



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Bay Delta Region
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GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



March 15, 2019

Governor's Office of Planning & Research

MAR 18 2019

STATE CLEARINGHOUSE

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Mr. Frank Girardi
 San Joaquin County
 Community Development Department
 1810 E. Hazelton Avenue
 Stockton, CA 95205

Dear Mr. Girardi:

Subject: PA-1800244 (SA), a.k.a. the Great Pacific Nut Company Processing/
 Preparation Facility, Negative Declaration, SCH #2019029036, City of Tracy,
 San Joaquin County

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study/Negative Declaration and Initial Study (IS/ND) for the proposed PA-1800244 (SA) Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines. In accordance with our mandates, CDFW is submitting comments on the IS/ND to inform San Joaquin County (County), as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Incidental take Permit (ITP), a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA ITP must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project (Fish and Game Code, § 2080 et seq.). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as potential significant modification to the Project and mitigation measures may be required to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if the Project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts

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must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification (Notification), pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourse with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document of the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Great Pacific Nut Company

Objective: Site Approval application for a nut processing/preparation facility to be complete in three phases over 5 years, including construction of a 30,000 square foot (sq. ft.) storage building, a 5,000 sq. ft. shop building, a 1,000 sq. ft. breakroom, and a truck scale for private use, a 30,000 sq. ft. shelling building, and a 400 sq. ft. canopy.

Location: 3501 West Lehman Road in the City of Tracy, San Joaquin County, California, Assessor's Parcel Number(s) 255-020-61.

Timeframe: Over 5 years

Description: The Project proposes to construct a nut processing/preparation facility in three phases over five years on 13.5 acres of existing agriculture land with an existing orchard. Phase 1, to be completed in 18 months, includes a 30,000 sq. ft. storage building, a 5,000 sq. ft. shop building, a 1,000 sq. ft. breakroom, and a truck scale for private use only. Phase 2, to be completed in thirty months, includes a 30,000 sq. ft. shelling building. Phase 3, to be completed in five years, includes a 400 sq. ft. open storage building.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Comment 1: Project may be subject to Notification under Fish and Game Code Section 1600 et. seq.

Comment 1: Impacts to irrigation ditch and associated trees are unclear.

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It is unclear from the Project description in the IS/ND if the Project will impact the irrigation ditch and associated trees located on the western side of the parcel. The irrigation ditch connects to the Banta Carbona canal, which northwestern end terminates at the San Joaquin River, and thus could be subject to Notification. If impacts to the irrigation ditch and trees are identified, then please update the IS/ND to disclose these impacts. Please update the Project description to include clarifying language that details how the Project will impact the irrigation ditch through possible activities such as water diversion and storm water run-off and include a description of how the Project will direct concentrated run-off from the increased percentage of impermeable surfaces on the parcel that are associated with the proposed construction. If impacts to the irrigation ditch are identified, then those proposed activities may be subject to Notification and CDFW may require an LSA Agreement, pursuant to Section 1600 et seq. of the Fish and Game Code. To obtain information about the LSA Notification process, please access our website at <https://www.wildlife.ca.gov/Conservation/LSA>; or to request a Notification package, contact the Bay Delta Regional Office at (707) 428-2002.

Comment 2: IS/ND does not mitigate biological impacts to a level of less-than-significant.

Comment 2a: Alternate mitigation needs to be specified in case San Joaquin Council of Governments (SJCOG) does not approve and/or applicant chooses to not participate.

The IS/ND states:

"If SJCOG determines that the applicant may participate in the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), and if the applicant chooses to participate, then the proposed project is consistent with the SJMSCP, as amended, as reflected in the conditions of project approval for this proposal...If the applicant chooses not to participate, then the applicant will be required to participate in a similar mechanism that provides the same level of mitigation."

This mitigation measure does not mitigate potential impacts to less-than-significant regarding CEQA, as the IS/ND does not propose or identify specific and sufficient mitigation in the event the SJCOG does not approve coverage or the applicant chooses to not participate. The statement also does not negate the need for a biological impact analysis, which includes, but is not limited to, potential impacts to nesting birds, Swainson's hawk (*Buteo swainsoni*, SWHA), burrowing owl (*Athene cunicularia*, BUOW), San Joaquin kit fox (*Vulpes macrotis mutica*, SJKF), and other special-status species. The Project has the potential to impact special-status species that utilize the Project area through direct take due to Project construction, indirect take due to Project operation, and temporary and permanent losses of agricultural land that can serve as marginal habitat. To ensure that Project impacts to special-status species are mitigated to a level of less-than-significant, and in the event SJCOG does not offer full coverage, CDFW recommends the IS/ND be revised to require compensatory mitigation for impacts to their habitat. Compensatory mitigation should be in the form of permanently conserved lands at the following ratios: 3:1 ratio (conserved land to impacted habitat) for permanent impacts; 5:1 for construction of new roadways, and 1:1 for temporary impacts (i.e. impact to baseline recovery in under one year). Conservation lands should be placed under a conservation easement with CDFW listed as a third-party beneficiary and an endowment should be funded for managing the lands for the benefit of the conserved species in perpetuity. Additionally, a long-term

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management plan should be prepared and implemented by a land manager. The Grantee of the conservation easement should be an entity that has gone through the due diligence process for approval by CDFW to hold or manage conservation lands.

Comment 2b: Additional mitigation needs to be specified for Swainson's hawks.

If SJCOG does not cover the Project, then protocol surveys and nest buffers for Swainson's hawk nests should be required to avoid Project impacts. To achieve this, the following mitigation measure should be incorporated into the IS/MND:

"Pre-Construction Surveys for Swainson's Hawk: If Project Activities are to be conducted between March 1 and July 31, a focused survey for active Swainson's hawk nests shall be conducted by a Qualified Biologist within seven (7) days prior to the beginning of Project Activities. If a lapse in Project Activities of seven (7) days or longer occurs, another focused survey shall be performed, and the results sent to CDFW prior to resuming work. The following criteria for shall be met:

- *Surveys shall be conducted in proposed work areas, staging, and storage areas.*
- *Surveys shall be conducted within 0.5 miles of the Project Site.*
- *Nest surveys for Swainson's hawks shall be conducted in a manner consistent with the recommended timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. For more information, see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline> located at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.*

If an active nest is identified, a 1/2-mile buffer in non-urban settings or a ¼ mile buffer in urban settings shall be maintained around the nest until the young fledge. If any active Swainson's hawk nests are found within 1/2-mile of the Project Site, CDFW shall immediately be contacted and additional measures may be required for Project Activities"

Comment 2d: Additional impact analysis and measures needed for nesting bird impact avoidance.

