

**Conditional Use Permit Application No. CUP22-009 – West II Clean Power LLC Project
Response to Comments Received on Project IS/MND**

Commenter	Comment	Response
<p>California Department of Fish and Wildlife</p>	<p>Tricolored Blackbird (TRBL)</p> <p>The MND identified the Project area as not having conditions suitable for TRBL as suitable nesting habitat such as freshwater marsh habitat was absent from the Project site. While TRBL typically nest within or adjacent to aquatic habitats, they have been known to breed within agricultural habitat and frequently forage within semi-natural grasslands and agricultural lands (Beedy et al. 2017). As the project area and surrounding lands are comprised of agricultural and ruderal habitat suitable for TRBL foraging, and historical occurrences occur within the project area, CDFW recommends the following mitigation measures:</p> <p>Recommended Mitigation Measure 1: TRBL Surveys</p> <p>Project activities shall be timed to avoid the normal bird breeding season for TRBL (February 1 through September 15). However, if Project activities must take place during that time, a qualified wildlife biologist shall conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies within 300 feet of Project activities and to evaluate potential Project-related impacts.</p> <p>Recommended Mitigation Measure 2: TRBL Avoidance</p> <p>If an active TRBL nesting colony is found during preconstruction surveys, a minimum 300-foot no-disturbance buffer in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to</p>	<p>Tricolored blackbird typically nest within or adjacent to open water aquatic habitats in protected nesting substrate such as cattails or tall rushes and forage within semi-natural grasslands and agricultural lands. While there are four CNDDDB recorded occurrences of tricolored blackbird within the immediate project vicinity, each of those occurrences are historic (dated 1935 or earlier) and are considered to be extirpated by CNDDDB. It is important to note that each of these occurrences were associated with cattail marshes along canals. The project site does not support freshwater marsh habitat or cattails. However, the project supports marginally suitable foraging habitat for tricolored blackbird. The project MND has been revised to reflect that while no suitable nesting habitat is present within the project site, the site supports suitable foraging habitat and nesting tricolored blackbird may have the potential to occur within the project vicinity. In the event tricolored blackbird are nesting within 300 feet of the project site, implementation of Mitigation Measure BIO-1 would avoid impacts to tricolored blackbird through establishment of a no-disturbance buffer and impacts would be less than significant with mitigation.</p>

Tricolored Blackbird Breeding Colonies on Agriculture Fields in 2015” (CDFW 2015). This buffer shall remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason, the colony should be reassessed to determine the extent of the breeding colony within 10 days of Project initiation.

Recommended Mitigation Measure 3: TRBL Take Authorization

In the event that a TRBL nesting colony is detected during surveys, the applicant shall consult with CDFW to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code Section 2081 subdivision (b), prior to any ground-disturbing activities.

REFERENCES

Beedy, E. C., W. J. Hamilton III, R. J. Meese, D. A. Airola, and P. Pyle, 2017. *Tricolored Blackbird (Agelaius tricolor), version 3.0*. in *The birds of North America*. P. G. Rodewald (Ed.). Cornell Lab of Ornithology, Ithaca, New York, USA. <https://doi.org/10.2173/bna.tribla.03>. Accessed February 21, 2023.

California Department of Fish and Wildlife (CDFW), 2015. *Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*. March 19, 2015.

	<p>Nesting Birds</p> <p>The MND provides Mitigation Measure MM BIO-1 to mitigate for nesting birds, which includes measures for nesting bird surveys, buffer establishment, buffer reductions, and nest monitoring, and reporting. CDFW does not recognize the nesting bird survey season, timing of nesting bird surveys, buffer distances, and buffer reduction procedures as adequate to protect nesting birds and CDFW recommends the following mitigation measure to adjust the nesting bird measure language within the MND:</p> <p>Recommended Mitigation Measure 4: Nesting Bird Surveys</p> <p>If ground-disturbing activities occur during the nesting bird season (February 1–September 15), a qualified biologist shall conduct a pre-activity survey 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. Surveys shall 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. Prior to initiation of construction activities, a qualified biologist shall conduct a survey to establish a behavioral baseline of all identified nests.</p> <p>Recommended Mitigation Measure 5: Nesting Bird Monitoring and/or Avoidance Buffer</p>	<p>Mitigation Measure BIO-1 in the project MND has been revised to reflect the nesting bird season to start on February 1, and to require the preconstruction survey for nesting birds to be conducted no more than 10 days prior to the start of ground-disturbing activities, consistent with CDFW recommendations. Per correspondence with Jeremy Pohlman, CDFW Senior Environmental Scientist (Specialist) on March 6, 2023, it was clarified that continuous monitoring of active nests is intended as an alternative to establishment of the standard no-disturbance buffers and CDFW would not require continuous monitoring unless one or more buffers are reduced. The revised version of Mitigation Measure BIO-1 provided in the Final Draft IS/MND is an equal/more effective measure when compared to the original language of Mitigation Measure BIO-1 as written in the Public Draft ISMND as well as the recommended mitigation language provided by CDFW.</p>
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	<p>Once construction begins, a qualified biologist shall continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, the work causing that change shall cease and CDFW be 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 a 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 advises and supports any variance from these buffers and notify CDFW in advance of implementing a variance.</p>	
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