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Defenders of Wildlife's Comments on the Darden Clean Energy Project

Additional submitted attachment is included below.



California Program Office

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April 21, 2025

Lisa Worrall
California Energy Commission
715 P Street
Sacramento, CA 95814

Re: Darden Clean Energy Project; Docket No. 23-OPT-02

Dear Ms. Worrall,

Thank you for the opportunity to provide comments in response to the Draft Environmental Impact Report (DEIR; also referred to as the Staff Assessment) for the proposed Darden Clean Energy Project (Project). Defenders of Wildlife (Defenders) is dedicated to protecting all wild animals and plants in their natural communities and has nearly 2.1 million members and supporters in the United States, with more than 311,000 residing in California.

The proposed Project is a solar photovoltaic facility that would generate up to 1,150 MW of renewable energy and includes an estimated 4,600 MWh battery energy storage system. The proposed Project would be sited on approximately 9,500 acres of land owned by Westlands Water District in unincorporated Fresno County. It is located near the community of Cantua Creek.

Defenders strongly supports renewable energy generation. A low-carbon energy future is critical for California's economy, communities and environment. As we transition toward a clean energy future, it is imperative that we consider the near-term impacts of solar development on our biodiversity, fish and wildlife habitat and natural landscapes while addressing the long-term impacts of climate change. Therefore, renewable energy projects must be planned, sited, developed and operated to avoid, minimize and mitigate adverse impacts on wildlife and lands with known high-resource values.

Comments

We offer the following comments on the DEIR for the proposed Project:

Project Location

The Project appears to be well-sited by being located on previously disturbed lands and consistent with Smart from the Start siting criteria. Defenders has a long history of advocating for a "Smart from the Start" approach to the siting and development of renewable energy projects, which dictates that development should occur on impaired or

degraded lands. A Defenders report directly identified lands within the Westlands Water District as severely impaired and, therefore, suitable for renewable energy development.¹ Siting on impaired lands minimizes potential project-related impacts on special-status species and their habitats. We encourage the developer to continue its commitment to avoiding lands with high conservation value for the development of future renewable energy projects.

Objective

The DEIR emphasizes a commitment to avoiding lands with high conservation value through the inclusion of the project objective to “[m]inimize environmental impacts and land disturbance associated with solar energy development by siting the facility on relatively flat, contiguous lands with low quality habitat, high solar insolation in close proximity to existing roads and established utility corridors.” Defenders appreciates the prioritization of siting renewable energy facilities on land with low quality habitat to reduce the impacts to biological resources and minimize land disturbance. We encourage the continued development of projects with objectives that prioritize least conflict siting.

Confidential Studies

A thoughtfully sited project, however, does not negate the need for public transparency when assigning avoidance, minimization and mitigation measures or analyzing the level of environmental impact from a proposed project. The DEIR and the associated Swainson’s Hawk Conservation Strategy relies on several studies that support the idea of Swainson’s hawk (SWHA) foraging within solar projects; however, these studies have been granted confidential designation by the California Energy Commission (CEC). The Swainsons’ Hawk Conservation Strategy states “[t]he study suggests that properly managed solar array fields within an agricultural landscape are not avoided by SWHA and may be selected at a greater frequency than many cultivated land cover types. Other studies have also shown that SWHA will forage in utility-scale solar generating facilities that are located within an overall matrix of agricultural land.” The DEIR reaffirms that solar projects can serve as foraging habitat and cites this confidential study as reasoning that a 0.25:1 compensatory ratio is appropriate for Swainson’s hawk and its habitat due to the potential uplift from the on-site revegetation efforts. Furthermore, the DEIR states the mitigation strategy included in the Swainson’s Hawk Conservation Strategy is intended to provide high quality foraging habitat within the solar development areas of the project.

The project application was submitted under the AB 205 permitting process. AB 205 established a streamlined permitting process for large-scale renewable energy project through the CEC in lieu of local permits through the California Environmental Quality Act (CEQA) processes. The intent of CEQA is to “[i]nform governmental decision-makers and the

¹ Defenders of Wildlife. *Smart From the Start: Responsible Renewable Energy Development in the Southern San Joaquin Valley*. 2012. Washington, D.C.

public about the potential significant environmental effects of proposed activities.” Given the AB 205 process is the equivalent permitting processes through the CEC in lieu of CEQA, it is reasonable to apply the intent of informing the public about the potential impacts. The Act reinforces the importance of informing the public about the potential impacts of a project through requiring the opportunity for the public to submit comments, for the CEC to conduct public outreach to solicit input, for the CEC to consider public input before making a permitting decision and the requirement to hold public meetings and hearings to gather input.

When an environmental review document cites confidential studies as evidence that potential project impacts are reduced due to the specific measures within documents withheld from the public, it undermines the ability of the public to analyze the project and the true environmental impacts adequately. The public and other stakeholders must be able to review the studies and the scientific evidence to ensure the proposed measures are appropriate.

