



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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Fresno, California 93710  
(559) 243-4005  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



March 18, 2025

Gary Mills, Chief Planner  
Tulare County Resource Management Agency, Environmental Planning Division  
5961 South Mooney Boulevard  
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**Subject: Foxtail Solar Project (Project)  
Mitigated Negative Declaration (MND)  
State Clearinghouse No. 2025021051**

Dear Gary Mills:

The California Department of Fish and Wildlife (CDFW) received a MND from Tulare County for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 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

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<sup>1</sup> 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 may be required.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

**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.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Foxtail Solar, LLC

**Objective:** The Project proposes to construct and operate a 55-megawatt (MW) photovoltaic solar power generation facility with a 55-MW battery energy storage system (BESS). Construction of the 450-acre facility would include site grading and earthwork, solar array construction, and interconnection to an existing 66-kilovolt (kV) transmission line running to an existing electrical substation adjacent to the Project site.

**Location:** The Project would be located on a 475.5-acre parcel of private land in western Tulare County, approximately five miles southwest of the City of Tulare. The Project site comprises Assessor Parcel Number (APN) 228-050-020, which is bounded by Avenue 190 to the north, Road 80 to the east, Avenue 184 to the south, and Road 72 to the west.

**Timeline:** Construction is expected to begin in late 2025 and occur over 18 months.

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## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Tulare County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the MND.

Aerial imagery of the Project site and its surroundings show the area contains mostly agricultural habitats including tilled row crops, orchards, fallow fields, and irrigation ponds. Based on a review of the Project description, California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, several special-status species could potentially be impacted by Project activities. Currently, the MND acknowledges that the Project area is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including the State threatened Swainson's hawk (*Buteo swainsoni*) and the State candidate western burrowing owl (*Athene cunicularia hypugaea*).

### Swainson's hawk

CDFW concurs with the portions of Mitigation Measures BIO-4, BIO-5, BIO-6, and BIO-7 specifically related to Swainson's hawk (SWHA). In addition, CDFW recommends the MND include the following measure:

#### **Recommended Mitigation Measure 1: SWHA Foraging Habitat Mitigation**

CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of  $\frac{3}{4}$  acre of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of  $\frac{1}{2}$  acre of HM land for each acre of development is advised.

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### **Western burrowing owl**

The California Fish and Game Commission approved western burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

CDFW does not concur that Mitigation Measures BIO-8, BIO-9, and BIO-10 are sufficient to reduce impacts to less than significant for BUOW. Additionally, passive relocation of BUOW, as proposed in Mitigation Measure BIO-10, is likely to directly result in unauthorized take of the species, and implementation of the measure may itself result in a potentially significant impact under CEQA. Therefore, passive relocation of BUOW is not recommended by CDFW, unless prior take authorization from CDFW is obtained prior to relocation efforts.

CDFW recommends the MND include the following measures to reduce potential impacts to BUOW to less than significant:

#### **Recommended Mitigation Measure 2: BUOW Surveys Prior to Construction**

CDFW recommends that focused surveys, specifically following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), be conducted the survey season immediately prior to construction. Please note that the 2012 Staff Report necessitates multiple surveys prior to the initiation of construction.

#### **Recommended Mitigation Measure 3: BUOW Avoidance Buffer**

Should a BUOW or known BUOW den (active or inactive) be detected, either during pre-construction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

#### **Recommended Mitigation Measure 4: BUOW Take Authorization**

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation are not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through

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the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

### **Editorial Comments and/or Suggestions**

**Nesting birds:** Currently Mitigation Measures BIO-5 and BIO-6 note that the nesting season occurs from February 1 to August 31. CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season and generally recommends the nesting season be from approximately February 1st through September 15th. CDFW would like to note the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW 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 the birds have fledged and are no longer reliant upon the nest or on-site 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 Project site would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

**Lake and Streambed Alteration:** The MND states that one intermittent stream is present within the Project site. 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

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requires an entity to notify CDFW prior to commencing any activity that 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.

**CNDDDB:** Please note that the CNDDDB is populated by records through voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project site.

**Artificial Lighting:** Installation of outdoor artificial night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication, determining when to begin foraging, thermoregulation behavior, and migration (Longcore and Rich 2004, Miller 2006, Nightingale et al. 2006, Perry et al. 2008, Stone et al. 2009). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004). Project activities could result in disruption of wildlife behavior, inadvertent injury, or mortality.

CDFW recommends that the MND for the Project include an analysis of artificial lighting as it relates to biological resources and incorporate enforceable mitigation measures to decrease the impacts of artificial outdoor lighting on wildlife species. Potentially feasible mitigation measures include motion sensitive lighting; mounting light fixtures as low as possible to minimize light trespass; use of light fittings that direct and confine the spread of light downward; and use of long-wavelength light sources. In addition, CDFW recommends that lighting is not installed in ecologically sensitive areas (e.g., streams,

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wetlands, and habitat used by special-status species, such as nesting/roosting sites and riparian corridors) and the use of the white/blue wavelengths of the light spectrum be avoided.

## 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 the CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to the CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

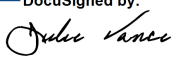
## FILING FEES

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 to assist Tulare County in identifying and mitigating Project impacts on biological resources. Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. If you have any questions, please contact Amanda Canepa, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (805) 746-0721, or by electronic mail at [Amanda.Canepa@wildlife.ca.gov](mailto:Amanda.Canepa@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

Gary Mills

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ATTACHMENT

ec: State Clearinghouse  
Governor's Office of Planning and Research  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)



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## REFERENCES

- California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo swainsoni*) in the Central Valley of California. Sacramento, California, USA.
- California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. Sacramento, California, USA.
- Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment*, 2:191–198.
- Miller, M. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor*, 108:130–139.
- Nightingale, B., T. Longcore, and C. Simenstad. 2006. Artificial night lighting and fishes. Pages 257–276 in C. Rich and T. Longcore, editors. *Ecological consequences of artificial light at night*. Island Press, Washington, D.C., USA.
- Perry, G. Buchanan, R. Fisher, M. Salmon, and S. Wise. 2008. Effects of night lighting on urban reptiles and amphibians. Chapter 16 in: *Urban Herpetology: Ecology, Conservation and Management of Amphibians and Reptiles in Urban and Suburban Environments*. J. C. Mitchell, R. E. Jung Brown and B. Bartholomew (ed.). *Herpetological Conservation*, 3:211-228.
- Stone, E., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology*, 19:1123–1127.

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**Attachment 1**

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

**PROJECT: Foxtail Solar Project by Foxtail Solar, LLC**

**SCH No.: 2025021051**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
SWHA	
Recommended Mitigation Measure 1: SWHA Foraging Habitat Mitigation	
BUOW	
Recommended Mitigation Measure 2: BUOW Surveys Prior to Construction	
Recommended Mitigation Measure 4: BUOW Take Authorization	
<i>During Construction</i>	
BUOW	
Recommended Mitigation Measure 3: BUOW Avoidance Buffer	