Final Environmental Impact Report

San Bernardino County Overnight Solar Project

SCH No. 2024010434

April 2025

Lead Agency:

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SAN BERNARDINO COUNTY

Preparer:

TETRA TECH

APRIL 2025

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1.0 INTRODUCTION

1.1 Purpose of the Environmental Impact Report

San Bernardino County (County), as the Lead Agency under the California Environmental Quality Act (CEQA), has prepared this Final Environmental Impact Report (Final EIR) for the Overnight Solar Project (project) (State Clearinghouse [SCH] No. 2024010434). This document, in conjunction with the Draft Environmental Impact Report (Draft EIR), published on October 2, 2024, comprises the Final EIR for the project.

As described in CEQA Guidelines Sections 15088, 15089, 15090, and 15132, the Lead Agency must evaluate comments received on the Draft EIR, prepare written responses, and consider the information contained in a Final EIR before approving a project. Pursuant to CEQA Guidelines Section 15132, a Final EIR consists of (a) the Draft EIR or a revision of the Draft; (b) comments and recommendations received on the Draft EIR either verbatim or in summary; (c) a list of persons, organizations, and public agencies commenting on the Draft EIR; (d) the responses of the Lead Agency to significant environmental points raised in the review and consultation process; and (e) any other information added by the Lead Agency.

1.2 Project Summary

Overnight Solar, LLC (applicant) proposes constructing and operating a utility-scale, solar photovoltaic (PV) electricity generation and battery energy storage system (BESS) facility with an on-site substation, inverters, fencing, access roads, and supervisory control and data acquisition (SCADA) system that would produce up to 150 megawatts (MW) of alternating current (AC) or direct current (DC) generating capacity and include up to 150 MW of battery storage capacity and 8 hours of battery capacity on approximately 596 acres of land (project site). A generation interconnect (gen-tie) corridor, spanning approximately 1.1 miles in length, would connect the proposed on-site substation to an existing gen-tie line associated with the Mojave Solar Facility. The proposed project would interconnect at the existing Sandlot Substation via the 230-kilovolt (kV) Southern California Edison Kramer-Coolwater Transmission Line, to deliver renewable energy to the electric grid.

The project site is primarily flat and located entirely on private land in unincorporated Lockhart, approximately 10 miles northwest of Hinkley and 10 miles east of Kramer Junction. State Route (SR) 58 is located approximately 6 miles south of the project site; U.S. Route 395 is approximately 10.5 miles west; Bureau of Land Management (BLM) Grass Valley Wilderness Area and the existing Lockhart PV I Solar Facility are located northeast and north of the project site (respectively); and the existing Mojave Solar Facility is east of the project site.

1.3 Overview of the CEQA Public Review Process

1.3.1 Notice of Preparation of Environmental Impact Report

In accordance with CEQA Guidelines Section 15082, a Notice of Preparation (NOP) was distributed to agencies and the public to initiate the County's CEQA review process for the project, identify and seek public input for the project's potential environmental effects, and identify a date for the project's public

scoping meeting. The NOP was distributed on January 18, 2024, and identified a public review period through February 19, 2024, in compliance with the State's mandatory 30-day public review period.

1.3.2 Scoping Meeting

A scoping meeting was held to discuss the proposed project on January 31, 2024, from 4:00 to 4:45 p.m. via webinar (Zoom). Hard copies of the notice were mailed to all property owners within a 1,300-foot radius of the project site and were also posted at the following locations:

Jerry Lewis High Desert Government Center
15900 Smoke Tree Street, First Floor
Hesperia, CA 92345

San Bernardino County Government Center
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415

San Bernardino County Library
Barstow Branch
304 East Buena Vista Street
Barstow, CA 92311

At the scoping meeting, a presentation was provided, including an overview of the project and the CEQA process. Following the presentation, participants were encouraged to provide oral or written comments to aid the County in refining the scope of issues to be addressed in the Draft EIR.

One individual from the public attended the scoping meeting. In addition, a total of five written comment letters were received in response to the NOP and scoping meeting. Comment letters were received from the Mojave Desert Air Quality Management District, Lahontan Regional Water Quality Control Board, Defenders of Wildlife, Desert Tortoise Council, and Mojave Ground Squirrel Conservation Council.

Key issues of environmental concern expressed by individuals and/or agencies during the scoping period included:

- Impacts to Desert Tortoise;
- Impacts to Mohave Ground Squirrel;
- Impacts to Burrowing Owl;
- Impacts to air quality, especially dust control;
- Impacts to water resources; and
- Alternatives.

Appendix A of the Draft EIR includes a copy of the NOP and comment letters received in response to the NOP and scoping meeting. The County made a good faith effort to address all the identified concerns in the Draft EIR.

1.4 Draft EIR Public Review and Comment

The Draft EIR, with an accompanying Notice of Completion (NOC), was circulated to the State Clearinghouse, trustee agencies, responsible agencies, other government agencies, and interested members of the public for a 45-day review period in accordance with CEQA Guidelines Sections 15084, 15087, and 15105. The review period began on October 2, 2024, and ended on November 18, 2024.

During this period, the County received five (5) comment letters on the Draft EIR from Adams Broadwell Joseph & Cardozo, Mojave Water Agency, California Department of Fish and Wildlife, Morongo Band of Mission Indians, and Ft. Yuma Quechan Indian Tribe. All written comments received during the public review period are presented, and responses are provided in **Section 2.0, Comment Letters and Responses to Comments** of this Final EIR.

1.5 Report Organization

This Final EIR is organized as follows:

- **Section 1.0, Introduction.** Describes the process and purpose of the Final EIR, provides a summary of the project, summarizes the EIR public review process, and presents the contents of the Final EIR.
- **Section 2.0, Comment Letters and Responses to Comments.** Presents all comments received by the County during the public review period of the Draft EIR (October 2, 2024 to November 18, 2024). Provides responses to all comments received that raise significant environmental points related to the contents of the Draft EIR.
- **Section 3.0, Minor Revisions to the Draft EIR.** Includes revisions to the Draft EIR that represent minor changes to the Project Description, changes or additions in response to comments received on the Draft EIR, and additional edits to provide clarification to the Draft EIR text. Changes to the Draft EIR are shown with ~~strikethrough~~ text for deletions and <u>double underlined</u> text for additions. The changes do not add significant new information that would affect the analysis or conclusions presented in the Draft EIR.
- **Appendices.** Contains appendices as referenced throughout the Final EIR.

2.0 COMMENT LETTERS AND RESPONSES TO COMMENTS

Under CEQA Guidelines Section 15088(a), "The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The Lead Agency shall respond to comments that were received during the noticed comment period and any extensions and may respond to late comments." Accordingly, this section of the Final EIR provides responses to each of the comments on the Draft EIR received during the public comment period. Section 2.1, below, provides a list of the comment letters received.

The individual letters received during the public comment period are each assigned a letter in alphabetical order by name. Each comment that requires a response is also assigned a number. For example, the first comment letter received was from Adams Broadwell Joseph & Cardozo; therefore, this is Letter A. The first comment in the letter is therefore labeled Comment A-1 and the responses to each comment are correspondingly numbered (i.e., Response to Comment A-1). A copy of each comment letter is provided in **Appendix A**. As required by the CEQA Guidelines Section 15088(c), the focus of the responses to comments is on "the disposition of significant environmental issues raised." Therefore, detailed responses are not provided for comments that do not relate to environmental issues.

