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April 5, 2012

Derek Chambers
Fresno County Public Works and Planning Department
2220 Tulare Street, Sixth Floor
Fresno, Ca. 93721

By email: dchambers@co.fresno.ca.us

Re: - Placer Solar Project MND, CUP 3321

Dear Mr. Chambers:

Friends of the Swainson's Hawk believes that wildlife is part of California's future and we're dedicated to seeing the California population of Swainson's Hawks flourish for all generations to come. We are a 501-c-3 volunteer charitable organization providing advocacy for wildlife and habitat and raptor safety. This letter addresses our concerns about the **Mitigated Negative Declaration for the** Unclassified Conditional Use Permit Application No. 3321 by Placer Solar, LLC.

This is a project which if approved would construct and operate a 20-megawatt photovoltaic solar plant on a 164.5-acre agricultural site. The property soils are classified as Prime farmland and wheat, cotton, corn and alfalfa has been grown on the property during the past 10 years.

We have reviewed the IS/MND and find it to be non-compliant with CEQA for failure to disclose and analyze significant environmental impacts, including but not limited to impacts to Swainson's Hawks. It fails to mitigate impacts to Swainson's Hawk to less than significant. These failures expose the project to potential CEQA litigation.

We concur with the comments submitted by Defenders of Wildlife. We ask that the IS/MND be revised to address deficiencies and re-circulated prior to hearing. Please address the deficiencies identified below in a recirculation.

Please keep us informed about future opportunities to review and comment upon this and other energy projects potentially affecting the Swainson's Hawk in Fresno County.

Regulatory Framework:

CEQA defines the significance of an impact on a state-listed species based on the following:

- Appendix G of the State CEQA guidelines states that a biological resource impact is considered significant (before considering offsetting mitigation measures) if the lead

agency determines that project implementation would result in “substantial adverse effects, either directly or through habitat modifications, on any species identified as being a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFG or USFWS”; and

- CEQA Section 15065 (Mandatory Findings of Significance), a biological resource impact is considered significant if the project has the potential to “substantially reduce the number or restrict the range of an endangered, rare or threatened species”.

“CEQA requires a mandatory findings of significance if a project’s impacts to threatened or endangered species are likely to occur (Sections 21001 [c], 21083, Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration.” (The Staff Report Regarding Mitigation for Impacts on Swainson’s Hawk in the Central Valley of California, California Department of Fish and Game, November 8, 1994, page 4)

The Mitigated Negative Declaration:

The MND states on page 8 that the project has no significant impacts on biological resources:

“The project site is located in an agricultural area and has been previously disturbed as said property has been historically utilized for agricultural cultivation. Additionally, neighboring properties have been historically utilized for agricultural cultivation and commercial uses, therefore, have also been previously disturbed. A review by staff of the California Natural Diversity Database indicated that the project site may be habitat for Munz’s tidy-tips, an annual herb native to California; however, the subject parcel and surrounding area have been previously disturbed by agricultural and commercial uses. Further, this proposal was referred to the USFWS, which did not express any concerns related to the project. This proposal was also referred to the CDFG, which also did not express any concerns. Therefore, no impacts were identified in regard to: 1.) Any candidate, sensitive, or special-status species; 2.) Any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFG or USFWS; 3.) Federally protected wetlands as defined by Section 404 of the Clean Water Act; and 4.) The movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. This proposal will not conflict with any local policies or ordinances protecting biological resources or any provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state Habitat Conservation Plan.”

This statement is in error. The project has significant impacts on Swainson’s Hawk foraging and nesting activity and does not include any mitigation measures to reduce impacts to less than significant. The Staff Report Regarding Mitigation for Impacts on Swainson’s Hawk in the Central Valley of California, California Department of Fish and Game, November 8, 1994 contains guidance on how to evaluate and assess mitigation for impacts on Swainson’s Hawk foraging and nesting.