Defenders requests the reports and studies that are relied on to justify avoidance, minimization and mitigation measures and assign the level of environmental impact be made available for public review. This includes the following studies:

- Swainson's Hawk and Other Raptor Foraging Use of Solar Array Fields within an Agricultural Landscape in Sacramento County (TN # 260919)
- The Distribution and Abundance of Nesting Swainson's Hawks in the Vicinity of the Proposed RE Scarlet Solar Generation Facility (TN # 260920)
- Swainson's Hawk and Other Raptor Foraging Use of Solar Array Fields within an Agricultural Landscape in Sacramento County Year 2 (TN # 260921)
- The Distribution and Abundance of Nesting Swainson's Hawks in the Vicinity of the Proposed RE Tranquillity LLC Solar Generation Facility (TN # 260922)

Within the confidentiality request for the four reports, the applicant states “[t]he research study papers document the results of investigations conducted at the expense of other private entities, including other renewable energy project developers. The results of those investigations are owned by the author(s) and/or other project developer(s) such that the Applicant is not authorized to share publicly.” The CEC found the confidential request to be a reasonable claim and granted confidential indefinitely. If upon further analysis the CEC still believes the claim to confidential converge is reasonable, then the avoidance, minimization and mitigation measures that rely on the confidential studies must be revised and supported by publicly available scientific information and research.

Compensatory Mitigation

The DEIR includes compensatory mitigation for both SWHA and burrowing owl (BUOW) due to documented observations on the Project site. SWHA was observed onsite during the 2023

surveys, with a total of six active nests and four individuals, which displayed both foraging and breeding behavior. Mitigation Measure Bio-11 requires a 0.25:1 compensatory ratio for impact on Swainson's hawk and its habitat; this would amount to 2,336 acres of compensatory mitigation. Although the project includes adaptive management for SWHA to repopulate the site, the DEIR acknowledges these are limited and preliminary studies. As previously mentioned in our comments, the studies are confidential, and the public cannot thoroughly provide input as to the effectiveness of the plan to fully address and mitigate the temporary and/or permanent impacts to 9,345 acres for the jurisdictional components of the project site. Regardless of whether the studies are made public and demonstrate scientific evidence that the project site is indeed self-mitigating, additional compensatory mitigation would still be required in order to fully mitigate project impacts pursuant to the California Endangered Species Act (CESA); this is something the DEIR acknowledges.

Despite the confidentiality issue and the fact that these studies are considered preliminary, the DEIR considers the implementation of the Swainson's Hawk Conservation Strategy and the Vegetation Management Plan when assigning the relatively low compensatory mitigation ratio of 0.25:1. As previously requested, if these studies remain confidential, then Defenders requests the avoidance, minimization and mitigation measures, including the compensatory mitigation ratio, that rely on the studies be revised and supported by publicly available research.

The DEIR acknowledges that BUOW has been documented as present year-round at the project site, exhibiting both breeding and foraging behavior, during surveys and site inspections. Specifically, nine individuals were observed within the solar facility location and 15 active or potential active burrows and pipes showing signs of active use were observed. Many of these observations were located at the boundaries of the solar facility, where BUOW could be significantly impacted by project impacts, specifically fencing that could result in restricted movement and loss of access to burrows.

Of note, BUOW was recently listed as a candidate species under CESA. As a candidate for listing, the species is temporarily afforded the same protections as state-listed endangered or threatened, and any loss or degradation of habitat could significantly impact populations. CESA requires that impacts to state-listed species be fully mitigated; therefore, compensatory mitigation is necessary to offset the permanent loss of occupied foraging and breeding habitat caused by the proposed Project. The DEIR requires either (a) purchase of a minimum of 200 acres of BUOW conservation bank credits or (b) providing for both permanent protection and perpetual management of 200 acres of habitat management lands. In order for this project to be fully mitigated, pursuant to CESA, the compensatory mitigation requirement should be a 1:1 ratio. Defenders requests the compensatory mitigation ratio is raised to 1:1, which would increase the acreage from 200 to 280 acres.

Permanent Conversion

The DEIR states when the Project is permanently closed, “[t]he project site would be restored and reclaimed to the extent practicable to pre-construction conditions....” Due to the unrelenting demand for renewable energy, utility-scale solar development, such as the proposed Project, can be reasonably expected to remain in energy production or another industrial use. Renewable energy projects are a permanent conversion of land use and, as such, require the DEIR to recognize the permanent nature of this conversion of land use.

Conclusion

Thank you once again for the opportunity to provide comments on the DEIR for the proposed Darden Clean Energy Project and for considering our comments. Defenders looks forward to reviewing the final EIR for the Project and requests to be notified when it is available. Please feel free to contact me with any questions.

Respectfully submitted,

Sophia Markowska

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