2.1 List of Commenters

The following individuals and agencies provided comments on the Draft EIR:

A. Sheila M. Sannadan
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B. Brandy Wood
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LETTER A

Sheila M. Sannadan
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Received on October 9, 2024

Response to Comment A-1

The commenter was contacted by the County on October 9, 2024, and as requested by the commenter, the County filled out and submitted the Public Records Act form on behalf of the commenter on the same date. All requested documents were provided by October 23, 2024, and confirmed being received by the commenter. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

LETTER B

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Ontario, CA 91764
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Received on November 15, 2024

Response to Comment B-1

As proposed in **Mitigation Measure BIO-4** of the Draft EIR (page 3.3-25), the clearance survey for desert tortoise would be performed in accordance with Chapter 6 of the Desert Tortoise (Mojave Population) Field Manual (*Gopherus agassizii*) (USFWS 2009). This methodology prescribes two (2) consecutive clearance surveys, each requiring 100 percent coverage of the project area. The surveys will be conducted during the desert tortoise active season "immediately prior to surface disturbance at each site within the project area or following construction of a Desert Tortoise-proof fence or similar barrier…" and will involve walking transects less than or equal to 15 feet (5 meters) wide.

Desert tortoises may also occupy burrows created by other species, including those made by desert kit fox and American badger. In compliance with Chapter 6 of the Desert Tortoise (Mojave Population) Field Manual (*Gopherus agassizii*) (USFWS 2009), all suitable cover sites, including burrows made by other species, will be inspected for use and occupancy by desert tortoises. Per the survey protocols and CDFW comments, desert tortoise clearance surveys will be completed independently of other wildlife surveys. **Mitigation Measures BIO-4** and **BIO-12** have been updated to reflect this change.

BIO-4 Desert tortoise exclusionary fencing shall be installed around the facility, in conjunction with the security fence, according to the specifications provided by the USFWS Desert Tortoise Field Manual (2009) and applicable permits. The installation of desert tortoise exclusionary fencing will precede any ground-disturbing construction activities associated with construction of the solar facility. Installation of desert tortoise exclusionary fencing will be supervised by a Designated Biologist ~~or Biological Monitor~~.

Once the installation is complete, Designated Biologists and Biological Monitors shall perform a clearance survey for desert tortoise within the exclusionary perimeter fencing, in accordance with ~~the~~ Chapter 6 of the USFWS 2009 Desert Tortoise (Mojave Population) Field Manual (*Gopherus agassizii*) ~~2019 USFWS Clearance Survey Protocol for the Mojave Desert Tortoise~~. If the species is determined present within the project site, individual(s) ~~shall be allowed to leave the site on their own or~~ will be relocated, per a translocation plan reviewed and approved by USFWS and CDFW, by a Designated B~~b~~iologist that is authorized to relocate desert tortoise by USFWS and CDFW.

Disturbance activities shall be monitored, as follows:

- Environmental awareness training (see **BIO-2**) shall include education on desert tortoise and Mohave ground squirrel, protective status, and avoidance measures to be implemented by all personnel, including looking under vehicles and equipment prior to moving. If desert tortoises or other protected species are encountered, such vehicles shall not be moved until they have voluntarily moved away from the vehicle and out of harm's way, or a qualified biologist has moved them.
- If a desert tortoise is present, a Designated Biologist ~~Biological Monitor~~ shall be present during all disturbance activities in the vicinity of exclusionary fencing ~~(if required)~~ and shall have the authority to stop work as needed to avoid direct impacts to desert tortoises. ~~Periodic biological~~ Daily inspections of the fence's perimeter and maintenance shall be conducted during the construction period to ensure the integrity of exclusionary fencing ~~(if required)~~. Work may proceed within the excluded area when the Designated Biologist ~~Biological Monitor~~ confirms all desert tortoises have left the excluded area.
- Should desert tortoises be found during construction activities, the Designated Biologist and/or Biological Monitor shall have the authority to stop work as needed to avoid direct impacts to tortoises, and further consultations with the USFWS and CDFW shall take place prior to relocating the desert tortoises.

Prior to grading and occupancy of the Project, a Designated Biologist shall inspect the existing Mojave desert tortoise exclusionary fencing along Harper Lake Road and record any existing damage. Damage to the exclusionary fencing determined to be a result of Project construction activities will be repaired by a licensed contractor approved by the CDFW. Project-related repairs will be paid for by the Applicant.

Speed limits on the Project Site shall be posted and will be limited to 15 miles per hour.

Off-road travels shall be prohibited in all native habitats adjacent to the Project Site during construction and operation, except when required for relocating species under the preapproved translocation plans for Mohave ground squirrel (*Xerospermophilus mohavensis*) (see **BIO-6**) and desert tortoise (*Gopherus agassizii*). Prohibited areas shall be posted prior to initiation of construction. Parking areas for the construction crews shall be designated and clearly marked (i.e., equipment staging area).

Trash and food items shall be contained in closed containers and removed daily to reduce attractiveness to opportunistic predators of desert tortoise (e.g., ravens, coyotes, feral dogs).

Employees shall not bring pets to the construction site.

Inactive and unoccupied burrows within the project site will be collapsed after their inactive status has been determined through the use of wildlife cameras, scopes, and tracking substrate in line with the CDFW's recommended revisions to **Mitigation Measure BIO-12**. **Mitigation Measure BIO-12** has been

updated to reflect the suggested changes from CDFW such that **Mitigation Measure BIO-12** focuses on desert kit fox and American badger pre-construction surveys. See **Section 3.0, Minor Revisions to the Draft EIR,** of the Final EIR.

BIO-12 Qualified biologists shall conduct pre-construction den surveys for desert kit fox and American badger on the project site 14-21~~30~~ days and 24 hours prior to any vegetation removal or ground disturbing construction activities. ~~Because Mojave desert tortoises will utilize shelter sites created by American badger and desert kit fox, these surveys may take place concurrently with desert tortoise preconstruction clearance surveys.~~ Pre-construction surveys for desert kit fox and American Badger will include disturbance areas and a 150~~30~~-meter buffer to the extent allowable. The locations of American badger and desert kit fox dens will be recorded. Current status and use by American badger and desert kit fox will be determined through the use of wildlife cameras, scopes, and~~/ or~~ tracking substrate. Inactive and unoccupied dens within the Project boundary will be collapsed after their status has been determined through monitoring ~~during clearance surveys~~. Active dens will be monitored, and a qualified biologist will establish a 50-meter non-disturbance buffer during the non-breeding season and a 150-meter non-disturbance buffer during the breeding/ pupping season (generally February 1 – May 15). If the den is in the central part of the site, a strip of vegetation at least 50-meters wide shall remain intact between the buffer and perimeter fencing to provide cover for the species. The buffer size may be amended by a qualified biologist through consultation with CDFW. Active burrows shall be avoided until they are confirmed unoccupied by a qualified biologist.

Burrow occupancy will be determined using a tracking medium such as diatomaceous earth or fine clay, ~~or~~ and infrared cameras placed at the entrance(s). If no tracks or evidence of activity is observed after 3 consecutive nights of monitoring, the burrow shall be scoped and excavated, and backfilled using nonpowered tools. If tracks or evidence of burrow occupancy is observed, ~~burrows shall be fitted with one-way trap doors for exclusion purposes. Infrared cameras will be used in conjunction with one-way trap doors to assess the effectiveness of exclusion efforts. At least forty-eight hours after installing one-way exclusion doors, and after confirming the effectiveness of exclusion efforts through photo review, the burrow will be scoped and backfilled using nonpowered tools. If occupancy monitoring reveals the burrow is being used for breeding/ reproductive purposes,~~ CDFW will be consulted to determine the course of action pertaining to exclusion efforts and passive translocation, which may include development of a management plan for CDFW's review and approval.