The IS/ND does not analyze Project impacts to nesting birds or provide mitigation measures to reduce impacts to a level of less than significant. The Project may adversely impact nesting birds through direct take by removal of the trees adjacent to the canal and by resulting in nest abandonment, loss of young and reduced health and vigor of chicks (resulting in reduced survival rates), temporary loss of nesting habitat, and breeding and foraging disturbance through Project activities. CDFW recommends the IS/ND be revised to analyze impacts to nesting birds.

If the analysis identifies impacts to nesting birds then CDFW recommends that the IS/ND be revised to include the addition of the following specific and enforceable mitigation measure in the event nesting birds are detected:

"Nesting Bird Assessment and Avoidance: Prior to the initiation of construction, including ground disturbing activities scheduled to occur between February 1 and September 1, a

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Qualified Biologist shall conduct a habitat assessment and nesting survey for nesting bird species no more than five (5) days prior to the initiation of work. Surveys shall encompass all potential habitats (e.g., grasslands and tree cavities) within 250 feet of the Project site. The Qualified Biologist conducting the surveys shall be familiar with the breeding behaviors and nest structures for birds known to nest in the Project site. Surveys shall be conducted during periods of peak activity (early morning, dusk) and shall be of sufficient duration to observe movement patterns. Survey results, including a description of timing, duration and methods used, shall be submitted to CDFW for review forty-eight hours prior to the initiation of the Project. If a lapse in Project activity of seven days (7) or more occurs, the survey shall be repeated and no work shall proceed until the results have been submitted to CDFW.

If nesting birds are found, then no work shall be initiated until species-specific buffers have been established in consultation with CDFW. The buffer area(s) shall be fenced off from work activities and avoided until the young have fledged, as determined by the Qualified Biologist. Active nests found inside the limits of species-specific buffer zones or nests within the vicinity of the Project site showing signs of distress from Project activity as determined by the Qualified Biologist shall be monitored daily during the duration of the Project for changes in bird behavior. Buffer areas of active nests within the vicinity of the Project site showing signs of distress or disruptions to nesting behaviors from Project activity, as determined by the Qualified Biologist, shall have their buffers immediately adjusted by the Qualified Biologist until no further interruptions to breeding behavior are detectable.

The Permittee or representatives of the Permittee shall not disturb or destroy the nests or eggs of fully protected species or of other birds as per Fish and Game Code Section 3503."

Comment 3: CDFW recommends additional mitigation measures for Project construction be included in the IS/ND.

CDFW also recommends the following avoidance and minimization measures to be included in the IS/ND:

"Open Pipes Restriction: All pipes, culverts, or similar structures that are stored at the construction site (either vertically or horizontally) for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to implementation by a Qualified Biologist.

Fence and Sign Post Restriction: Any fencing posts or signs installed, temporarily or permanently, throughout the course of the Project shall have the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife, specifically birds of prey.

Spill Contingency Plan Required: Permittee shall submit for approval an oil/toxic materials spill contingency plan to CDFW prior to commencement of operations. The plan shall identify the location of containment and abatement materials on-site and the notification and cleanup procedures to be followed by Permittee in the event of a spill.

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Spill Cleanup: Permittee shall begin the cleanup of all spills immediately. CDFW shall be notified immediately by the Permittee of any spills and shall be consulted regarding cleanup procedures. The Permittee shall have all spill clean-up equipment on-site during construction.

Spill Containment: All activities performed in or near waters of the state shall have absorbent materials designated for spill containment and clean-up activities on-site for use in an accidental spill. The Permittee shall immediately notify the California Governor's Office of Emergency Services at (800) 852-7550 and immediately initiate the clean-up activities. CDFW shall be notified by the Permittee and consulted regarding clean-up procedures.

ENVIRONMENTAL DATA

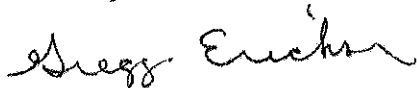
CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The completed form can be mailed electronically to CNDDDB at the following email address: cnddb@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>

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends the revisions to mitigation measures, described above, be incorporated as enforceable conditions into the revised IS/ND. CDFW appreciates the opportunity to comment on the IS/ND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Jeanette Griffin, Environmental Scientist, at (209) 234-3447 or Jeanette.Griffin@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse
Steve Mayo, San Joaquin Council of Governments – Mayo@sjcoq.org

STAFF REPORT

- SUBJECT:** Great Pacific Nut Company Project, Plan Participation and Habitat Classification Change
- RECOMMENDED ACTION:** Motion to 1) Allow the Great Pacific Nut Company Project to Participate in the SJMSCP and; 2) Allow an Alteration to the Habitat Type Coverage from Agriculture (C34) Habitat Land to Multi-Purpose Open Space (C2) Habitat Land

DISCUSSION:

SUMMARY:

The project applicant, Wilson Architecture, is requesting coverage under the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) through the San Joaquin County Community Development Department because the site is in an unmapped area of the Plan. The project site is located on the north side of West Lehman Road, 985 feet west of South Ahern Road, Tracy in the Central Southwest Transition Zone (attachments 1 & 2).



RECOMMENDATION:

SJCOG, Inc. staff and HTAC recommend the SJCOG, Inc. Board to:

- 1) Allow the project to participate under the SJMSCP to provide biological coverage for the project impacts to the habitat types under the federal and state permits;
- 2) Allow an alteration to the habitat type coverage from Agricultural (C34) habitat land to Multi-Purpose Open Space (C2) habitat land

FISCAL IMPACT:

If the project is approved including the habitat type coverage alteration, SJCOG, Inc. will be provided mitigation for the project impacts as required under the SJMSCP for approximately 13.54 acres. The impacts for this project would consist of 13.54 acres of Multi-Purpose Open Space (C2) habitat impacts.

BACKGROUND:



This project consists of a Site Approval application for a nut processing/preparation facility to be completed in three (3) phases over five (5) years. Phase 1, to be completed in 18 months, includes the construction of a 30,000 square foot storage building, a 5,000 square foot shop building, a 1,000 square foot breakroom, and a truck scale for private use only. Phase 2, to be completed in thirty (30) months, includes the construction of a 30,000 square foot shelling building. Phase 3, to be completed in five (5) years, includes a 400 square foot canopy (attachment 3).

