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November 8, 2024

Greg Plucker
Community Development Director
County of Colusa Community Development Department
1213 Market Street
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Subject: Janus Solar and Battery Storage Project
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH No. 2024061043

Dear Greg Plucker:

The California Department of Fish and Wildlife (CDFW) received and reviewed the draft Environmental Impact Report (DEIR) from County of Colusa Community Development Department for the Janus Solar and Battery Storage Project (Project) in Colusa, pursuant the California Environmental Quality Act (CEQA) statute and guidelines.[1] CDFW previously submitted comments in response to the Notice of Preparation of the DEIR on July 17, 2024.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, plants and their habitats. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that it, by law, may need to exercise its own regulatory authority under the Fish and Game Code (Fish & G. Code).

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Fish & G. Code, § 1802.). Similarly, for purposes of CEQA, CDFW provides, as available, biological expertise during public agency

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.

environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project site is located approximately 6.5 miles southwest of the City of Williams. State Highway 20 runs about one mile from the Project site, north and west. The proposed Project would be located on two County of Colusa Assessor Parcels (APN's 018-050-005 and 006) totaling approximately 886 acres currently used for cattle grazing in Colusa County, California. The Project would utilize an estimated 666 acres of the total 886 acres, and connect to the Pacific Gas and Electric (PG&E) Cortina Substation, located on Walnut Drive, approximately 4 miles northeast of the Project site.

The Project consists of the construction, operation, maintenance, and decommissioning of a solar photovoltaic (PV) power generating facility including solar PV modules, a battery energy storage system (BESS), on-site substation, a gen-tie transmission line, and other necessary supporting infrastructure for the Janus Solar and Battery Storage Project. The Project would generate up to 80 megawatts of alternating current of electricity and store up to 80 megawatts, or 320 megawatt hours (MWh), of electricity on the approximately 666-acre site. The Project would connect to the electrical grid at the existing PG&E Cortina Substation via an approx. 4-mile new gen-tie transmission line. A Development Agreement and a review of Project compatibility with the existing Williamson Act contract is also part of the Project.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist the County of Colusa Community Development Department in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources. CDFW recommends that the forthcoming EIR address the following:

Comment 1. Burrowing Owl CESA Candidacy

Issue: The burrowing owl (*Athene cunicularia*) (BUOW) is designated as a State Species of Special Concern in the DEIR. On October 10, 2024, the California Fish and Game Commission granted the western burrowing owls candidate species protections under CESA. The candidacy designation temporarily affords the BUOW broad CESA protections (including prohibitions against "take" without permit authorization) throughout the entirety of California over the next 12-18 months while CDFW conducts a species status review to confirm whether (and where) listing is warranted and to recommend management and recovery actions. Projects with potential impacts to BUOW are encouraged to obtain an incidental take permit (ITP) from CDFW in order to comply with CESA. In the event that CDFW does confirm that listing is warranted for the BUOW in the future, when the Project's construction phase is set to occur and take of BUOW or its nest is unavoidable, then the Project proponent can obtain an ITP from CDFW and provide suitable mitigation for loss of nesting habitat.

Recommendation or Recommended Mitigation Measure: CDFW recommends the relevant DEIR section should be modified to note the recent CESA candidate status of the BUOW. Additionally, if it is determined that avoidance of BUOW is not feasible, then CDFW recommends the project proponent apply for an ITP from CDFW.

Comment 2. Burrowing Owl Loss of Nesting and Foraging Habitat

Issue: The DEIR does not adequately reduce project impacts to BUOW. As stated in the DEIR, the project site provides foraging habitat for BUOW. The DEIR states that the Project is anticipated to utilize 666 acres of suitable foraging habitat. BUOW have suffered significant habitat loss due to large-scale development, including wind and solar energy infrastructure development, and from the killing and removal of mammals during significant grading activities whose underground burrows the owls use for nesting. BUOW is listed as a candidate species under CESA and has additional protection under the Migratory Bird Treaty Act and section 3503.5 of the Fish and Game Code; therefore, impacts may be considered potentially significant unless adequate mitigation is incorporated.