To guard against the spread of distemper and other diseases, equipment and tools used for burrow occupancy monitoring and excavation will be treated with a disinfectant that's proven effective. This includes but is not limited to accelerated hydrogen peroxide, potassium peroxymonosulfate, or a 1:20 dilution of household bleach. Fieldworker clothing will be washed in hot water and dried using a dryer.

CDFW will be notified in dealing with injured, sick, or dead American badger or desert kit fox.

Response to Comment B-2

No living desert tortoises have been identified within the final proposed project footprint during any project surveys, but seven live desert tortoises were observed within the survey area (outside of the project footprint) as shown in Figure 3.3-3 of Section 3.3, Biological Resources, of the Draft EIR. The locations of these observations has been clarified in **Section 3.0, Minor Revisions to the Draft EIR**, of the Final EIR.

As discussed in Section 4.3.1, Solar Layout Northwestern Corner (Original Project Footprint), of the Draft EIR, the Applicant removed approximately 40 acres of the planned solar array development in the northwest corner of the project parcel based on early consultation with CDFW beginning November 2023 to avoid potential impacts to desert tortoise, including sightings and signs. See also Section 5.3, Mitigation Measures and Design Considerations, of Appendix D, Biological Resources Technical Report, of the Draft EIR. As stated on page 3.3-11 of Section 3.3, Biological Resources, of the Draft EIR, carcasses of deceased desert tortoises found on site showed evidence of predation and therefore transport to and or around the area by carnivores (domesticated, unattended dogs have been encountered on site). This creates uncertainty as to the original inhabited area of the deceased desert tortoises. The Applicant is committed to avoiding impacts to biological resources first and foremost, and has updated **Mitigation Measure BIO-4** (see Response to Comment B-1), as suggested by the CDFW, with a revision to reference the 2009 USFWS Desert Tortoise Field Manual clearance survey protocol instead of the 2019 USFWS protocol survey guidance. See **Section 3.0, Minor Revisions to the Draft EIR,** of the Final EIR.

Response to Comment B-3

The Applicant submitted an application for authorized take of western burrowing owl through the issuance of a California Endangered Species Act (CESA) Incidental Take Permit (ITP) on August 30, 2024. The Applicant's consultation with CDFW has been ongoing with bi-weekly meetings since November 2023. CDFW recommends removing the specifics regarding the Applicant's Burrowing Owl Exclusion Plan or Passive Relocation Plan from **Mitigation Measure BIO-7** of the EIR (pages 3.3-26 to 3.3-27); while noting that passive relocation performed according to the Staff Report on Burrowing Owl Mitigation (CDFW 2012) may be authorized through the ITP as a minimization measure. Accordingly, this suggestion has been incorporated into the Final EIR.

BIO-7 ~~Not more than 30 days~~ Pprior to project disturbance activities, a qualified biologist(s) familiar and experienced with western burrowing owl shall perform a take avoidance pre-construction ~~clearance~~ survey for burrowing owl occupation ~~this species~~ in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. The surveys shall include 100 percent coverage of the Project site and proposed gen-tie within the Mojave Solar Facility, plus a 500-m buffer in adjacent habitat. A report summarizing the surveys including all requirement for survey reports shall be submitted to CDFW for review. If western burrowing owl are not detected during pre-construction surveys, and if no burrows or perch sites have active sign (~~tracks~~ molted feathers, cast pellets, prey remains, eggshell fragments, decoration, or excrement~~or scat~~), then construction related activities may begin and no further action shall be required and no further mitigation under this measure is necessary. Mitigation shall be provided for burrowing owl habitat (loss of burrows and foraging habitat) through BIO-5.

If western burrowing owl is present on-site, a non-disturbance buffer following the buffer guidance contained in the Staff Report on Burrowing Owl Mitigation will be implemented to ensure no take and full avoidance of the species occurs. Fencing or flagging shall be installed to create a non-disturbance buffer area where no work activities may be conducted. The initial non-disturbance buffer will be a 200-meter radius from the occupied burrow during the breeding season (generally February 1st – August 31st)~~, unless authorized by a qualified biologist~~. During the non-breeding season (generally September 1st – January 31st), no ground disturbing activities shall be permitted within an initial 50-meters of an occupied burrow. A larger or smaller buffer may be established as determined by ~~in consultation with~~ a qualified biologist with consideration of levels of disturbance caused by Project activities.

If avoidance of an occupied burrow is infeasible and take of the species may occur, the Project Proponent shall consult with CDFW to discuss the best path going forward which may include obtaining take authorization through a CESA incidental take permit. Passive relocation, performed according to the Staff Report on Burrowing Owl Mitigation (CDFW, 2012) may be authorized through the incidental take permit as a minimization measure. ~~western burrowing owl may be passively relocated by a qualified biologist during the non-breeding season, or when owls have not laid eggs, or whenever juveniles are capable of independent survival. Passive translocation will follow a CDFW approved Burrowing Owl Exclusion Plan or Passive Relocation Plan that will be prepared and approved by CDFW prior to implementing relocation efforts. At a minimum, the plan will be prepared by a qualified biologist in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. The Burrowing Owl Exclusion Plan or Passive Relocation Plan shall include the following performance standards:~~

- ~~Excavation shall require nonpowered hand tools. Sections of flexible plastic pipe or burlap bag shall be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow. One-way doors shall be installed at the entrance to the active burrow and other potentially active burrows within 160 feet of the active burrow and monitored for at least 48 hours after installation. If burrows will not be directly impacted by the project, one-way doors shall be installed to prevent use and shall be removed after ground-disturbing activities have concluded in the area. Only burrows that will be directly impacted by the project shall be excavated and filled.~~
- ~~Detailed methods and guidance for passive relocation of burrowing owls to off-site "replacement burrow site(s)" consisting of a minimum of two suitable, unoccupied burrows for every Burrowing Owl or pair to be passively relocated.~~
- ~~Monitoring and management of the replacement burrow site(s) and a reporting plan. The objective shall be to manage the replacement burrow sites for the benefit of Burrowing Owls (e.g., minimizing weed cover), with the specific goal of maintaining the functionality of the burrows for a minimum of 2 years.~~
- Monitoring active burrows during construction periods to ensure Burrowing Owls are not detrimentally affected. The Applicant, in consultation with CDFW, shall respond to monitoring results and implement additional measures to avoid disturbances that could result in nest failure during the breeding season, or impacts that could result in

take or injury ~~or mortality~~ at any time.

- Compensatory Mitigation to offset impacts by purchasing and managing off-site habitat or by purchasing mitigation credit, as approved by CDFW. (see **BIO-5**).

Response to Comment B-4

Mitigation Measure BIO-5 of the Draft EIR (page 3.3-26) includes the acquisition of offsite compensatory mitigation land to offset impacts to Mojave ground squirrel, desert tortoise, and western burrowing owl and to reduce impacts to these species to a less than significant level under Impact 3.3-1. **Mitigation Measure BIO-5** has been updated to reflect that the Applicant shall acquire compensatory mitigation land, the amount of which will be determined as part of Overnight Solar's ongoing ITP application process with CDFW. This will reduce project impacts to a less than significant level as discussed under Impact 3.3-1 of the EIR (pages 3.3-19 through 3.3-30).

