

Staff Report 61

APPLICANT:

Wonderful Nut Orchards LLC

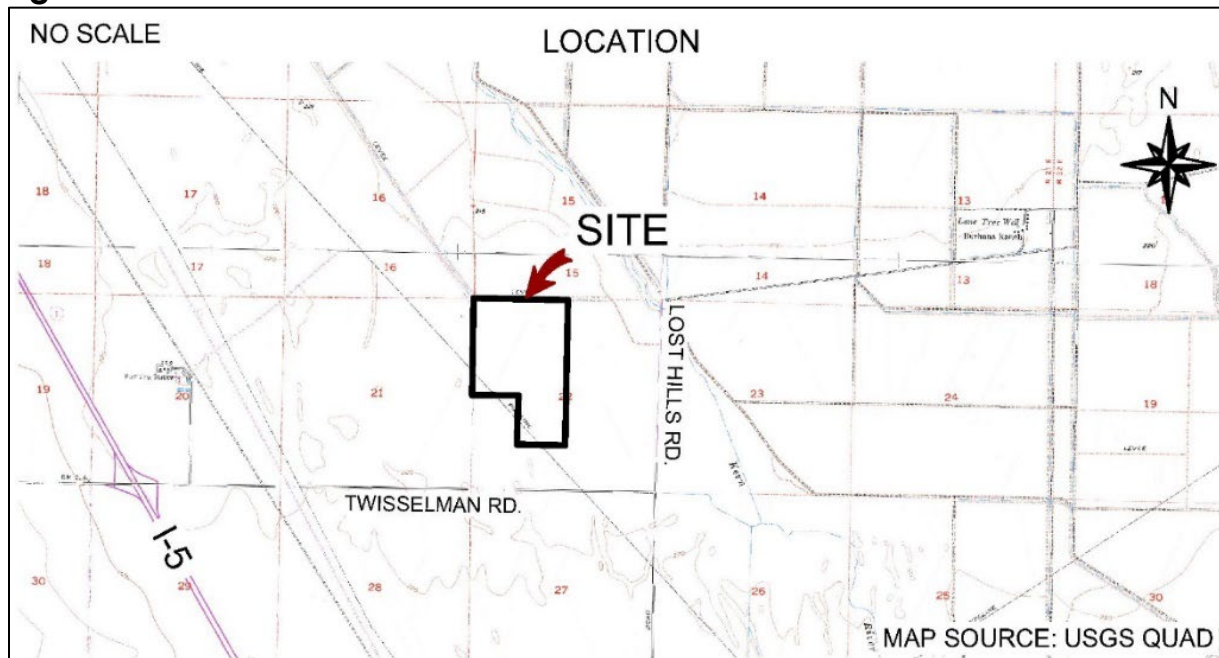
PROPOSED ACTION:

Approval of a Modification of the State's Right of Surface Entry Agreement.

AREA, LAND TYPE, AND LOCATION:

Approximately 200 acres of State 100 percent reserved mineral interest school land, Assessor's Parcel Number: 044-130-21, located about 5 miles west of the Kern National Wildlife Refuge in the community of Lost Hills, within the NW 1/4, and NE 1/4 of SW 1/4 of Section 22, Township 25 South, Range 21 East, Mount Diablo Baseline & Meridian, Kern County (as shown in Figure 1).