Recommendation or Recommended Mitigation Measure: CDFW recommends the lead agency quantify the total acreage of Project impacts to BUOW foraging and nesting habitat. Two seasons of temporary impacts to foraging habitat should be considered and mitigated for as permanent impacts. To reduce impacts to BUOW nesting and foraging habitat to a less than significant level, CDFW recommends a minimum of 3 acres for each acre habitat replacement for nesting habitat and a minimum of acre for acre habitat replacement for foraging habitat in the form of fee title acquisition with a conservation easement to protect BUOW nesting and foraging habitat. To reduce impacts to a level of less than significant, CDFW recommends incorporating the following mitigation measure in the DEIR that adequately addresses impacts to BUOW nesting and foraging habitat:

To compensate for the permanent loss burrowing owl nesting and foraging habitat, the project proponent shall preserve nesting and foraging habitat for burrowing owl, or shall purchase burrowing owl habitat mitigation credits at a CDFW-approved

mitigation bank, at a minimum of 3:1 for loss of nesting and 1:1 for loss foraging habitat ratios. Before purchase of credits at a mitigation bank and/or acquisition of mitigation land, location of the mitigation shall be determined by the lead agency and a qualified biologist based on habitat suitability. This mitigation shall be implemented by the project proponent prior to starting project activities in suitable burrowing owl foraging habitat.

Comment 3. Swainson's Hawk Loss of Foraging Habitat

Issue: The DEIR does not adequately reduce project impacts on Swainson's hawk (*Buteo Swainsoni*) (SWHA). As stated in the DEIR, the project site provides foraging habitat for SWHA. The DEIR states that the Project is anticipated to utilize 666 acres of suitable foraging habitat. The primary threat to the SWHA population in California continues to be habitat loss, especially the loss of suitable foraging habitat, but also nesting habitat in some portions of the species' breeding range, due to urban development and incompatible agriculture. This impact may have been the greatest factor in reducing SWHA range and abundance in California over the last century (California Department of Fish and Game 1993, California Department of Conservation 2011). SWHA is listed as threatened under CESA and has additional protection under the Migratory Bird Treaty Act and section 3503.5 of the Fish and Game Code; therefore, impacts may be considered potentially significant unless adequate mitigation is incorporated.

Suitable foraging habitat is necessary to provide an adequate energy source for breeding SWHA adults, including support of nestlings and fledglings. If prey resources are not sufficient, or if adults must hunt long distances from the nest site, the energetics of the foraging effort may result in reduced nestling health and survival with an increased likelihood of disease and/or starvation. In more extreme cases, the breeding pair, in an effort to assure their own existence, may even abandon the nest and young (Woodbridge 1985). Routine animal grazing activities, increases in human presence, and the permanent impacts associated with solar panel installation, will permanently reduce the amount of SWHA foraging habitat. SWHA generally searches for prey by soaring above fields and solar panels reduce their ability to see and catch their prey.

Recommendation or Recommended Mitigation Measure: CDFW recommends the lead agency quantify the total acreage of Project impacts to SWHA foraging and nesting habitat. Two seasons of temporary impacts to foraging habitat should be considered and mitigated for as permanent impacts. To reduce impacts to SWHA foraging and nesting habitat to a less than significant level, CDFW recommends a minimum of acre for acre habitat replacement in the form of fee title acquisition with a conservation easement to protect SWHA foraging and nesting habitat. To reduce impacts to a level of less than significant, CDFW recommends incorporating the following mitigation measure in the DEIR that adequately addresses impacts to SWHA nesting and foraging habitat:

To compensate for the permanent loss of 666 acres of SWHA foraging habitat, the project proponent shall preserve foraging habitat for SWHA or shall purchase SWHA foraging habitat mitigation credits at a CDFW-approved mitigation bank, at a minimum 1:1 ratio. Before purchase of credits at a mitigation bank and/or

acquisition of mitigation land, location of the mitigation shall be determined by the lead agency and a qualified biologist based on habitat suitability. This mitigation shall be implemented by the project proponent prior to starting project activities in suitable SHWA foraging habitat.