As described in Section 3.3, Biological Resources, of the Draft EIR, the proposed project site is sparsely vegetated, with no trees and few individual cacti being recorded. These results are typical for the region in areas, such as the project site, that have experienced trespassed commercial grazing, agricultural impacts, and illegal dumping. As noted in Response to Comment B-2 above, there have been no living desert tortoise, Mojave ground squirrel, or western burrowing owl sightings on the proposed project site during the various surveys (see pages 43 through 45 of Appendix D of the Draft EIR). Living desert tortoise and burrowing owl were only observed within the survey area outside of the proposed project footprint, and no Mojave ground squirrel (living or dead) were observed at all (see pages 44 and 45 of Appendix D of the Draft EIR). Therefore, the required amount of compensatory mitigation shall be determined as part of Overnight Solar's ongoing ITP application review process with CDFW and will be sufficient to mitigate for the desert tortoise, Mojave ground squirrel, and western burrowing owl habitat that will potentially be impacted by the project. The Applicant has proactively modified the project boundary based on CDFW's primary interest of avoiding impacts rather than mitigating them. Refer to Response to Comment B-2 above. **Mitigation Measure BIO-5** has been updated, as shown in **Section 3.0, Minor Revisions to the Draft EIR**, to include a compensatory mitigation land acquisition, the required amount of which will be determined as part of Overnight Solar's ongoing ITP application review process with CDFW.

CDFW incorrectly asserts that the acquired land meant to offset impacts may be less than necessary for adequate mitigation of project impacts. The Applicant has not yet acquired mitigation lands and will ensure that such mitigation lands are sufficient to meet the required amount set forth by CDFW through Overnight Solar's ongoing ITP application review process.

BIO-5 The Applicant shall acquire offsite compensatory mitigation land ~~at a 1:1 mitigation ratio (1 acre of compensatory mitigation land per 1 acre of Project impact)~~ to offset impacts to Mojave desert tortoise, Mohave ground squirrel and Western Burrowing Owl. The required amount of compensatory mitigation shall be determined as part of Overnight Solar's ongoing ITP application review process with CDFW. This determination shall be finalized prior to the issuance of a grading permit from San Bernardino County. ~~as applicable, as well as~~ The Applicant shall also follow any regulations pertaining to applicable agency permits and agency coordination, such as Incidental Take Permits (ITPs) for all three species. As applicable and as required and approved

by USFWS and CDFW, offsite compensatory mitigation land shall be put into a conservation easement and managed with the goal of providing suitable habitat and ensuring long-term protection for these species.

Response to Comment B-5

The species name for desert kit fox has been updated in Section 3.3.1.2 of the Final EIR to *Vulpe macrotis macrotis*. This revision does not affect the analysis of the Draft EIR.

Response to Comment B-6

The language in the Final EIR has been updated to reflect the recent CESA candidate status of burrowing owl. Refer to **Section 3.0, Minor Revisions to the Draft EIR**, of the Final EIR. This revision does not affect the analysis of the Draft EIR.

Response to Comment B-7

Mitigation Measure BIO-2 has been updated to include Golden Eagle as both a CDFW Watch List species and a Fully Protected species.

Response to Comment B-8

Acknowledged, observations will be reported to the California Natural Diversity Database (CNDDB).

Response to Comment B-9

Acknowledged.

References

CDFW (California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. Available online at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true. Accessed February 2025.

USFWS (United States Fish and Wildlife Service). 2009. Desert Tortoise (Mojave Population) Field Manual (*Gopherus agassizii*). Available online at: https://www.fws.gov/sites/default/files/documents/Desert-Tortoise-Field-Manual.pdf. Accessed January 2025.

USFWS. 2019. Preparing for Any Action That May Occur Within the Range of the Mojave Desert Tortoise (*Gopherus agassizii*). Available online at: https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise%20Pre-project%20Survey%20Protocol_2019_v2.pdf. Accessed January 2025.

LETTER C

Bernadette Ann Brierty
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sbertman@morongo-nsn.gov

Received on November 18, 2024

Response to Comment C-1

The Morongo Band of Mission Indians (MBMI) commends the County's efforts in researching the ethnohistorical background of the area, noting that the area is particularly sensitive for cultural resources due to historical occupation of the area and weather events resulting in erosion. The MBMI requests tribal participation (i.e., Tribal Monitors) during all ground-disturbing activities and expresses that they have "identified some fundamental concerns with the current DEIR".

The Applicant is committed to working with MBMI through a Tribal Monitoring Service Agreement, which is to be executed prior to the start of construction, as detailed in **Mitigation Measure CUL-2** in Section 3.4, Cultural and Tribal Cultural Resources, of the Draft EIR. Overnight Solar reached out by email to MBMI on December 13, 2024 and again on January 8, 2025 to prepare the Tribal Monitoring Service Agreement, but has not yet received a response. Responses to MBMI's additional concerns are addressed in the following response to comments.

Response to Comment C-2

The MBMI takes issue with "The attendance of and participation of Consulting Tribe(s) during the Worker Education Awareness Program (WEAP) or pre-grade meeting". As noted above, the Applicant is committed to working with the MBMI through a Tribal Monitoring Service Agreement (Agreement), which is to be executed prior to the start of construction, as detailed in **Mitigation Measure CUL-2.** As noted previously, the Applicant has reached out to the MBMI by email on December 13, 2024, and January 8, 2025, but has not received any response from the MBMI to get the Agreement in place; however, the Agreement will include attendance of the Tribal Monitor at the WEAP training or pre-grade meeting. As already noted in **Mitigation Measure CUL-1**, described in Section 3.4, Cultural and Tribal Cultural Resources, of the Draft EIR, the WEAP training will be developed in consultation with an archaeologist who meets Secretary of the Interior Professional Qualifications in Archaeology (Lead Archaeologist).

While this comment does not present substantial evidence that the proposed mitigation is not sufficient to reduce impacts to less than significant levels, **Mitigation Measure CUL-1** has been updated as follows:

CUL-1 The project proponent/owner shall conduct a Worker Education Awareness Program (WEAP) for relevant construction personnel working on the proposed project and

conducting subsurface activities. Development of the WEAP shall include consultation with an archaeologist who meets Secretary of the Interior Professional Qualifications in Archaeology (Lead Archaeologist). The training shall include an overview of potential cultural resources that could be encountered during ground disturbing activities to facilitate worker recognition, avoidance, and subsequent immediate notification to the Lead Archaeologist. The consulting Tribal Monitor shall attend the WEAP training or pre-grade meeting, as outlined in their Tribal Monitoring Service Agreement (see **Mitigation Measure CUL-2**), to be in place prior to the start of construction.

Response to Comment C-3

The MBMI states concerns related to the treatment and disposition of inadvertent discoveries. The treatment and disposition of inadvertent discoveries would be handled in accordance with the requirements set forth in **Mitigation Measure CUL-3** contained in Section 3.4, Cultural and Tribal Cultural Resources, of the Draft EIR. It is unclear what issue(s) the MBMI has related to the treatment and disposition of inadvertent discoveries, however, the Applicant is committed to working with the MBMI through a Tribal Monitoring Service Agreement (Agreement), which is to be executed prior to the start of construction, as detailed in **Mitigation Measure CUL-2.**

While this comment does not present substantial evidence that the proposed mitigation is not sufficient to reduce impacts to less than significant levels, **Mitigation Measure CUL-3** has been updated as follows:

CUL-3 In the event that previously unknown pre-contact or historic-period archaeological resources (sites, features, or artifacts) are exposed during construction activities for the proposed project, all work occurring within 100 feet of the find shall immediately stop until the Lead Archaeologist can evaluate the significance of the find and determine whether or not additional study is warranted, in consultation with the County. The consulting Tribal Monitor shall support the Lead Archaeologist in evaluating the significance of the find and determining whether or not additional study is warranted, as applicable, and pursuant to their Tribal Monitoring Service Agreement (see **Mitigation Measure CUL-2**), to be in place prior to the start of construction.

