



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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October 7, 2024

Steve Esselman, Planning Director
City of Shafter
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Shafter, California 93263
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Subject: **Wonderful Solar Facilities (Project)
Mitigated Negative Declaration (MND)
State Clearinghouse No. 2024090198**

Dear Steve Esselman:

The California Department of Fish and Wildlife (CDFW) received an MND from the City of Shafter, as Lead Agency, for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game 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 (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on

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.

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projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments 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.), related authorization as provided by the Fish and Game Code will be required.

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

As a responsible agency, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

PROJECT DESCRIPTION SUMMARY

Proponent: Wonderful Nut Orchards, LLC

Objective: The proposed Project involves the construction and operation of three photovoltaic (PV) systems on three separate sites within existing almond orchards totaling approximately 22 acres. The Project includes the 2.3-acre Lerdo West site, a 716-kilowatt (kW) fixed ground mount solar PV system, the 8.6-acre Lerdo Middle site, a 2,537-kW tracker solar PV system and the 11.7-acre Ranch 3461 site, a 3,412-kW tracker solar PV system.

Location: Lerdo West site Assessor's Parcel Number (APN) 089-090-30 is located northeast of the intersection of Cherry Avenue and Lerdo Highway (at coordinates 35.504149, -119.232113), Lerdo Middle site (APN 091-320-03) is located southwest of the intersection of Wallace Road and Road 5039 (at coordinates 35.506220, -119.162031), and the Ranch 3461 site (APN 091-252-34) is located east of Mendota Street (at coordinates 35.456388, -119.225118).

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Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Shafter in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document.

Aerial imagery of the Project boundary and its surroundings show the area contains agricultural lands including row crops and orchards. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records, the surrounding habitat, and the field survey conducted in support of the Project, several special-status species could potentially be impacted by Project activities.

Currently, the MND acknowledges that the Project is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. After review of the Initial Study and MND, CDFW has concerns about the ability of the proposed mitigation measures to reduce impacts to less than significant for the federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern burrowing owl (*Athene cunicularia*).

San Joaquin Kit Fox

The MND currently states there is a moderate to high potential for San Joaquin kit fox (SJKF) to occur and that the Project is located within the geographic range of a known population of SJKF. In addition, construction activities initiated by the Project may attract SJKF to the Project. Mitigation Measure 1 is provided to mitigate potential impacts to SJKF and provides the following measures:

- "If known or natal San Joaquin kit fox dens are identified at any time during construction, protocols enumerated in the USFWS Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance (2011) should be implemented, and the appropriate agencies contacted for guidance,
- Vertical sided trenching deeper than 2 feet will include escape ramps at no more than a 1:1 ratio every 100 feet,

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- Vertical sided holes that are not capable of being ramped should be covered or otherwise secured to the greatest extent practicable, and
- Pipes, conduit and similar material 3 inches or greater should be capped to prevent wildlife from becoming inadvertently trapped in the piping.”

CDFW concurs with these measures and recommends the following prior to ground-disturbing activities:

Recommended Mitigation Measure 1: Preconstruction Focused Survey

CDFW recommends assessing presence/absence of SJKF by conducting focused dens surveys in all areas of potentially suitable habitat no less than 14 days and no more than 30 days prior to beginning of ground-disturbing activities.

Recommended Mitigation Measure 2: SJKF Avoidance Buffers

CDFW recommends implementing no-disturbance buffers, as described in the USFWS’ “Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance” (2011) (USFWS Protocol) around potentially suitable or known SJKF den sites.

Recommended Mitigation Measure 3: SJKF Take Authorization

If the no-disturbance buffers outlined in the USFWS Protocol for SJKF are not feasible, CDFW recommends that consultation with CDFW occur to discuss how to implement the Project and avoid take. If take cannot be avoided, CDFW recommends the Project proponent pursue take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) to comply with CESA.

