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Submitted On: 10/22/2024  
Docket Number: 23-OPT-02*

**Defenders of Wildlife and Center for Biological Diversity Scoping  
Comments for Darden DEIR (23-OPT-02)**

*Additional submitted attachment is included below.*



October 22, 2024

California Energy Commission  
Docket Unit, MS-4  
Docket No. 23-OPT-02  
715 P Street  
Sacramento, California 95814-5512

Docketed to: 23-OPT-02

RE: Notice of Preparation of a Draft Environmental Impact Report for the Darden Clean Energy Project (SCH 2024091023)

Defenders of Wildlife (Defenders) and the Center for Biological Diversity (Center) respectfully submit these scoping comments for the draft environmental impact report (DEIR) for the Darden Clean Energy Project (Project). Defenders is dedicated to protecting all wild animals and plants in their natural communities and has 2.1 million members and supporters in the United States, 316,000 of whom reside in California. We employ science, public education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions to prevent the extinction of species, associated loss of biological diversity, and habitat alteration and destruction. The Center is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. These comments are submitted on behalf of the Center's 1.7 million staff, members and supporters throughout California and the western United States, many of whom live, work and/or recreate in California.

We strongly support the development of renewable energy production. A low-carbon energy future is critical for California's economy, communities, and environment, as is

protecting air and water quality to support healthy ecosystems and communities. Achieving this future—and *how* we achieve it—is critical for protecting California's internationally treasured wildlife, landscapes, and diverse habitats. We believe transitioning to a renewable energy future need not exacerbate the ongoing extinction crisis by thoughtfully planning projects while protecting habitat critical to species. The proposed Project is a 1,150 megawatt (MW) solar photovoltaic (PV) development with battery storage and gen-tie located on approximately 9,100 acres in the unincorporated area of western Fresno County. The Project is located south of the community of Cantua Creek and is within the lands that Westlands Water District is actively retiring from agricultural use.

This proposed Project includes:

- 1,150 MW solar PV generation facility
- Up to 4,600 MW-hour battery energy storage system
- 34.5-500 kilovolt (kV) grid step-up substation
- 10- to 15-mile 500 kV gen-tie line
- A new 500 kV utility switchyard along the Los Banos-Midway #2 500 kV transmission line that would transfer to Pacific Gas and Electric Company ownership

The Project site and surrounding area are irrigated row crops and seasonally managed fallow agricultural lands. The Project site is generally level and has been in agricultural use for decades. Some larger trees (eucalyptus, willow, and cottonwood) are found predominately along the margins of the fields. Some orchards are located along the gen-tie line route.

The Project site provides suitable habitat for numerous special status species. American badger (*Taxidea taxus*), San Joaquin kit fox (*Vulpes macrotis mutica*), burrowing owl (*Athene cunicularia*), Swainson's hawk (*Buteo swainsoni*), golden eagle (*Aquila chrysaetos*), California horned lark (*Eremophila alpestris actia*), loggerhead strike (*Lanius ludovicianus*), yellow warbler (*Setophaga petechia*), Oregon vesper sparrow (*Pooecetes gramineus affinis*), mountain plover (*Charadrius montanus*), prairie falcon (*Falco mexicanus*), and northern harrier (*Circus hudsonius*) were all documented to be nesting or foraging within or adjacent to the Project.<sup>1, 2</sup>

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<sup>1</sup> Appendix Q Biological Resources Assessment Volumes 1 – 3 (TN 253038-1, 2, and 3)

<sup>2</sup> Appendix R Species Observed and with Potential to Occur and 10-mile CNDDDB Darden Clean Energy (TN 253534)

## Comments

### **Swainson's Hawk Conservation Strategy**

We appreciate the applicant's initiative to develop a forward thinking Swainson's Conservation Strategy (TN 253021). Successful and durable implementation of a strategy that incorporates avoidance and minimization, site restoration and revegetation, nest tree planting, and a robust third-party research program could benefit a suite of species.

#### *Foraging Area Analysis*

We are concerned that the foraging area analysis may underestimate the foraging habitat needed for the Swainson's hawks and other raptors occupying the Project area. We request the California Energy Commission (CEC) consult with the California Department of Fish and Wildlife (CDFW) and the United States Fish and Wildlife Service to determine the accuracy and adequacy of the applicant's foraging area analysis.

#### *Foraging Habitat Restoration and Nest Tree Planting*

The applicant's proposed foraging habitat restoration and planting replacement nesting trees for future generations of raptors is a welcome step forward. However, it only provides mitigation value if the revegetation and planted trees are maintained and adaptive management is implemented as required. We recommend the DEIR include mitigation measures requiring monitoring and managing habitat restoration for a minimum of ten years to achieve success. Further, we recommend that planted nest trees be monitored, maintained, and replaced as needed for ten years after the trees have reached suitable size for nesting to ensure the availability of future nesting sites. We recommend the CEC consult with CDFW and the California Native Plant Society to determine appropriate seed mixes and new nest tree species.