In accordance with the SJMSCP Planned Land Use Map, the project site is in the “unmapped” land use area of the plan. Because it is not located on a SJMSCP Compensation Map, the project can request an alteration to the SJMSCP vegetation map habitat classification on a case by case review.

The project is seeking an alteration to the habitat classification on the SJMSCP vegetation map. Per the SJMSCP’s Section 8.8.2.1, a project can seek an alteration to the habitat classification by providing aerial photography imagery dated prior to SJMSCP permit issuance in 2001. Each project will be reviewed by the Habitat TAC for recommendation to the SJCOG, Inc. Board for approval on a case-by-case basis.

The original SJMSCP GIS vegetation map portrays the project site as Agriculture (C34). However, the 2001 aerial (attachment 4), which shows a broader review of the habitat types in San Joaquin County, shows portions of the land within the project footprint as Multi-Purpose Open Space (C2) consisting of an existing orchard. The original SJMSCP habitat classification for this specific area would be re-classified from 13.54 acres of Agriculture (C34) to 13.54 acres of Multi-Purpose Open Space (C2) habitat land.



Adjacent Vegetation and Land Use

Location	SJMSCP Vegetation Map Classification	Habitat Type Category	Actual Use Of Property
Site	Agriculture (C34)	Agriculture (C34)	Multi-Purpose Open Space (C2)
North	Urban (U2), Agriculture (C34)	Urban (U2), Agriculture (C34)	Urban (U2), Agriculture (C34)
South	Agriculture (C34)	Agriculture (C34)	Agriculture (C34)
East	Urban (U2), Agriculture (C34)	Urban (U2), Agriculture (C34)	Urban (U2), Agriculture (C34)
West	Agriculture (C34)	Agriculture (C34)	Agriculture (C34)

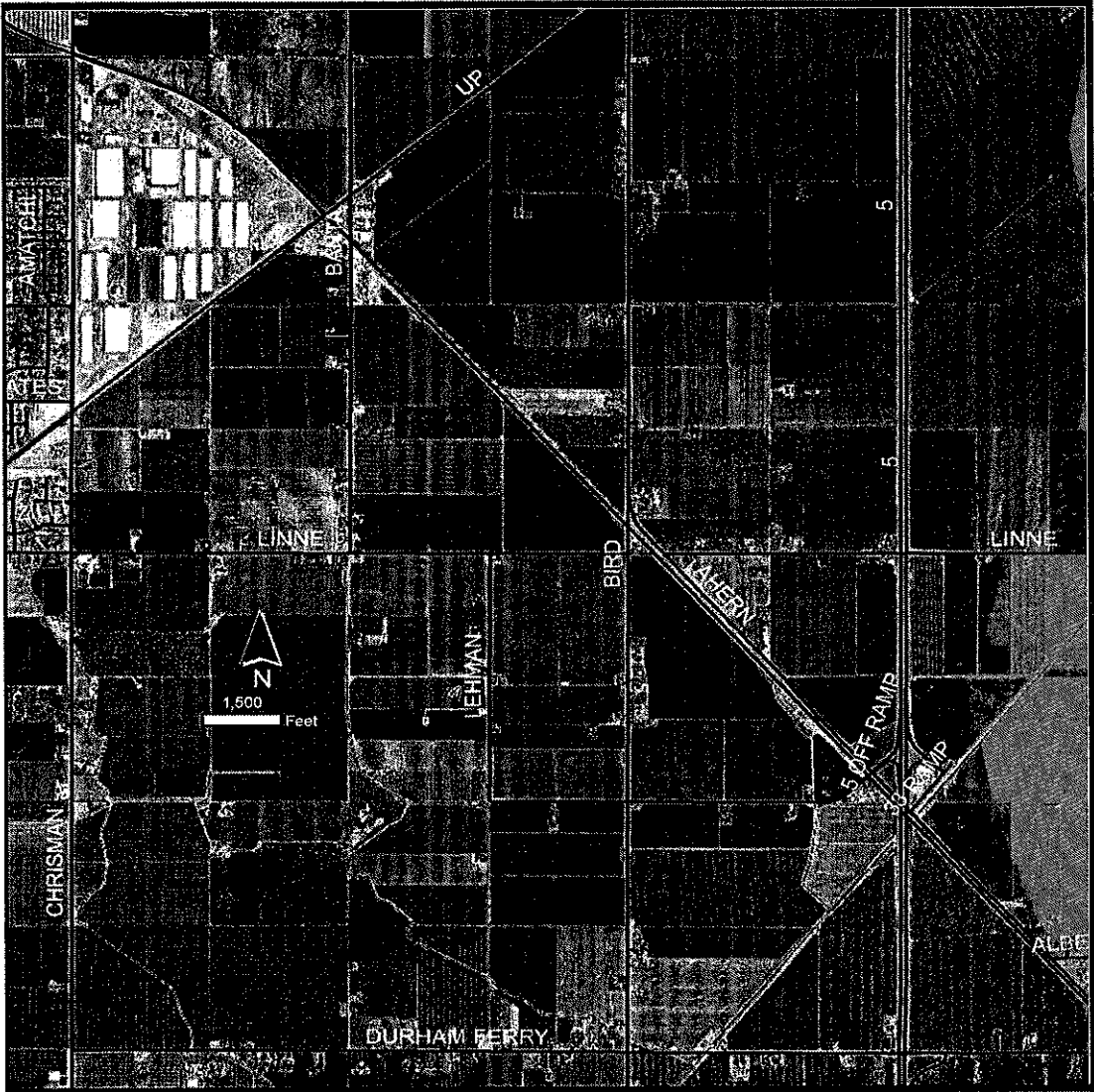
COMMITTEE ACTIONS:

- Habitat Technical Advisory Committee: Approved
- SJCOG, Inc. Board: Action Required

ATTACHMENTS:

1. General Location Map
2. Project Location Map
3. Project Site Map

Prepared by: Laurel Boyd, Assistant Habitat Planner







Great Pacific Nut Company Project

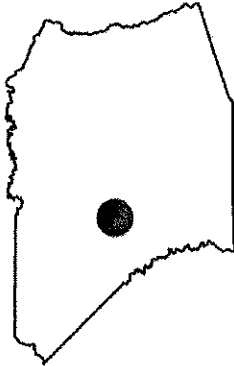
Legend

 Great Pacific Nut Project

TracyCompMap

Land_Type




-  Agriculture
-  Multi-Purpose Open Space
-  Natural
-  Urban

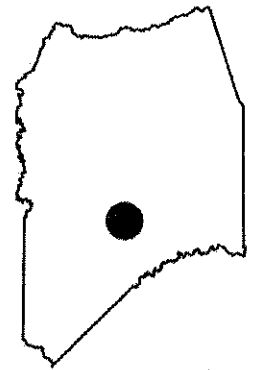


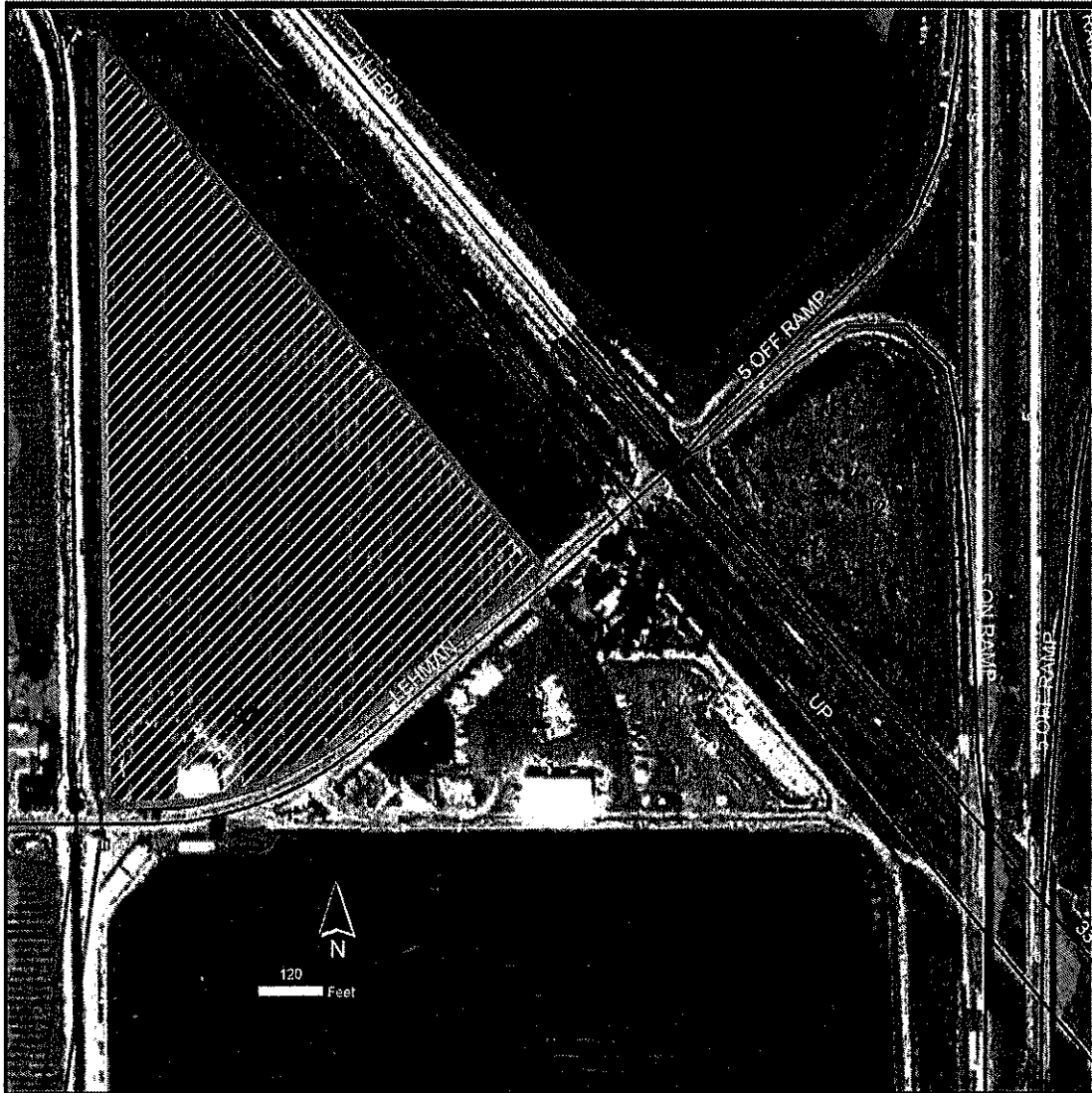


Great Pacific Nut Company Project

Legend.