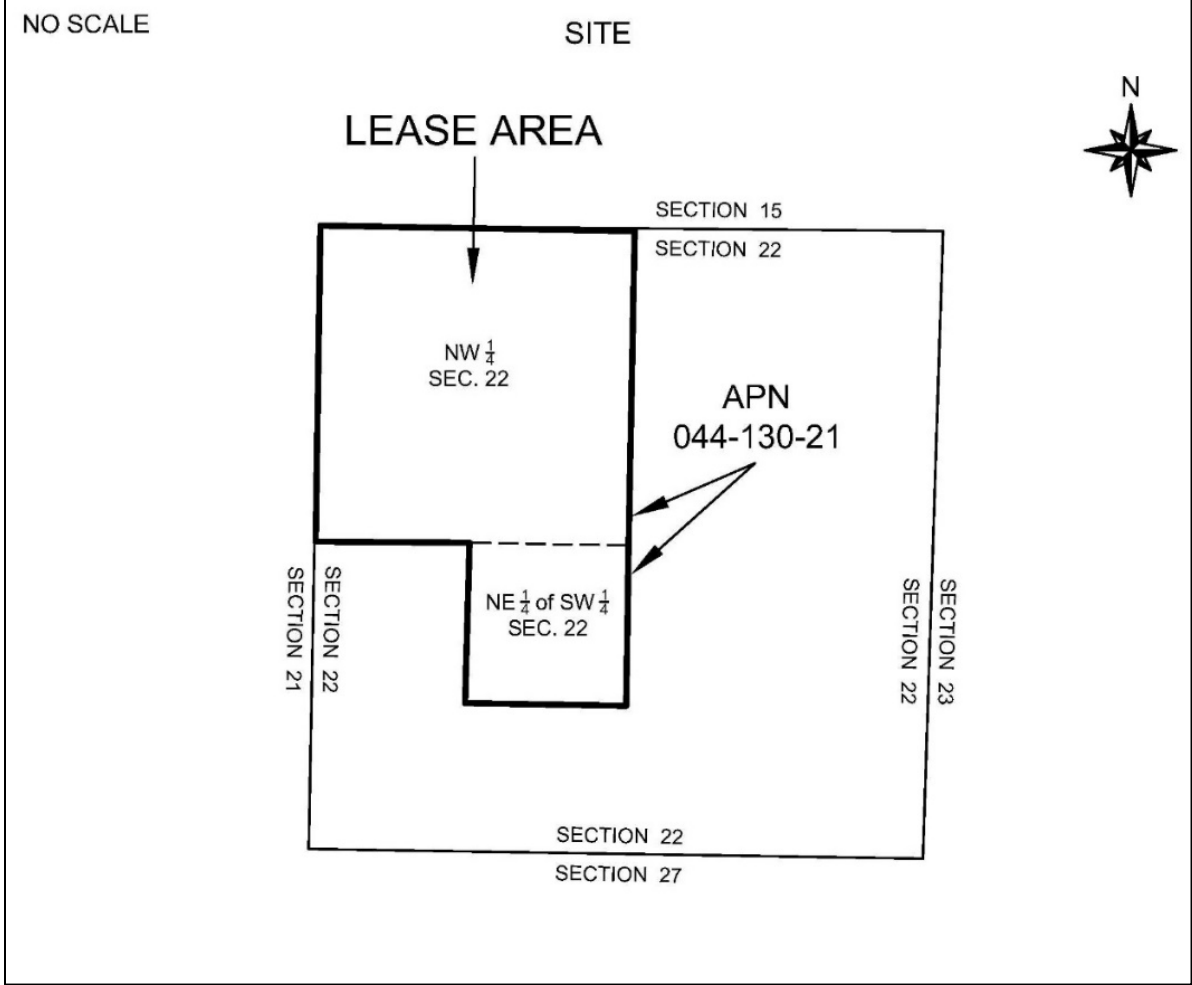
Figure 1. Location



PROPOSED AGREEMENT:

Modification of the State's right to use or cause to be used, for purposes of developing its mineral reservation, the surface, including its right to enter such lands to a depth of 500 feet below the surface of the lands (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

50 years, beginning June 7, 2024.

CONSIDERATION:

~~\$1,7605,940~~ per year, due on July 8, with an annual Consumer Price Index adjustment.

SPECIFIC AGREEMENT PROVISIONS:

The Agreement shall run with the land and shall be binding upon and inure to the Applicant, its successors, and assigns for the term of the Agreement. The Applicant and all subsequent owners of the lands described in Exhibit A (attached) shall continue to be benefited and burdened by the covenants unless and until it expires or is otherwise terminated as provided in the Agreement.

BACKGROUND:

The State retains 200 acres of 100 percent reserved mineral interest (RMI) school lands located about 5 miles west of the Kern Wildlife Refuge in the community of Lost Hills, within the NW 1/4, and NE 1 /4 of the SW 1/4 of Section 22, T25S, R21E, Mount Diablo Baseline & Meridian, Kern County (Assessor Parcel Number 044-130-21). The surface estate is privately owned. The State retains ownership of any subsurface minerals, except for oil and gas. The rights to subsurface minerals include the right to enter onto the land to extract the minerals. Although the State reserves any potential mineral interest as required by State law, commercial quantities may not be present, and the surface development may not be compatible with future mining operations. In such cases, the State can contractually agree to modify the surface entry rights to enable surface development. The Applicant proposes to use the surface of the parcel to construct a combined utility-scale photovoltaic solar generation facility and battery energy storage facility that will be in use for up to 50 years or more.

Under Public Resources Code section 6401, subdivision (b), the Commission may modify, and surrender its right to enter the State's RMI, to a depth of 500 feet below the surface, to allow for the orderly use and development of lands where the State has sold the surface but retained the mineral interest. The Commission may modify its right of surface entry upon a finding that there are no known deposits of commercially valuable minerals in and above a plane located 500 feet below the surface of the lands and that such modifications are not inconsistent with federal laws pertaining to the grant of school lands (i.e., the RMI is not sold or otherwise disposed of).

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Codes sections 6005, 6216, and 6401; California Code of Regulations, title 2, section 2003.