#### *Durability*

Due to the unrelenting demand for renewable energy and the significant transmission investment required, utility-scale solar development such as the proposed Project can be reasonably expected to remain in energy production or another industrial use far beyond the Project's initial 35 years. These projects are a permanent conversion of land use and, as such, require durable mitigation. Furthermore, the ownership and/or management of the proposed Project can be reasonably expected to change over time. Future owners and management may not share the applicant's conservation vision. The applicant's proposed self-mitigation becomes meaningless if its durability is not ensured.

The Swainson's Hawk Conservation Strategy must include measures to provide permanent durability. The DEIR should include mitigation measures requiring:

- Full funding for required implementation of revegetation and nest tree planting and adaptive management.
- Permanent protection of the foraging and nesting habitat on the Project site with a perpetual conservation easement (CA Civil Code §815 et seq.) approved by CDFW and held by a CDFW approved qualified conservation organization.
- A fully funded endowment to pay for the management, enforcement, and defense of the conservation easement must be provided to the easement holder.

#### *Third Party Research Program*

The proposed third party research program has the potential to provide insight that can inform the solar build out in the West. We request the ongoing results of the research be made publicly available on an annual basis to build a better understanding of how solar projects can contribute to conservation. We recommend that the funding for the program be administered via an independent third party, such as a science-based community foundation, to avoid any potential conflicts of interest.

#### **Burrowing Owls**

Burrowing owls and occupied burrows have been observed at the proposed Project site. The burrows are predominately located along the margins of the proposed Project site, which will be in close proximity to where the security fencing, including fence posts would be installed.

Burrowing owls have been listed as a candidate species under the California Endangered Species Act. As a candidate for listing, the species is temporarily afforded the same protections as a state-listed endangered or threatened species. The DEIR must consider the long term impact of the security fencing on the burrowing owls' use of their burrows. The DEIR must provide mitigation measures to ensure that project activities, including installation and maintenance of security fencing, will avoid impacts to the species, or the Project proponent must obtain an incidental take permit from CDFW.

#### **Golden Eagle – California Fully Protected Species**

Golden eagles are a California fully protected species. Per Senate Bill 147, California's statute for fully protected species requires that take be avoided to the maximum extent possible. If take cannot be avoided to the maximum extent possible, then a project applicant must fully mitigate that take, ensure that all further measures necessary to satisfy the conservation standard of Section 2805(d) of the Fish and Game Code are in

place, and provide for monitoring and adaptive management.

### **Cumulative Impact Analysis**

In response to the retirement of agricultural lands, this portion of the San Joaquin Valley is experiencing significant solar development. Six substantial utility scale solar projects are proposed, under development, or operating within 14 miles of the Project. Although we encourage the development of renewable energy projects on retired farmland in the San Joaquin Valley, there is the potential for significant and unavoidable cumulative impacts.

Despite this ongoing renewable energy development, adequate cumulative impact analysis is consistently absent from EIRs prepared for renewable energy projects. We request the DEIR comprehensively analyze the direct and indirect cumulative impacts of past, present, and reasonably foreseeable activities that adversely impact the region's biological resources. These reasonably foreseeable development projects should not be limited to clean energy development exclusively but encompass all types of development. This analysis must include, but not be limited to, the cumulative impacts on special status species such as burrowing owl, Swainson hawk, golden eagle, American badger, and San Joaquin kit fox. The analysis must also include the cumulative impacts to wildlife connectivity and provide mitigation measures. Furthermore, we request the analysis include a detailed map of existing and planned solar energy development within the remaining habitat for special status species.

### **Project Alternatives**

We recognize the value of repurposing impaired or retired farmland for solar energy development in the San Joaquin Valley. However, evaluation of a reasonable range of project alternatives is required to support informed decision making on the potential benefits and impacts of the proposed Project. We recommend a "reduced project size" alternative that would evaluate increasing foraging and nesting habitat by expanding the width of the spacing between the rows of solar panels and increasing the size of the protective buffers around nesting trees/artificial perches and burrows.

### **Conclusion**

Thank you for consideration of our comments. We look forward to reviewing the DEIR. Please contact Pamela Flick at (916) 442-5746 or [pflick@defenders.org](mailto:pflick@defenders.org) or Kate Kelly at (530) 902-1615 or [kate@kgconsulting.net](mailto:kate@kgconsulting.net) with any questions.

Sincerely,

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