-  Great Pacific Nut Project
-  Project Location
-  Habitat Classifications

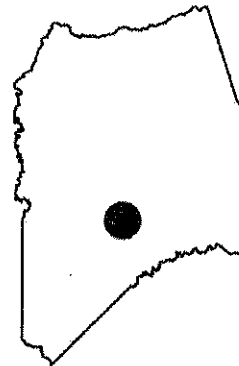


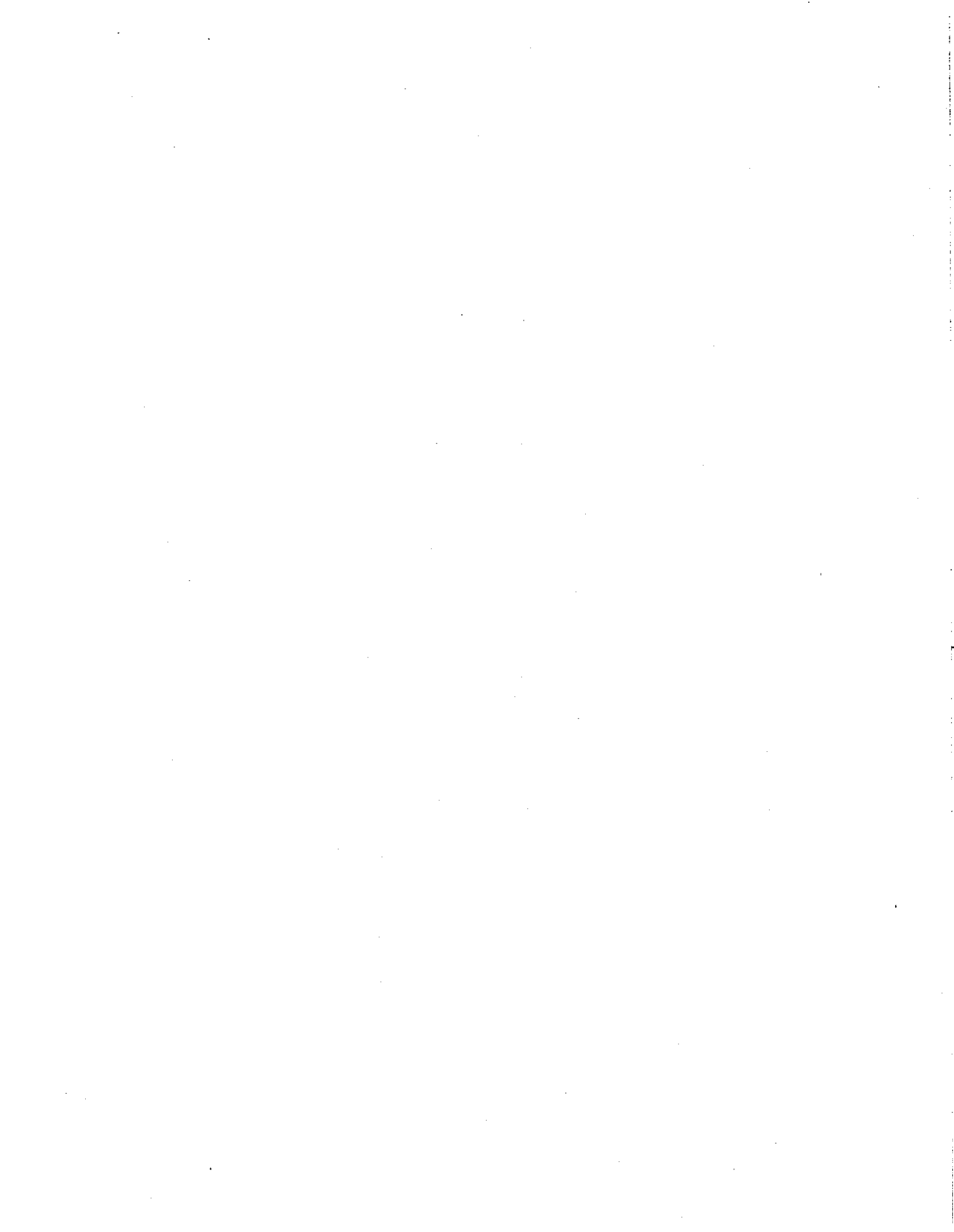


Great Pacific Nut Company Project

Legend

-  Great Pacific Nut Project
-  Project Location
-  Habitat Classifications





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S J C O G, Inc.

555 East Weber Avenue • Stockton, CA 95202 • (209) 235-0600 • FAX (209) 235-0600

*San Joaquin County Multi-Species Habitat Conservation &
Open Space Plan (SJMSCP)*

**Great Pacific Nut Company Project, Phase 1 (PA-1800244)
SJMSCP Incidental Take Minimization Measures
(APN: 255-020-61)**

Date: February 5, 2019

Findings: Potential nesting habitat for Swainson's hawk

Potential nesting habitat for common birds (Migratory Bird Treaty Act)

Total Disturbed Acres Anticipated: 3.5 acres

Habitat Types to be Disturbed: Multi-Purpose Open Space (C2) Habitat Land

Project Jurisdiction: San Joaquin County

Advisory Statements

After inspecting the project site, and project site conditions, the San Joaquin Council of Governments (SJCOG) provides the following *advisory statements* to the applicant. No further action is required with the SJCOG with respect to the following statements. SJCOG does not accept any liability for the accuracy of these statements since each regulatory agency discussed below must determine the extent of its own regulatory authority with respect to the proposed project.

It should be noted that two important federal and state agencies (U.S. Army Corps of Engineers and the California Regional Water Quality Control Board) and California Department of Fish and Wildlife Streambed Alteration requirements have not issued permits to the SJCOG and so payment of the fee to use the SJMSCP will not modify requirements (1600/1602) now imposed by these agencies. **If potential waters of the United States [pursuant to Section 404 Clean Water Act] may occur on the project site**, it therefore may be prudent to obtain a preliminary wetlands map from a qualified consultant. If waters of the United States are confirmed on the project site, the Corps and the Regional Water Quality Control Board (RWQCB) would have regulatory authority over those mapped areas [pursuant to Section 404 and 401 of the Clean Water Act respectively] and permits would likely be required from each of these resource agencies prior to impacting these features on the project site.

The SJMSCP covers lawful activities which must comply with all federal, state and local laws for coverage. The **Migratory Bird Treaty Act (MBTA)** is a federal act which protects many birds and their habitats. Those species go beyond the listed SJMSCP species but are included as protective measures for compliance with the federal MBTA measures. The measures will be stated under **MBTA Compliance** in the prescribed ITMM.

The ITMM is not deemed complete until finalized by SJCOG, Inc. staff and provided back to the project.

Conditions

Prior to ground disturbance:

1. Incidental Take Minimization Measures (ITMMs) will be issued to the project and must be signed by the project applicant prior to any ground disturbance but no later than six (6) months from receipt of the ITMMs. If ITMMs are not signed within six months, the applicant must reapply for SJMSCP Coverage. Upon receipt of signed ITMMs from project applicant, SJCOG, Inc. staff will sign the ITMMs. This is the effective date of the ITMMs.
2. Under no circumstance shall ground disturbance occur without compliance and satisfaction of the ITMMs.
3. Upon issuance of fully executed ITMMs and prior to any ground disturbance, the project applicant must:
 - a. Post a bond for payment of the applicable SJMSCP fee covering the entirety of the project acreage being covered (the bond should be valid for no longer than a 6 month period); or
 - b. Pay the appropriate SJMSCP fee for the entirety of the project acreage being covered; or
 - c. Dedicate land in-lieu of fees, either as conservation easements or fee title; or
 - d. Purchase approved mitigation bank credits.
4. Within 6 months from the effective date of the ITMMs or issuance of a building permit, whichever occurs first, the project applicant must:
 - a. Pay the appropriate SJMSCP for the entirety of the project acreage being covered; or
 - b. Dedicate land in-lieu of fees, either as conservation easements or fee title; or
 - c. Purchase approved mitigation bank credits.