Comment 4. White-tailed Kite Loss of Foraging Habitat

Issue: The DEIR does not adequately reduce project impacts on white-tailed kite (*Elanus leucurus*). As stated in the DEIR, the project site provides foraging habitat for white-tailed kite. The DEIR states that the Project is anticipated to utilize 666 acres of suitable foraging habitat. Among the factors that could be contributing to the long-term decline in white-tailed kite numbers, loss of habitat is the most frequently implicated (Dunk 1995). Conversion of grassland and other agricultural lands (e.g. alfalfa and other forage crops) used by kites to urban or more intense agricultural uses has been a major land use trend in the Central Valley and throughout California in recent decades (CDOC 2008, Volpe et al. 2010, Cameron et al. 2014). White-tailed kite is listed as a fully protected species in California and has additional protection under the Migratory Bird Treaty Act and section 3503.5 of the Fish and Game Code; therefore, impacts may be considered potentially significant unless adequate mitigation is incorporated.

Recommendation or Recommended Mitigation Measure: CDFW recommends the lead agency quantify the total acreage of Project impacts to white-tailed kite foraging and nesting habitat. Two seasons of temporary impacts to foraging habitat should be considered and mitigated for as permanent impacts. To reduce impacts to white-tailed kite foraging and nesting habitat to a less than significant level, CDFW recommends a minimum of acre for acre habitat replacement in the form of fee title acquisition with a conservation easement to protect white-tailed kite foraging and nesting habitat. To reduce impacts to a level of less than significant, CDFW recommends incorporating the following mitigation measure in the DEIR that adequately addresses impacts to white-tailed kite nesting and foraging habitat:

To compensate for the permanent loss of 666 acres of white-tailed kite foraging habitat, the project proponent shall preserve foraging habitat for white-tailed kite, or shall purchase white-tailed kite foraging habitat mitigation credits at a CDFW-approved mitigation bank, at a minimum 1:1 ratio. Before purchase of credits at a mitigation bank and/or acquisition of mitigation land, location of the mitigation shall be determined by the lead agency and a qualified biologist based on habitat suitability. This mitigation shall be implemented by the project proponent prior to starting project activities in suitable burrowing owl foraging habitat.

Comment 5. Crotch's Bumble Bee Avoidance Plan

Issue: Mitigation Measure BIO-1 currently involves the drafting of a Crotch's Bumble bee (*Bombus crotchii*) (CBB) avoidance plan with measures to reduce potential impacts to the species. However, it does not require CDFW consultation in the plan's development prior to implementation. Additionally, the measure states that the plan is anticipated to include preconstruction surveys, avoidance for vegetation removal, and buffers around CBB nests

and individuals, but does not make these avoidance methods required. Therefore, there could be significant impacts to CBB, if the measures are not revised.

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

Prior to ground disturb**ance,** ~~ing or~~ vegetation removal**,** and management activities within the Project site, a CBB avoidance plan will be prepared **in consultation with CDFW.** ~~and submitted to CDFW for review.~~ This plan will include specific avoidance measures that will be implemented to avoid take of the species. The~~se~~ measures **shall** ~~are anticipated to~~ include but **are not** ~~not be~~ limited to pre-construction surveys for CBB individuals and nests, **avoidance of active nests**, avoidance of vegetation removal to the **maximum** extent feasible during the CBB colony active period, procedures for vegetation management in coordination with mitigation measure **FIRE-1**, and implementation of avoidance buffers around CBB individuals and nests if they are observed. If it is determined that avoidance of CBB is not feasible, then the Project will seek an Incidental Take Permit from CDFW. CDFW's bumble bee survey considerations can be found using the following link: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline.