Biological Assessment. The MND should have performed a standard biological assessment of Swainson's Hawk impacts per CDFG guidance in its 1994 Staff Memorandum. This includes identifying species use of the property and neighboring properties for nesting and foraging. It includes documenting the distance from known nesting sites of Swainson's Hawks and the potential for foraging on the property. No Biological Assessment was included in the MND.

We are aware that a biological assessment was prepared for the site that is not included in the MND. It identifies Swainson's Hawk foraging habitat on site and nesting within .5 miles. The Biological Assessment Report does not assess Swainson's Hawk habitat loss impacts according to the California Fish and Game protocol that is typically used (The Staff Report Regarding Mitigation for Impacts on Swainson's Hawk in the Central Valley of California, California Department of Fish and Game, November 8, 1994), and which would result in a 1:1 mitigation ratio for lost foraging habitat.

Disclose Impacts.

Section 15126.2(b) of the *CEQA Guidelines* requires that the environmental review describe any significant impacts, including those that can be mitigated but not reduced to less than significant levels. The MND fails to adequately describe the project impacts on Swainson's Hawk nesting and foraging habitat, it does not address the risk of take of listed threatened species, and does not explain how these impacts can be and have been mitigated to less than significant.

Mitigation. Feasible mitigation measures for impacts on Swainson's Hawk foraging habitat and measures to avoid take are missing from this MND. CEQA requires Fresno County to mitigate the impacts of the project to less than significant, or if that is not possible, to the maximum extent feasible and to provide substantial evidence supporting its conclusions.

Habitat Loss. In terms of habitat loss, DFG typically advises that any permanent loss of Swainson's hawk (*Buteo swainsoni*) foraging habitat should be mitigated by preserving or establishing equal quality foraging habitat in an amount equal to or greater than the amount being impacted, and protected and managed in perpetuity. CDFG considers solar installation to be a permanent loss of foraging habitat (see **California Energy Commission and Department of Fish and Game, June 2, 2010 entitled "Swainson's Hawk Survey Protocols, Impact Avoidance and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California."**)

Measures to Reduce Take of Swainson's Hawk. The MND includes no measures to reduce take. There is evidence however that a nesting pair is within one half mile of the project. The measures should include the following standard protocols:

“In order to avoid take of nesting raptors (including Swainson's hawks), a pre-construction raptor nest survey shall be conducted within 15 days prior to the beginning of construction activities by a California Department of Fish and Game (CDFG) approved biologist in order to identify active nests in the project site vicinity (within one-half mile). The results of the survey shall be submitted to CDFG. If active nests are found, a quarter-mile (2640 feet) initial temporary nest disturbance buffer shall be established. If project related activities within the temporary nest disturbance buffer are determined to be necessary during the nesting season, then an on-site biologist/monitor experienced with raptor behavior shall be retained by the project proponent to monitor the nest, and shall along with the project proponent, consult with the CDFG to determine the best course of action necessary to avoid nest abandonment or take of individuals. Work may be allowed to proceed within the temporary nest disturbance buffer if raptors are not

exhibiting agitated behavior such as defensive flights at intruders, getting up from a brooding position, or flying off the nest. The designated on-site biologist/monitor shall be on-site daily if necessary while construction related activities are taking place and shall have the authority to stop work if raptors are exhibiting agitated behavior. In consultation with the CDFG and depending on the behavior of the raptors, over time it may be determined that the on-site biologist/monitor may no longer be necessary due to the raptors' acclimation to construction related activities.

We are also aware that California Department of Fish and Game has informed the lead agency of numerous significant biological impacts and has proposed biological mitigation measures that should be included in the MND which have not been included. We strongly recommend that you not certify this MND, but prepare the necessary additional analyses and mitigation measures to comply with trustee agency guidance on species protection. Otherwise Fresno County will not be in compliance with CEQA.

Please keep us informed about any public hearings or additional opportunities for public review for this project, and for projects like it that have impacts on Swainson's Hawks.

Thank you for this opportunity to comment.

Sincerely,



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C: Garry George, Audubon California
Jeffrey Single, Regional Manager, CDFG Central Region
Kim Delfino, Defenders of Wildlife