Failure to satisfy the obligations of the mitigation fee shall subject the bond to be called.

Pay appropriate SJMSCP 2019 fees based on habitat categories and rates to SJCOG, Inc.:

- Multi-Purpose Open Space (C2) Habitat – 3.5 acres x \$6,700 per acre = **\$23,450.00**

Total Fee due: \$23,450.00

Note: If fees are not paid prior to January 1, 2020 this project will be subject to the subsequent fee change, and the fee above will no longer be applicable.

Project Proponent Must Initial Here As to Understanding the Note Above:

DH

Prior to commencing ground disturbance:

Surveys

Initial and/or follow up surveys shall be conducted no greater than 14 days prior to construction for Swainson's hawk and common raptor species protected under the Migratory Bird Treaty Act (MBTA) for nesting habitat. If these species are observed nesting on the project site then the following Incidental Take Minimization Measures shall be implemented.

5.2.4.11 Swainson's hawk

The Project Proponent has the option of retaining known or potential **Swainson's hawk** nest trees (i.e., trees that hawks are known to have nested in within the past three years or trees, such as large oaks, which the hawks prefer for nesting) or removing the nest trees.

If the Project Proponent elects to retain a nest tree, and in order to encourage tree retention, the following Incidental Take Minimization Measure shall be implemented during construction activities:

If a nest tree becomes occupied during construction activities, then all construction activities shall remain a distance of two times the dripline of the tree, measured from the nest.

If the Project Proponent elects to remove a nest tree, then nest trees may be removed between September 1 and February 15, when the nests are unoccupied.

These Incidental Take Minimization Measures are consistent with the provisions of the **Migratory Bird Treaty Act** as described in Section 5.2.3.1(G).

MBTA Compliance:

Listed below are effective measures that should be employed at all project development sites nationwide with the goal of reducing impacts to birds and their habitats. A qualified biologist will be required to be on site as a biological monitor during these activities. These measures are grouped into three categories: General, Habitat Protection, and Stressor Management. These measures may be updated through time. We recommend checking the MBTA Conservation Measures website regularly for the most up-to-date list.

1. General Measures

- a. Educate all employees, contractors, and/or site visitors of relevant rules and regulations that protect wildlife. See the Service webpage on Regulations and Policies for more information on regulations that protect migratory birds.
- b. Prior to removal of an inactive nest, ensure that the nest is not protected under the Endangered Species Act (ESA) or the Bald and Golden Eagle Protection Act (BGEPA). Nests protected under ESA or BGEPA cannot be removed without a valid permit.
 - i. See the Service Nest Destruction Policy
- c. Do not collect birds (live or dead) or their parts (e.g., feathers) or nests without a valid permit. Please visit the Service permits page for more information on permits and permit applications.
- d. Provide enclosed solid waste receptacles at all project areas. Non-hazardous solid waste (trash) would be collected and deposited in the on-site receptacles. Solid waste would be collected and disposed of by a local waste disposal contractor. For more information about solid waste and how to properly dispose of it, see the EPA Non-Hazardous Waste website.
- e. Report any incidental take of a migratory bird, to the local Service Office of Law Enforcement.
- f. Consult and follow applicable Service industry guidance.

2. Habitat Protection

- a. Minimize project creep by clearly delineating and maintaining project boundaries (including staging areas).
- b. Consult all local, State, and Federal regulations for the development of an appropriate buffer distance between development site and any wetland or waterway. For more information on wetland protection regulations see the Clean Water Act sections 401 and 404.
- c. Maximize use of disturbed land for all project activities (i.e., siting, lay-down areas, and construction).
- d. Implement standard soil erosion and dust control measures. For example:
 - i. Establish vegetation cover to stabilize soil
 - ii. Use erosion blankets to prevent soil loss
 - iii. Water bare soil to prevent wind erosion and dust issues

3. Stressor Management

Stressor: Vegetation Removal

Conservation Goal: Avoid direct take of adults, chicks, or eggs.

Conservation Measure 1: Schedule all vegetation removal, trimming, and grading of vegetated areas outside of the peak bird breeding season to the maximum extent practicable. Use available resources, such as internet-based tools (e.g., the FWS's Information, Planning and Conservation system and Avian Knowledge Network) to identify peak breeding months for local bird species; or, contact local Service Migratory Bird Program Office for breeding bird information.

Conservation Measure 2: When project activities cannot occur outside the bird nesting season, conduct surveys prior to scheduled activity to determine if active nests are present within the area of impact and buffer any nesting locations found during surveys.

- 1) Generally, the surveys should be conducted no more than five days prior to scheduled activity.
- 2) Timing and dimensions of the area to be surveyed vary and will depend on the nature of the project, location, and expected level of vegetation disturbance.
- 3) If active nests or breeding behavior (e.g., courtship, nest building, territorial defense, etc.) are detected during these surveys, no vegetation removal activities should be conducted until nestlings have fledged or the nest fails or breeding behaviors are no longer observed. If the activity must occur, establish a buffer zone (100-foot minimum) around the nest and no activities will occur within that buffer zone until nestlings have fledged and left the nest area. The dimension of the buffer zone may need to be expanded depending on the proposed activity, habitat type, and species present and should be coordinated with the biologist on site and/or SJMSCP.
- 4) When establishing the buffer zone, construct a barrier (e.g., plastic fencing) to protect the area. If the fence is knocked down or destroyed, work will suspend wholly, or in part, until the fence is satisfactorily repaired.
- 5) When establishing a buffer zone, a qualified biologist will be present onsite to serve as a biological monitor during vegetation clearing and grading activities to ensure no take of migratory birds occurs. Prior to vegetation clearing, the monitor will ensure that the limits of construction have been properly staked and are readily identifiable. Any associated project activities that are inconsistent with the applicable conservation measures, and activities that may result in the 'take of

migratory birds' will be immediately halted and reported to the SJMSCP and the appropriate Service office within 24 hours.

- 6) If establishing a buffer zone of a minimum of 100-feet is not feasible, contact the Service for guidance to minimize impacts to migratory birds associated with the proposed project or removal of an active nest. Active nests may only be removed if you receive a permit from your local Migratory Bird Permit Office. A permit may authorize active nest removal by a qualified biologist with bird handling experience or by a permitted bird rehabilitator.

Conservation Measure 3: Prepare a vegetation maintenance plan that outlines vegetation maintenance activities and schedules so that direct bird impacts do not occur.