STATE'S BEST INTERESTS:

As noted above, the Applicant proposes to use the surface of the parcel to construct a combined utility-scale photovoltaic solar generation facility and battery energy storage facility that will be in use for up to 50 years or more. The proposed modification of the State's right of surface entry to enable the development of the facility is in the State's best interests because it helps the State achieve its ambitious greenhouse gas emission reduction target of 40 percent below 1990 levels by 2030 (SB 32, 2016) and 85 percent by 2045 (AB 1279, 2022), and renewable energy procurement targets of 60 percent by 2030 (SB 100, 2018), 90 percent by 2035, and 100 percent by 2045 (SB 1020, 2022), through the development and expansion of the State's renewable energy portfolio. Despite the temporary loss of entry onto the parcel, the State will benefit from the new clean energy production from the solar facility. Additionally, given the low mineral potential of the parcel, it is highly unlikely that the Commission will receive any applications to develop the mineral interest on the parcel during the term of the proposed agreement. The low mineral potential of the parcel was confirmed using the mineral evaluation report completed by a registered geologist and a registered engineer with Miocene Inc. Engineering and Operating Services on August 16, 2023, which was submitted as a requirement of the application.

As consideration for the modification of the State's right of surface entry, the Applicant will pay an annual fee, \$~~1,765,940~~ due on July 8, adjusted annually by the Consumer Price Index. This consideration was determined using methods authorized by the Commission under California Code of Regulations, title 2, section 2003. Finally, this subject modification is for a limited term of 50 years to preserve the ability to enter the surface if future mineral resources are discovered.

CLIMATE CHANGE:

As stated in the [Safeguarding California Plan: 2018 Update](#) (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms. The lease

area is open lands with moderate to low vegetation fuels, and is vulnerable to the above events, including dust storms and flash flooding from thunderstorms, and to a lesser extent, wildland fires. The lands contemplated under the agreement as well as the surrounding area may be vulnerable to these weather events; however, the right of entry agreement would remain unaffected by any projected climate change effects.

CONCLUSION:

For all the reasons above, staff believes the approval of entry into a Modification of the State's Right of Surface Entry Agreement is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a modification of the State's right of surface entry on RMI lands, it exercises legislatively delegated authority and responsibility as trustee of those lands as authorized by law. If the Commission denies the application, the Applicant would not be able to deny the State the authority to extract resources pursuant to its RMI. However, a future mineral lessee of the State would be economically responsible for any loss to surface improvements made by the Applicant if they are impacted by mineral development. Upon expiration or prior termination of the Modification of the State's Right of Surface Entry Agreement, the Commission would no longer be bound by its terms. The Applicant may submit a new application for a future modification, the approval of which would be at the Commission's sole discretion.
2. The modification of the State's right of surface entry is consistent with 43 U.S. Code section 870 because the State is not alienating its mineral interest and retains the ability to develop any minerals at the end of the modification agreement's term.
3. This action is consistent with the "Leading Climate Activism" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan, and with addressing the challenges and opportunities described in the Strategic Plan to "Embrace and safeguard multi-benefit School Lands and resource management stewardship that equitably balances responsible local and regional economic development, supports living wages, environmental protection, and revenue generation."

4. Authorization to enter into a new Modification of the State's Right of Surface Entry Agreement is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Land Description
- B. Modification of Right of Surface Entry Agreement

RECOMMENDED ACTION:

It is recommended that the Commission:

FINDING:

1. Find that there are no known commercially valuable minerals located on the subject parcel in and above a plane of 500 feet.
2. Find that the proposed modification of the State's right of surface entry will permit the orderly use and development of the lands for renewable energy.
3. Find that the proposed modification is consistent with 43 U.S. Code section 870.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that issuing a Modification of the State's Right of Surface Entry Agreement is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of an Agreement modifying the State's right of surface entry to use or cause to be used, for purposes of developing its mineral reserves, the surface, including its right to enter such lands to a depth of 500 feet below the surface of the lands described in Exhibit A (attached) and shown on Figures 1 and 2 (for reference purposes only), and by this reference made a part hereof, to Wonderful Nut Orchards LLC, beginning June 7, 2024, for a term of 50 years;

| consideration in the amount of \$1,765,940 per year due July 8, with an annual Consumer Price Index adjustment.

EXHIBIT A

A4192

LAND DESCRIPTION

A parcel of Indemnity School Lands located in Section 22, Township 25 South, Range 21 East, Mount Diablo Meridian, as shown on Official Government Plat approved March 19, 1856, Kern County, State of California, more particularly described as follows:

The Northwest Quarter of said Section 22 and the Northeast Quarter of the Southwest Quarter of said Section 22.