Pursuant to CEQA Guidelines Section 15126.4(b)(3), proposed project redesign and preservation in place shall be the preferred means to avoid impacts to significant historical resources. Consistent with CEQA Guidelines Section 15126.4(b)(3)(C), if it is demonstrated that resources cannot be avoided, the qualified archaeologist shall develop additional treatment measures in consultation with the County, which may include testing for CRHR-eligibility, data recovery or other appropriate measures. The Monitoring and Treatment Report shall also document the evaluation and/or treatment of the resource.

Refer also to **Mitigation Measure CUL-4** in Section 3.4, Cultural and Tribal Cultural Resources, of the Draft EIR, for requirements related to the inadvertent discovery of human remains. No further mitigation is necessary or required.

Response to Comment C-4

The MBMI requests that no photographs be taken of inadvertently discovered human remains except by the County coroner. This is already included in **Mitigation Measure CUL-4** of the Draft EIR and no revisions are required.

Response to Comment C-5

The MBMI has requested a final report to be submitted to the County and Consulting Tribe(s) for review and comment before it is filed with the appropriate Archaeological Information Center. As stated in **Mitigation Measure CUL-2,** after monitoring has been completed the Lead Archaeologist shall prepare a Monitoring and Treatment Report to be submitted to the Director of the San Bernardino County Planning Division.

While this comment does not present substantial evidence that the proposed mitigation is not sufficient to reduce impacts to less than significant levels, **Mitigation Measure CUL-2** has been updated as follows:

CUL-2 The Lead Archaeologist shall prepare a Cultural Resources Monitoring and Treatment Plan to be implemented during ground-disturbing activities associated with project construction. The plan shall outline monitoring procedures and the process for the identification of cultural and tribal resources during project construction. The Morongo Band of Mission Indians and the YSMN shall be given the opportunity to be present and provide monitoring of ground clearing and ground disturbing activities. The Project Applicant shall arrange for a Tribal Monitoring Services Agreement to be in place prior to the start of construction by contacting the Morongo Band of Mission Indians and the YSMN. After monitoring has been completed, the Lead Archaeologist shall prepare a Monitoring and Treatment Report detailing the results of monitoring, to be submitted to the Director of the San Bernardino County Planning Division and the Morongo Band of Mission Indians and the YSMN for review and comment before it is filed with the appropriate California Historical Resources Information System (CHRIS) Information Center.

Response to Comment C-6

The Morongo Band of Mission Indians (MBMI) requests that the County include MBMI's Standard Mitigation Measures in the Final EIR. The County acknowledges and appreciates MBMI's submission of these standard recommended mitigation measures, provided to the County on July 9, 2024 as part of the consultation process. To a substantial degree, the Draft EIR's mitigation measures already include many of the measures suggested by MBMI. See **Mitigation Measures CUL-1** through **CUL-4**, as well as the responses to comments and revisions to the associated mitigation measures provided above. Collectively, these mitigation measures reduce impacts to cultural resources to less than significant levels for the reasons analyzed in the Draft EIR. The MBMI does not present substantial evidence that the proposed mitigation is not sufficient to reduce impacts to less than significant levels, and as such, additional mitigation is not included in the Final EIR.

That said, Overnight Solar is committed to working with MBMI through the Tribal Monitoring Service Agreement, which is to be executed prior to the start of construction, as detailed in **Mitigation Measure**

CUL-2. The Agreement will include more detailed specifics regarding Tribal Monitoring activities.

LETTER D

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Received on October 8, 2024

Response to Comment D-1

Acknowledged.

LETTER E

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Received on October 17, 2024

Response to Comment E-1

Acknowledged.

3.0 MINOR REVISIONS TO THE DRAFT EIR

In accordance with the CEQA Guidelines Section 15132(a), this section of the Final EIR provides changes to the Draft EIR that have been made to clarify, correct, or supplement the information provided in that document. These changes and clarifications are due to recognition of inadvertent errors or omissions, and to respond to comments received on the Draft EIR during the public review period. The changes described in this section do not add significant new information to the Draft EIR that would require recirculation of the Draft EIR. More specifically, CEQA requires recirculation of a Draft EIR only when "significant new information" is added to a Draft EIR after public notice of the availability of the Draft EIR has occurred (refer to California Public Resources Code [PRC] Section 21092.1 and CEQA Guidelines Section 15088.5), but before the EIR is certified. CEQA Guidelines Section 15088.5 specifically states that "New information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. 'Significant new information' requiring recirculation includes, for example, a disclosure showing that:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted to reduce the impact to a level of insignificance.
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
- The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded."

CEQA Guidelines Section 15088.5 also provides that "[re]circulation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR... A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record."

As demonstrated in this Final EIR, the changes presented in this section do not constitute new significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5. Rather, the Draft EIR is comprehensive and has been prepared in accordance with CEQA.

Changes to the Draft EIR are indicated below under the respective EIR section heading, page number, and paragraph. Paragraph reference is to the first full paragraph on the page. Deletions are shown with ~~strikethrough~~ and additions are shown with <u>double underline</u>.

Executive Summary

The revisions, clarifications, or corrections to the Draft EIR sections described below also apply to the executive summary of the Draft EIR.

2.0 Project Description

Page 2-12

- ~~**Variance:** The gen-tie poles would be 95 feet tall and the substation equipment would be 65 feet tall at the highest point, both requiring a Major Variance. The project would obtain a height variance for both the gen-tie poles and the substation equipment, as these components would exceed the maximum allowable height of 52.5 feet for the RL and RC zoning districts. The height limit for these zoning districts is 35 feet; however, in accordance with County Development Code Section 83.02.040(c)(2)(T), the maximum structure height specified in a land use zoning district may be exceeded by no more than 50 percent for structures including distribution and transmission cables and towers. The poles would be designed to meet all the latest National Electrical Safety Code (NESC) requirements for high-voltage transmission lines~~.

Page 2-13

The project would include one on-site substation containing high-voltage equipment, which would be unenclosed, occupy an area of approximately 300 feet by 300 feet, and be separately protected with security fences meeting the requirements of the 2023 NESC. The on-site substation would be located within the southeastern corner of the project site (**Figure 2-2**). Within the substation fence, the electrical equipment would reach to approximately 65 feet tall at the highest points~~, which exceeds the maximum allowable height for the RC zoning district plus the 50 percent allowable increase, pursuant to County Development Code Section 83.02.040(c)(2)(T). Accordingly, the project would obtain a height variance for the substation electrical equipment, and for the gen-tie poles as discussed in Section 2.2.1.5, Gen-Tie Line and Grid Interconnection, below~~. A small one-story, rectangular control building, housing the communication and SCADA equipment (if required), would also be located in the substation footprint. The control building footprint would be 15 feet by 15 feet, with a maximum height of 8 feet.