Additionally, CDFW recommends the DEIR incorporate the following CBB mitigation measures:

1. **Seasonal Restriction. Native or non-native flowering vegetation removal shall occur prior to bloom and before the active season for CBB (which is approximately March 1 through October 31). The project proponent shall avoid conducting project activities involving vegetation and ground disturbance in CBB habitat during the Queen/Gyne Flight Season, when queens emerge in the spring searching for nest sites and during the fall flight period when gynes mate and search for overwintering habitat. These time periods shift each year due to climatic conditions (drought, temperature, and precipitation). To determine these time periods each year, a qualified biologist shall be onsite and conduct CBB Protocol Surveys as described in CDFW's bumble bee survey considerations (**https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline).

2. **Lighting Minimization. If feasible, Project will be restricted to to daytime hours. If nighttime construction is needed within 500 feet of CBB habitat, Permittee shall ensure that all construction-related lighting shall not have significant illumination pass beyond the immediate work area. Shielding techniques may include, but should not be limited to, the use of fence slats, netting, mesh, or tarps; and all construction lighting used shall be yellow or orange lighting.**

Comment 6. American Badger Preconstruction Survey

Issue: American badgers (*Taxidea taxus*) are a CDFW species of special concern (SSC) and have been experiencing serious population declines that, if continued or resumed, could qualify it for State threatened or endangered status.

The American badger utilize different types of dens throughout their life: reproductive (natal and rearing), over-wintering and hunting. The American badger mates between July and September with delayed implantation of the embryo occurring between January and February (Long, 1973). Females give birth underground between March and April. Kits typically disperse from the reproductive den at three to four months of age (Messick et al., 1981) although some young American badgers have delayed dispersal until their second year. Currently, the proposed mitigation measure states if dens are found during the preconstruction survey, they will be excavated or blocked to discourage use if they are potentially active. However, forced relocation of kits prior to their ability to disperse on their own can result in unforeseen stressors or impacts to local badger populations.

Recommendation or Recommended Mitigation Measure: CDFW recommends that Mitigation Measure BIO-1 for the American Badger be replaced with the following:

American Badger Preconstruction Survey. The project proponent shall retain a qualified biologist to conduct an American badger preconstruction survey within 3 calendar days prior to the initiation of construction activities within suitable habitat for American badger. If no American badger individuals and/or burrows are found during the preconstruction survey, the biologist shall document the findings in a letter report to CDFW, submit the report and no further mitigation shall be required. If individuals and/or burrows are found, the project proponent shall consult with CDFW and a qualified biologist to determine an appropriate no disturbance buffer to avoid impacts to the den. If impacts cannot be avoided, den excavation and exclusion implementation shall take place during the non-breeding season (typically September 1 through January 1) in consultation with CDFW.

Comment 7. Pollinators

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

Recommendation or Recommended Mitigation Measure: CDFW recommends the Project area be planted with deep-rooted native flowers and grasses that capture and filter storm water, build topsoil, and provide abundant and healthy food for bees and

other insects that provide critical services to our food and agricultural systems as described on the Fresh Energy website at https://fresh-energy.org/beeslovesolar/.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to 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 submitted online or mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an effect on fish and wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the County of Colusa Community Development Department and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

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

CDFW appreciates the opportunity to comment on the DEIR for the Janus Solar and Battery Storage Project and recommends that the County of Colusa Community Development Department address CDFW's comments and concerns in the forthcoming DEIR. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter, or wish to schedule a meeting and/or site visit, please contact Michael Shun, Senior Environmental Scientist (Specialist) at (916) 767-8444 or michael.shun@wildlife.ca.gov.

Sincerely,

DocuSigned by:
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746D5F13C3B348A...

Morgan Kilgour
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REFERENCES

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