Swainson’s Hawk

Mitigation Measure 2 is provided to mitigate for potential impacts to Swainson’s hawk (SWHA) and states that, “If ground-disturbing activities are planned during the nesting season for migratory birds that may nest on or near the site (generally February 1 through August 31), nesting bird surveys shall occur prior to the commencement of ground disturbance for project activities. If nesting birds are present, no new construction or ground disturbance should occur within an appropriate avoidance area for that species until young have fledged, unless otherwise approved and monitored by a qualified onsite biologist.” CDFW does not concur that this measure is sufficient to mitigate for potential impacts to SWHA and recommends that protocol surveys for SWHA be conducted following the guidelines developed by the Swainson’s Hawk Technical Advisory Committee (SWHA TAC 2000) if construction activities are anticipated during the SWHA breeding season. Please note that these guidelines recommend multiple surveys, including an early season survey, to assist the Project

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proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

Mitigation Measure 2 continues by stating that, "Appropriate avoidance should be determined by a qualified biologist. In general, minimum avoidance zones for active nests should be implemented as follows:

- Ground or low-shrub nesting non-raptors – 300 feet (91 meters),
- Burrowing owl – as appropriate based on nest location, existing surrounding activity, and evaluation of owl behavior (coordination with CDFW may be warranted),
- Sensitive raptors (e.g., prairie falcon, golden eagle) – 0.5 miles (0.8 kilometers), and
- Other raptors – 500 feet (152 meters)."

For SWHA, CDFW recommends a ½-mile buffer be implemented around any detected active SWHA nest. If an active nest is detected and the buffer cannot be implemented, CDFW recommends the following:

Recommended Mitigation Measure 4: SWHA Take Consultation

In the event an active SWHA nest is detected during surveys and the ½-mile no-disturbance buffer around the nest cannot feasibly be implemented, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code Section 2081(b) is necessary to comply with CESA.

Burrowing owl

The MND notes there is moderate potential for burrowing owl (BUOW) to occur and Mitigation Measure 2 is provided to mitigate for potential impacts to BUOW and states that, "In general, minimum avoidance zones for active nests should be implemented as follows: ...Burrowing owl – as appropriate based on nest location, existing surrounding activity, and evaluation of owl behavior (coordination with CDFW may be warranted)". CDFW does not concur that this measure is sufficient to mitigate for potential impacts to BUOW and recommends the following:

Recommended Mitigation Measure 5: BUOW Surveys Prior to Construction

CDFW recommends that surveys, following the "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing

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Owl Mitigation” (CDFG 2012) be conducted the survey season immediately prior to construction.

Recommended Mitigation Measure 6: BUOW Avoidance Buffer

If a BUOW is detected during surveys or during construction, CDFW recommends that no-disturbance buffers, as outlined in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW’s Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Recommended Mitigation Measure 7: BUOW Consultation

If BUOW are found within these recommended buffers and avoidance is not possible, consultation with the CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation.

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species, including SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS to comply with FESA is advised well in advance of any ground disturbing activities.

Lake and Streambed Alteration: Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW’s regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that

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may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

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 the CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency 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

CDFW appreciates the opportunity to comment on the MND to assist the City of Shafter in identifying and mitigating Project impacts on biological resources.

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If you have any questions, please contact Ren Cotter, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 767-0956 or by electronic mail at Ren.Cotter@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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REFERENCES

California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. Pages 171-177 in Lincer, J. and K. Steenhof (editors). 1993. The burrowing owl, its biology and management. Raptor Research Report Number 9.

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. Sacramento, California, USA.

Swainson's hawk technical advisory committee (SWHA TAC). 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in the central valley of California. Swainson's Hawk Technical Advisory Committee.

U. S. Fish and Wildlife Service. 2011. Standard Recommendations for the protection of the San Joaquin kit fox prior to or during ground disturbance. U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Sacramento, California.

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PROJECT: Wonderful Solar by Wonderful Nut Orchards, LLC

SCH No.: 2024090198

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
SWHA	
Recommended Mitigation Measure 4: SWHA take consultation	
SJKF	
Recommended Mitigation Measure 1: SJKF preconstruction focused survey	
Recommended Mitigation Measure 3: SJKF take authorization	
BUOW	
Recommended Mitigation Measure 5: BUOW surveys prior to construction	
Recommended Mitigation Measure 7: BUOW consultation	
<i>During Construction</i>	
SJKF	
Recommended Mitigation Measure 2: SJKF avoidance buffer	
BUOW	
Recommended Mitigation Measure 6: BUOW avoidance buffer	