Page 2-15

The gen-tie poles would be 95 feet in height and the gen-tie line would be 230 kV to accommodate the electric circuit(s) necessary to interconnect the project substation with the existing gen-tie line just south of the Alpha Substation. ~~As previously described, the project would obtain a height variance for the gen-tie poles and substation equipment due to the exceedance of the applicable height limit pursuant County Development Code Section 83.02.040(c)(2)(T), and t~~These components would be designed to meet all the latest NESC requirements for high-voltage transmission lines. Power lines would be installed in conformance with Avian Power Line Interaction Committee (APLIC) standards for electrocution-reducing techniques as outlined in Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006 (APLIC 2006), and the collision-reducing techniques outlined in Reducing Avian Collisions with Power Lines: The State of the Art in 2012 (APLIC 2012), or any superseding document issued by APLIC.

Page 2-21

Water would be required for panel washing activities, general maintenance, and fire suppression purposes. Operational water demands would total approximately 11 acre-feet per year. The frequency of panel washing would be determined based on soiling of the PV panels and expected benefit from

cleaning. However, panel washing would be required at least once per year and potentially up to 4 times per year. Panel washing would require up to 12 employees with water trucks and would take approximately 20 days to complete for each panel washing event. When cleaning is necessary, water would be sprayed on the PV panels to remove dust. This water would be obtained from existing on-site wells at the adjacent Mojave Solar Facility. Operational water for fire suppression would be contained within a water tank located on-site in the southeast corner of the project, near the main entrance ~~next to one of the existing wells within the adjacent Mojave Solar Facility~~. Overnight Solar will truck water from the Mojave Solar Facility to Overnight Solar. No new permanent facilities will be constructed at the Mojave Solar Facility for the proposed water use. A temporary construction water tank will be placed next to the existing well on the Mojave Solar Facility to facilitate the delivery of water to the water trucks. San Bernardino County Fire Protection District maintains keys for all access gates at the Mojave Solar Facility.

Page 2-23 through 2-24

Table 2-2. Matrix of Potential Approvals Required

Permit/Action Required	Approving Agency	Lead/Trustee/Responsible Agency Designation
Environmental Impact Report Certification	County	Lead Agency
Conditional Use Permit	County	Lead Agency
Zoning Amendment	County	Lead Agency
Countywide Plan/Policy Plan Amendment	County	Lead Agency
~~Major Variance for Height of Gen-Tie Poles and Substation Electrical Equipment~~	~~County~~	~~Lead Agency~~
Non-residential Solar Permit	County	Lead Agency
Encroachment Permits	County	Lead Agency
General Order 131-D Review	California Public Utilities Commission	Responsible Agency
Air Quality Construction Management Plan	Mojave Desert Air Quality Management District (MDAQMD)	Responsible Agency
Dust Control Plan	MDAQMD	Responsible Agency
Clean Water Act Permit, if required (Section 401)	Lahontan Regional Water Quality Control Board (RWQCB)	Responsible Agency
General Permit and Storm Water Pollution Prevention Plan	Lahontan RWQCB	Responsible Agency
Clean Water Act Permit, if required (Section 404)	U.S. Army Corps of Engineers (USACE)	Responsible Agency
Assembly Bill (AB) 52 Consultation	County	Lead Agency
National Historic Preservation Act, Section 106	Historic Preservation Office	Responsible Agency
Waste Discharge Permit, if required	Lahontan RWQCB	Responsible Agency
Streambed Alteration Agreement, if required (Section 1600)	California Department of Fish and Wildlife (CDFW)	Trustee Agency
Incidental Take Permit, if required (Section 2081)	CDFW	Trustee Agency
Incidental Take Permit, if required (Section 10(a))	U.S. Fish and Wildlife Service (USFWS)	Responsible Agency
Fire Department Review	San Bernardino County Fire Protection District	Responsible Agency

Permit/Action Required	Approving Agency	Lead/Trustee/Responsible Agency Designation
Grading and Building Permit(s)	County	Lead Agency

3.3 Biological Resources

Page 3.3-1

This section evaluates the potential biological resource impacts that may result from implementation of the Overnight Solar Project (project). The following discussion addresses the environmental and regulatory setting, the potential environmental impacts related to biological resources, and includes mitigation measures required to reduce or avoid these impacts, as applicable. ~~Note that project components located within previously developed areas associated with the Mojave Solar Facility, such as the proposed generation interconnect (gen-tie), are not considered to have the potential to impact biological resources due to the developed and fenced nature of this area, and the fact that this area has previously been permitted and their biological impacts evaluated. The analysis herein is therefore focused on the current project footprint (project site), comprising approximately 596 acres.~~

Page 3.3-2

As further detailed in Section 2.2.1.5, Gen-Tie Line and Grid Interconnection, of Section 2.0, Project Description, of this Draft EIR, the project's proposed gen-tie line would be approximately 1.1 miles in length and would run within the existing Mojave Solar Facility, along the northern or southern side of an existing drainage canal, as Option A and Option B, respectively. Both options would be located within the existing Mojave Solar Facility and are evaluated in this Draft EIR, and generally referred to throughout as the gen-tie and gen-tie corridor, due to their close proximity to one another (approximately 275 feet apart). The gen-tie corridor would temporarily be 120 feet wide during construction and would ultimately be 80 feet wide once operational. On March 26, 2025, Corvus biologists conducted a biological survey along the proposed gen-tie corridor and the results are discussed in Section 3.3.1.2 below.

Page 3.3-7

Special-status wildlife species identified in database searches as having moderate or high potential to occur on the project site included American badger (*Taxidea taxus),* Bell's sparrow (*Artemesiospiza belli belli*), desert kit fox (*Vulpes macrotis* *macrotis* ~~*mutica*~~), golden eagle (*Aquila chrysaetos*), Le Conte's thrasher (*Toxostoma lecontei*), loggerhead shrike (*Lanius ludovicianus*), MGS, Mohave River vole (*Microtus californicus mohavensis*), Mojave desert tortoise, Mojave fringe-toed lizard (*Uma scoparia*), mountain plover (*Charadrius montanus*), prairie falcon (*Falco mexicanus*), western burrowing owl (*Athene cunicularia*), and western snowy plover (*Charadrius nivosus nivosus*).

Page 3.3-10

This species was observed within the project ~~site~~survey area. Biologists detected seven live desert tortoises in~~on~~ the ~~project site~~survey area between April and May 2023, one of which was a juvenile (**Figure 3.3-3**).

Page 3.3-12

Western burrowing owl (State Candidate ~~SSC~~). On October 10, 2024, the California Fish and Game Commission (CFGC) voted to protect the western burrowing owl as a candidate for listing under the CESA, as it has been declining across its range including California for the last several decades (Wilkerson and Siegel 2010 and 2011, Sheffield 2021). Western burrowing owls are primarily found in open areas with short vegetation and bare ground in deserts, grasslands, and shrub-steppe environments. Breeding commonly occurs in native prairies, pastures, fallow fields, road and railway rights-of-way, canal embankments, and urban habitats. Burrowing owls are dependent on the presence of pre-existing mammal burrows that are used for nesting and roosting. Burrowing owl habitat is present on the project site in the form of open desert scrub.

