status Species surveys	
Recommended Mitigation Measure 8: Special-Status Plants	
Special-Status Plants take authorization	
Recommended Mitigation Measure 9: Nesting Birds	
Nesting Bird surveys	
<i>Before Impacting the Bed, Bank, or Channel of any Stream or River</i>	
Mitigation Measure: Notification to CDFW's Lake and Streambed Alteration Program	
<i>During Construction</i>	
Recommended Mitigation Measure 1: BNLL	
BNLL avoidance buffer	
Recommended Mitigation Measure 2: BUOW	

BUOW avoidance buffer	
Recommended Mitigation Measure 3: GKR and SNKR	
GKR and SNKR avoidance buffer	
Recommended Mitigation Measure 5: SWHA	
SWHA avoidance buffer	
Recommended Mitigation Measure 6: CBB	
CBB avoidance buffer	
Recommended Mitigation Measure 7: Other State Species of Special Concern	
Species avoidance buffer	
Recommended Mitigation Measure 8: Special-Status Plants	
Special-Status Plants avoidance buffer	
Recommended Mitigation Measure 9: Nesting Birds	
Nesting bird avoidance buffer	