Stressor: Invasive Species Introduction

Conservation Goal: Prevent the introduction of invasive plants.

Conservation Measure 1: Prepare a weed abatement plan that outlines the areas where weed abatement is required and the schedule and method of activities to ensure bird impacts are avoided.

Conservation Measure 2: For temporary and permanent habitat restoration/enhancement, use only native and local (when possible) seed and plant stock.

Conservation Measure 3: Consider creating vehicle wash stations prior to entering sensitive habitat areas to prevent accidental introduction of non-native plants.

Conservation Measure 4: Remove invasive/exotic species that pose an attractive nuisance to migratory birds.

Stressor: Artificial Lighting

Conservation Goal: Prevent increase in lighting of native habitats during the bird breeding season.

Conservation Measure 1: To the maximum extent practicable, limit construction activities to the time between dawn and dusk to avoid the illumination of adjacent habitat areas.

Conservation Measure 2: If construction activity time restrictions are not possible, use down shielding or directional lighting to avoid light trespass into bird habitat (i.e., use a 'Cobra' style light rather than an omnidirectional light system to direct light down to the roadbed). To the maximum extent practicable, while allowing for public safety, low intensity energy saving lighting (e.g. low pressure sodium lamps) will be used.

Conservation Measure 3: Minimize illumination of lighting on associated construction or operation structures by using motion sensors or heat sensors.

Conservation Measure 5: Bright white light, such as metal halide, halogen, fluorescent, mercury vapor and incandescent lamps should not be used.

Stressor: Human Disturbance

Conservation Goal: Minimize prolonged human presence near nesting birds during construction and maintenance actions.

Conservation Measure 1: Restrict unauthorized access to natural areas adjacent to the project site by erecting a barrier and/or avoidance buffers (e.g., gate, fence, wall) to minimize foot traffic and off-road vehicle uses.

Stressor: Collision

Conservation Goal: Minimize collision risk with project infrastructure and vehicles.

Conservation Measure 1: Minimize collision risk with project infrastructure (e.g., temporary and permanent) by increasing visibility through appropriate marking and design features (e.g., lighting, wire marking, etc.).

Conservation Measure 2: On bridge crossing areas with adjacent riparian, beach, estuary, or other bird habitat, use fencing or metal bridge poles (Sebastian Poles) that extend to the height of the tallest vehicles that will use the structure.

Conservation Measure 3: Install wildlife friendly culverts so rodents and small mammals can travel under any new roadways instead of over them. This may help reduce raptor deaths associated with being struck while tracking prey or scavenging road kill on the roadway.

Conservation Measure 4: Remove road-kill carcasses regularly to prevent scavenging and bird congregations along roadways.

Conservation Measure 5: Avoid planting "desirable" fruited or preferred nesting vegetation in medians or Rights of Way.

Conservation Measure 6: Eliminate use of steady burning lights on tall structures (e.g., >200 ft).

Stressor: Entrapment

Conservation Goal: Prevent birds from becoming trapped in project structures or perching and nesting in project areas that may endanger them.

Conservation Measure 1: Minimize entrapment and entanglement hazards through project design measures that may include:

1. Installing anti-perching devices on facilities/equipment where birds may commonly nest or perch
2. Covering or enclosing all potential nesting surfaces on the structure with mesh netting, chicken wire fencing, or other suitable exclusion material prior to the nesting season to prevent birds from establishing new nests. The netting, fencing, or other material must have no opening or mesh size greater than 19 mm and must be maintained until the structure is removed.
3. Cap pipes and cover/seal all small dark spaces where birds may enter and become trapped.

Conservation Measure 2: Use the appropriate deterrents to prevent birds from nesting on structures where they cause conflicts, may endanger themselves, or create a human health and safety hazard.

1. During the time that the birds are trying to build or occupy their nests (generally, between April and August, depending on the geographic location), potential nesting surfaces should be monitored at least once every three days for any nesting activity, especially where bird use of structures is likely to cause take. It is permissible to remove non-active nests (without birds or eggs), partially completed nests, or new nests as they are built (prior to occupation). If birds have started to build any nests, the nests shall be removed before they are completed. Water shall not be used to remove the nests if nests are located within 50 feet of any surface waters.
2. If an active nest becomes established (i.e., there are eggs or young in the nest), all work that could result in abandonment or destruction of the nest shall be avoided until the young have fledged or the nest is unoccupied. Construction activities that may displace birds after they have laid their eggs and before the young have fledged should not be permitted. If the project continues into the following spring, this cycle shall be repeated. When work on the structure is complete, all netting shall be removed and properly disposed of.

Stressor: Noise

Conservation Goal: Prevent the increase in noise above ambient levels during the nesting bird breeding season.

Conservation Measure 1: Minimize an increase in noise above ambient levels during project construction by installing temporary structural barriers such as sand bags

Conservation Measure 2: Avoid permanent additions to ambient noise levels from the proposed project by using baffle boxes or sound walls.

Stressor: Chemical Contamination

Conservation Goal: Prevent the introduction of chemicals contaminants into the environment.

Conservation Measure 1: Avoid chemical contamination of the project area by implementing a Hazardous Materials Plan. For more information on hazardous waste and how to properly manage hazardous waste, see the [EPA Hazardous Waste website](#).

Conservation Measure 2: Avoid soil contamination by using drip pans underneath equipment and containment zones at construction sites and when refueling vehicles or equipment.

Conservation Measure 3: Avoid contaminating natural aquatic and wetland systems with runoff by limiting all equipment maintenance, staging laydown, and dispensing of fuel, oil, etc., to designated upland areas.

Conservation Measure 4: Any use of pesticides or rodenticides shall comply with the applicable [Federal and State laws](#).

1. Choose non-chemical alternatives when appropriate
2. Pesticides shall be used only in accordance with their registered uses and in accordance with the manufacturer's instructions to limit access to non-target species.
3. For general measures to reducing wildlife exposure to pesticides, see EPA's

Pesticides: Environmental Effects website.

Stressor: Fire

Conservation Goal: Minimize fire potential from project-related activities.

Conservation Measure 1: Reduce fire hazards from vehicles and human activities (e.g., use spark arrestors on power equipment, avoid driving vehicles off road).