Page 3.3-12

Initial burrowing owl surveys were conducted during peak breeding season in 2023 (April 15 to July 15), with two biologists walking 10-meter belt transects across the original survey area. Biologists examined natural and artificial substrates for occupation by western burrowing owl, and recorded signs~~evidence~~ of use (i.e., feathers, pellets, burrows, whitewash, egg fragments, live animals/breeding pairs, and live birds). Biologists marked all occupied and suitable burrowing owl burrows during this effort. During May 2023, ~~and~~ April 2024, and March 2025, all suitable western burrowing owl burrows were revisited in an effort to determine occupancy and site use. Additional western burrowing owl focused surveys were performed in May, June, and July 2024, within the current project site and a 150-meter buffer. The proposed gen-tie corridor was surveyed for burrowing owl on March 26, 2025. Signs of burrowing owl use were considered "historic" if detected within 2023 or 2024 and "active" if detected within 2025. ~~No live~~Three historic signs and five active signs of burrowing owl~~s~~ use ~~were~~ have been observed within the current project footprint, one active sign of burrowing owl use has been observed northwest of the project footprint, and one active sign of burrowing owl use has been observed within the Mojave Solar Facility (**Figure 3.3-5**).~~; however, evidence of their presence was recorded in the form of active soil burrows, scat, and pellets (**Figure 3.3-3**).~~ The occupied burrowing owl burrow within the 150-meter buffer of the current project footprint within the existing Mojave Solar Facility, was detected more than 875 meters from the proposed project gen-tie located in the facility (**Figure 3.3-5**). However, no signs of burrowing owl use were observed along the proposed gen-tie corridor within Mojave Solar Facility during the 2025 surveys. For these reasons, western burrowing owl is ~~assumed~~ determined to be present within and around the project footprint~~site~~.

Page 3.3-20

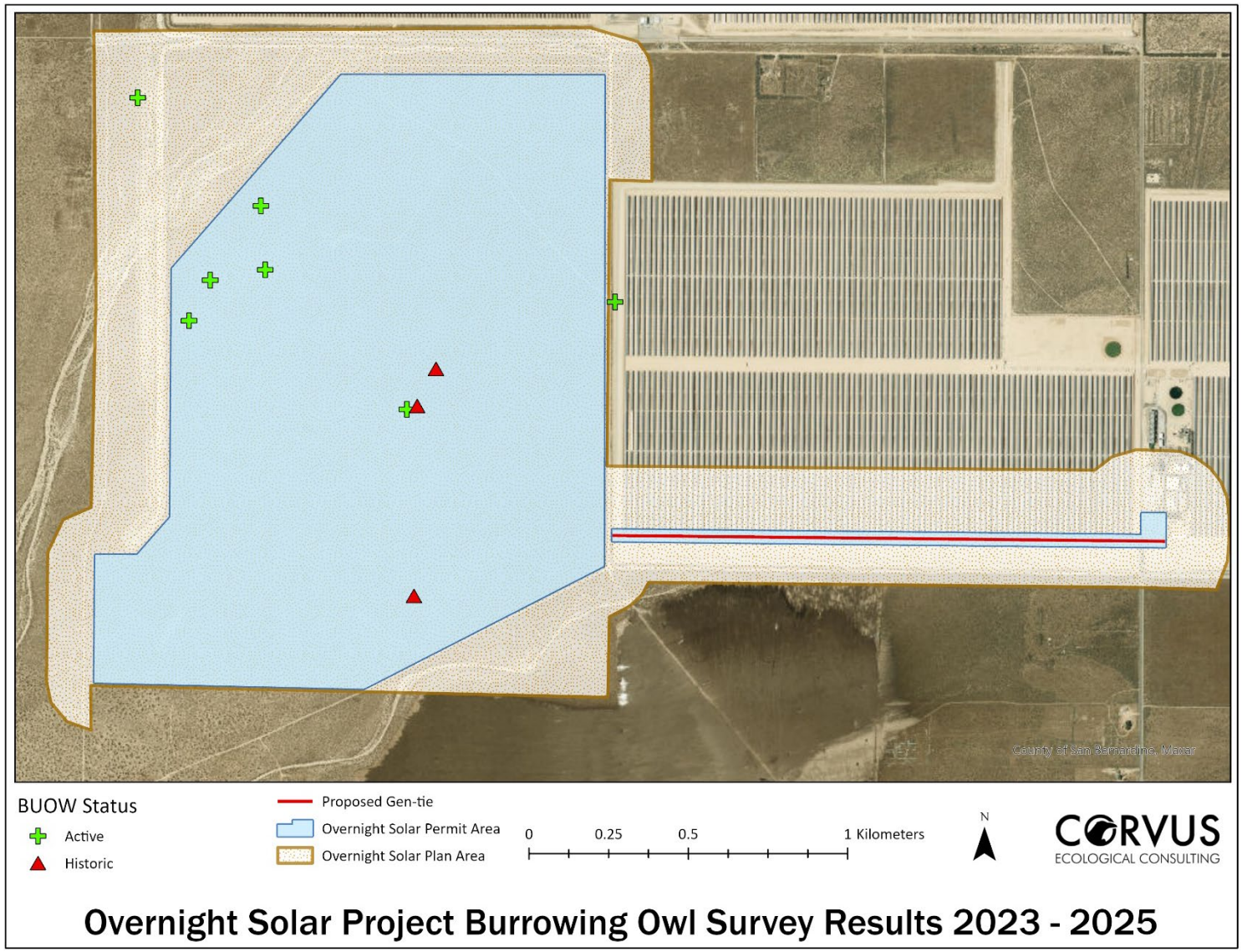

Figure 3.3-5. Burrowing Owl Survey Results

Page 3.3-20 through 3.3-21

Mojave Desert Tortoise

Several live Mojave desert tortoises were observed on the project site during surveys. Project disturbance activities (e.g., vegetation clearing, project site grading, excavation earthwork) present a potentially significant impact to desert tortoises including habitat loss, disruption of burrows, increased mortality, increased predation, and stress and behavioral changes. Potential direct impacts would be mitigated to less than significant levels with implementation of **Mitigation Measures BIO-2 through BIO-5.** These mitigation measures include conducting biological resources training as part of a worker environmental awareness program (WEAP) that discusses desert tortoise and other special-status species (**BIO-2)**, biological monitoring (**BIO-3**), establishing limits of disturbance areas and installation of desert tortoise exclusion fencing (**BIO-4**), coordinating with agencies and purchasing compensatory mitigation (**BIO-5**). The proposed gen-tie corridor is located within an area already fenced off by the existing Mojave Solar Facility with permanent desert tortoise exclusion fencing. Thus, disturbance activities associated with the proposed gen-tie would have no impact on Mojave desert tortoise.

Page 3.3-21 through 3.3-22

Western Burrowing Owl

During March 2024, multiple conservation groups petitioned the California Fish and Game Commission to request legal protection for this species under the CESA. On October 10, 2024, the California Fish and Game Commission unanimously voted to protect western burrowing owls throughout California as a "Candidate Species" under the CESA. ~~Potentially~~ Historic and active western burrowing owl burrows were observed during project surveys within and around the project site, an occupied burrowing owl burrow was observed within the existing Mojave Solar Facility approximately 875 meters from the proposed gen-tie, and there is suitable burrowing owl habitat present; therefore, this species is assumed to be present on the project site and in the vicinity of the gen-tie. The project has the potential to impact burrowing owl individuals if they are present on the project site and along the gen-tie at the time of scheduled disturbance activities. **Mitigation Measure BIO-7** would reduce impacts to western burrowing owl to less than significant by requiring pre-construction burrowing owl surveys and coordination with CDFW if relocation is required.