END OF DESCRIPTION

Prepared 02/06/2024 by the California State Lands Commission Boundary Unit



EXHIBIT B

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:

STATE OF CALIFORNIA
California State Lands Commission
301 East Ocean Blvd. Suite 550
Long Beach, CA 90802-8833

STATE OF CALIFORNIA
OFFICIAL BUSINESS

Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Portions of A.P.N 044-130-21

County: Kern

A4192, Agreement ____

MODIFICATION OF RIGHT OF SURFACE ENTRY AGREEMENT

Whereas, the State of California (State), acting by and through the California State Lands Commission (Commission), on July 14, 1955, conveyed by state patent certain lands described in Exhibit A, subject to a mineral reservation with surface entry rights (Subject Lands); and

Whereas, the surface estate of the Subject Lands described in Exhibit A is proposed by Wonderful Nut Orchards LLC for the continued development and use of an approximately 200 acres photovoltaic or concentrated photovoltaic solar farm and battery energy storage facility; and

Whereas, to allow for the orderly development and financing of a photovoltaic solar farm and battery energy facility, and to protect against disturbance of operations by the potential development of the State's mineral reservation, Wonderful Nut Orchards LLC has applied to the Commission for a modification of the State's reserved right to enter the surface to a depth of 500 feet; and

Whereas, on August 16, 2023, Wonderful Nut Orchards LLC, submitted a mineral evaluation report, concluding no occurrence of commercially valuable minerals upon or under the lands described in Exhibit A; and

Whereas, the Commission, determined, pursuant to California Public Resources Code Section 6401 (b), at its meeting on June 7, 2024, that there are no known deposits of commercially valuable minerals in and above a plane located 500 feet below the surface of the lands described in Exhibit A; and

Now, therefore, effective June 7, 2024, the State, acting by and through the Commission, and Wonderful Nut Orchards LLC do hereby agree as follows:

1. The State, pursuant to the provisions of Public Resources Code section 6401 (b), surrenders its right to use or cause to be used, for purposes of developing its mineral reservation, the surface, including its right to enter such lands to a depth of 500 feet below the surface, of the lands described in Exhibit A attached hereto, for a period of 50 years commencing June 7, 2024, until June 6, 2074.
2. In consideration for the State modifying its rights pursuant to Public Resources Code section 6401 (b) with respect to the lands described in Exhibit A, Wonderful Nut Orchards LLC agrees to pay to the Commission an annual fee of ~~\$1,760~~, with an annual Consumer Price Index adjustment. The annual payment of ~~\$1,760~~ shall be made on July 8, 2024, and upon each subsequent anniversary thereafter.
3. The covenant created by this Agreement shall run with the land and shall be binding upon and inure to Wonderful Nut Orchards LLC, its successors and assigns. Wonderful Nut Orchards LLC and any and all subsequent owners of the lands described in Exhibit A shall continue to be benefited and burdened by the covenant unless and until it expires or is otherwise terminated as provided herein. This Agreement shall be recorded by the Commission with the County of Kern Assessor-County Clerk-Recorder upon execution by all parties. Wonderful Nut Orchards LLC, its successors and assigns shall notify any future prospective purchasers or acquirers of the lands described in Exhibit A of this Agreement, and make any sale or transfer of the lands described in Exhibit A contingent on the acquirer's acknowledgement of its rights and duties under this Agreement. The landowner of the lands described in Exhibit A shall notify the Commission of any sale or transfer of such lands within 30 days of such sale or transfer, and shall provide the Commission with the contact information of the new owner of such lands.

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4. The annual fee specified in paragraph 2 of this agreement will be adjusted annually by the Consumer Price Index as specified in California Code of Regulations, title 2, section 1900, (m) and (n). The Commission will provide a courtesy invoice 30 days prior to the date the fee is due specifying the updated fee amount at the address currently on file for the owner of the lands described in Exhibit A. If the Commission does not send a courtesy invoice, Wonderful Nut Orchards LLC or its successor landowner, shall submit a payment in the amount of the prior year's annual fee when due and contact the Commission within 30 days to determine the balance due.
5. Should Wonderful Nut Orchards LLC, or subsequent surface owner, fail to perform any covenant, condition, or agreement contained in this agreement and the Breach is not cured within 60 days after written notice of the Breach is served on the surface owner by the Commission, then this Agreement shall automatically terminate.
6. Any revision to this Agreement shall be in writing, signed by both parties, and recorded with the Kern County Assessor-County Clerk-Recorder.

This modification of the State's right of surface entry is executed by and on behalf of the State of California by the Commission, acting pursuant to law, as approved and authorized at its regular public meeting on June 7, 2024.

[SIGNATURES ON NEXT PAGE]

CALIFORNIA STATE LANDS COMMISSION

Date: _____ By: _____

COLIN CONNOR
Assistant Executive Officer

WONDERFUL NUT ORCHARDS LLC

Date: _____ By: _____

Name

Title

*In executing this document, the following are required:

Corporations:

1. Affix Corporate Seal.
2. Attach certified copy of the resolution or other document authorizing its execution on behalf of the corporation.

Individuals:

1. Attach acknowledgment of Signature.