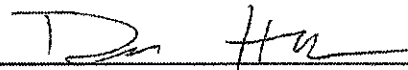
Conservation Measure 2: Consider fire potential when developing vegetation management plans by planting temporary impact areas with a palette of low-growing, sparse, fire resistant native species that meet with the approval of the County Fire Department and local FWS Office.

During project construction:

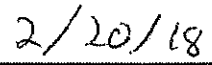
All food-related trash items such as wrappers, cans, bottles, and food scraps shall be disposed of in closed containers and removed at least once a week from the construction site.

In reliance on the Section 10(a)(1)(B) Permit issued by the United States Fish and Wildlife Service and the Section 2081(b) Incidental Take Permit issued by the California Department of Fish and Wildlife, San Joaquin County has consulted with and agreed to allow coverage pursuant to the SJMSCP for the *Great Pacific Nut Co. Project, Phase 1 (PA-1800244)* its successors, agents and assigns pursuant to the "Implementation Agreement for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan" which will allow the *Great Pacific Nut Co. Project, Phase 1 (PA-1800244)*, its successors, agents and assigns to construct, operate and maintain the Project commonly known as the *Great Pacific Nut Co. Project, Phase 1 (PA-1800244)* and located on Assessor Parcel Numbers 255-020-61 which could result in a legally permitted Incidental Take of the SJMSCP Covered Species in accordance with and subject to the terms and conditions of the *Great Pacific Nut Co. Project, Phase 1 (PA-1800244)* approved by San Joaquin County. This Certification applies only to activities on the subject parcel(s) which are carried out in full compliance with the approved plans for the *Great Pacific Nut Co. Project, Phase 1 (PA-1800244)*, Section 10(a)(1)(B) Permit, and Section 2081(b) Incidental Take Permit conditions.

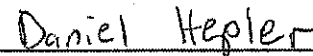
I have read, acknowledge, and agree to the preceding conditions:



Project Proponent for the *Great Pacific Nut Co. Project, Phase 1 (PA-1800244)*



Date



Please Print Name Here

FOR SJCOG, Inc. Use Only:

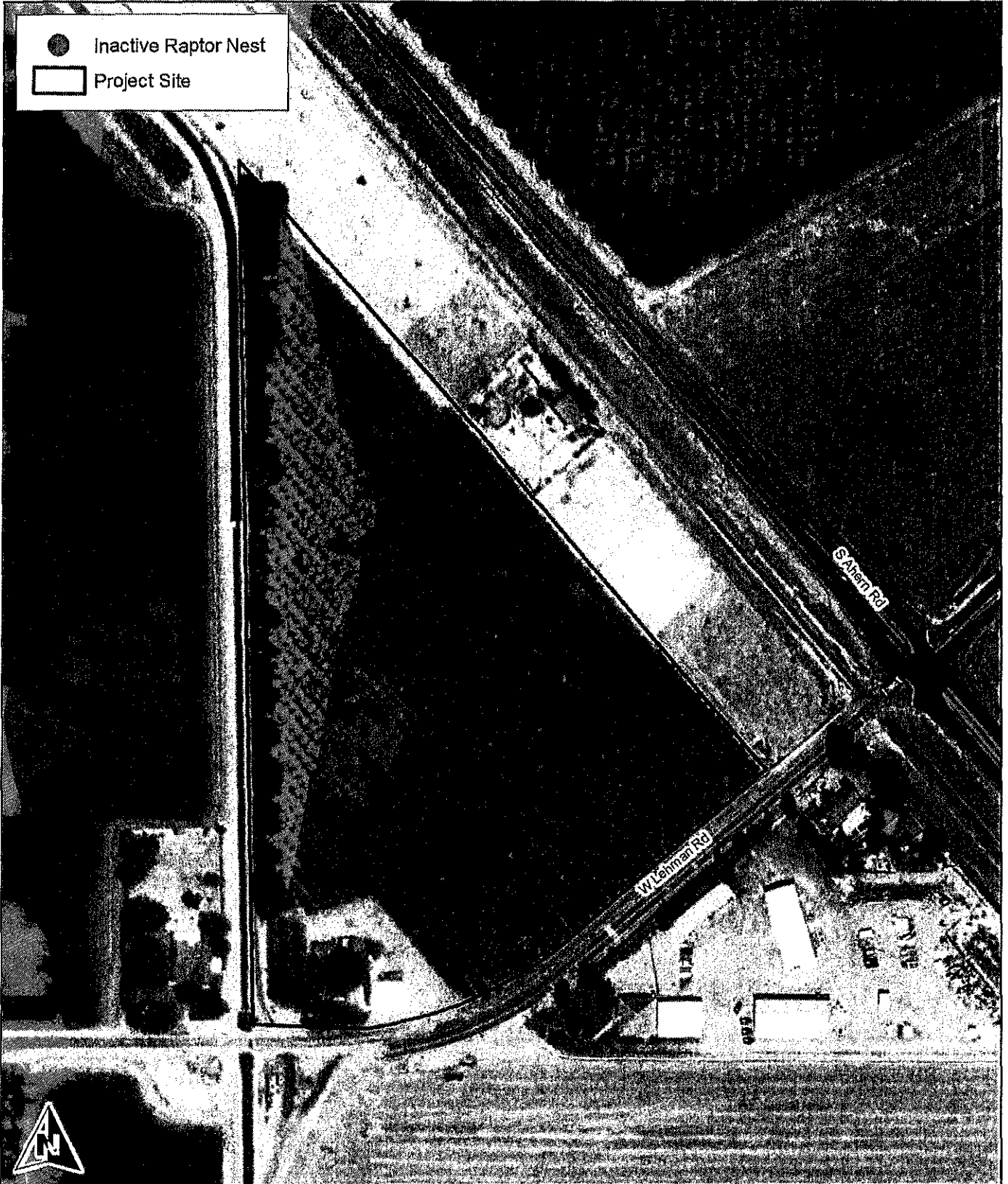
Laurel Boyd
SJCOG, Inc. Staff Signature

2/21/19
Official Date of Issuance

Laurel Boyd
SJCOG, Inc. Staff Print Name Here

8/21/19
Mitigation Due Date





Monk & Associates
Environmental Consultants
1136 Saranap Avenue, Suite Q
Walnut Creek, California 94595
(925) 947-4867

Figure 3. Aerial Photograph of the
Great Pacific Nut Co. Project, Phase 1
Tracy, California

Aerial Photograph Source: USGS
Map Preparation Date: February 5, 2019