Page 3.3-23 through 3.3-24

During the project's construction, operation, and decommissioning, potential impacts to avian species would include collision risks associated with the project's solar arrays, transmission wires, fencing, and heavy equipment. Risk factors associated with collisions include the size of the facility, height of structures, specific attributes of structures (i.e., guy wires or lighting), development type, frequency of inclement weather, and differences in species or taxa's potential collision risk. As discussed in Section 2.2.1.5, Gen-Tie Line and Grid Interconnection, of Section 2.0, Project Description, of this Draft EIR, power lines would be installed in conformance with Avian Power Line Interaction Committee standards for collision-reducing techniques.

Page 3.3-25 through 3.3-26

BIO-2 Prior to any construction and decommissioning activity, the Applicant, in coordination with the Designated Biologist and Biological Monitor, shall provide all workers on the project with a WEAP briefing informing them of the biological resources on site and the required measures to avoid unnecessary impact or take of these resources or their habitat. The WEAP shall place special emphasis on protected species including those listed below, and nesting birds protected under the FGC and MBTA, and any special status plants.

- Federally Threatened and State Threatened Mojave Desert Tortoise
- State Threatened Mohave Ground Squirrel
- State Candidate Western Burrowing Owl
- California SSC/ Protected:
  - Western Burrowing Owl
  - Le Conte's Thrasher
  - Loggerhead Shrike
  - American Badger
  - Desert Kit Fox
- California Fully Protected and Watch List Golden Eagle
- California Watch List ~~Species~~:
  - Bell's Sparrow
  - Prairie Falcon
  - Golden Eagle

The program shall include the following elements:

- A presentation, developed by or in consultation with a biologist familiar with special-status species in the vicinity of the project, discusses the sensitive biological resources with potential to occur on-site. The presentation should include an explanation for resource protection and penalties incurred for non-compliance;
- Brochures or booklets containing written descriptions and photographs of protected species as well as a list of site rules pertaining to biological resources to be provided to all WEAP participants;
- Contact information for the project biological monitor and instructions to contact the monitor with any questions regarding the WEAP presentation or booklets;
- An acknowledgement form to be signed by each worker indicating that they received WEAP training and will abide by the site rules protecting biological resources; and
- Conspicuous stickers identifying the project and signifying WEAP completion to be distributed immediately following WEAP training and required on personnel hard hats.

Page 3.3-26 through 3.3-27

BIO-4 Desert tortoise exclusionary fencing shall be installed around the facility, in conjunction with the security fence, according to the specifications provided by the USFWS Desert Tortoise Field Manual (2009) and applicable permits. The installation of desert tortoise exclusionary fencing will

precede any ground-disturbing construction activities associated with construction of the solar facility. Installation of desert tortoise exclusionary fencing will be supervised by a Designated Biologist ~~or Biological Monitor~~.

Once the installation is complete, Designated Biologists and Biological Monitors shall perform a clearance survey for desert tortoise within the exclusionary perimeter fencing, in accordance with ~~the~~ Chapter 6 of the USFWS 2009 Desert Tortoise (Mojave Population) Field Manual (*Gopherus agassizii*) ~~2019 USFWS Clearance Survey Protocol for the Mojave Desert Tortoise~~. If the species is determined present within the project site, individual(s) ~~shall be allowed to leave the site on their own or~~ will be relocated, per a translocation plan reviewed and approved by USFWS and CDFW, by a Designated B~~b~~iologist that is authorized to relocate desert tortoise by USFWS and CDFW.

Disturbance activities shall be monitored, as follows:

- Environmental awareness training (see **BIO-2**) shall include education on desert tortoise and Mohave ground squirrel, protective status, and avoidance measures to be implemented by all personnel, including looking under vehicles and equipment prior to moving. If desert tortoises or other protected species are encountered, such vehicles shall not be moved until they have voluntarily moved away from the vehicle and out of harm's way, or a qualified biologist has moved them.
- If a desert tortoise is present, a Designated Biologist ~~Biological Monitor~~ shall be present during all disturbance activities in the vicinity of exclusionary fencing ~~(if required)~~ and shall have the authority to stop work as needed to avoid direct impacts to desert tortoises. ~~Periodic biological~~ Daily inspections of the fence's perimeter and maintenance shall be conducted during the construction period to ensure the integrity of exclusionary fencing ~~(if required)~~. Work may proceed within the excluded area when the Designated Biologist ~~Biological Monitor~~ confirms all desert tortoises have left the excluded area.
- Should desert tortoises be found during construction activities, the Designated Biologist and/or Biological Monitor shall have the authority to stop work as needed to avoid direct impacts to tortoises, and further consultations with the USFWS and CDFW shall take place prior to relocating the desert tortoises.

Prior to grading and occupancy of the Project, a Designated Biologist shall inspect the existing Mojave desert tortoise exclusionary fencing along Harper Lake Road (from Highway 58 to Lockhart Ranch Road) and record any existing damage. Damage to the exclusionary fencing determined to be a result of Project construction activities will be repaired by a licensed contractor approved by the CDFW. Project-related repairs will be paid for by the Applicant.

Speed limits on the Project Site shall be posted and will be limited to 15 miles per hour.

Off-road travels shall be prohibited in all native habitats adjacent to the Project Site during construction and operation, except when required for relocating species under the preapproved translocation plans for Mohave ground squirrel (*Xerospermophilus mohavensis*) (see **BIO-6**) and desert tortoise (*Gopherus agassizii*). Prohibited areas shall be posted with signage prior to initiation of construction. Parking areas for the construction crews shall be designated and clearly marked (i.e., equipment staging area).

Trash and food items shall be contained in closed containers and removed daily to reduce attractiveness to opportunistic predators of desert tortoise (e.g., ravens, coyotes, feral dogs).

Employees shall not bring pets to the construction site.

Page 3.3-27

BIO-5 The Applicant shall acquire offsite compensatory mitigation land ~~at a 1:1 mitigation ratio (1 acre of compensatory mitigation land per 1 acre of Project impact)~~ to offset impacts to Mojave desert tortoise, Mohave ground squirrel and Western Burrowing Owl. The required amount of compensatory mitigation shall be determined as part of Overnight Solar's ongoing ITP application review process with CDFW. This determination shall be finalized prior to the issuance of a grading permit from San Bernardino County. ~~as applicable, as well as~~ The Applicant shall also follow any regulations pertaining to applicable agency permits and agency coordination, such as Incidental Take Permits (ITPs) for all three species. As applicable and as required and approved by USFWS and CDFW, offsite compensatory mitigation land shall be put into a conservation easement and managed with the goal of providing suitable habitat and ensuring long-term protection for these species.

Page 3.3-27 through 3.3-29

BIO-7 ~~Not more than 30 days~~ Pprior to project disturbance activities, a qualified biologist(s) familiar and experienced with western burrowing owl shall perform a take avoidance pre-construction ~~clearance~~ survey for burrowing owl occupation ~~this species~~ in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. The surveys shall include 100 percent coverage of the Project site and proposed gen-tie within the Mojave Solar Facility, plus a 500-m buffer in adjacent habitat. A report summarizing the surveys including all requirement for survey reports shall be submitted to CDFW for review. If western burrowing owl are not detected during pre-construction surveys, and if no burrows or perch sites have active sign (~~tracks~~ molted feathers, cast pellets, prey remains, eggshell fragments, decoration, or excrement~~or scat~~), then construction related activities may begin and no further action shall be required and no further mitigation under this measure is necessary. Mitigation shall be provided for burrowing owl habitat (loss of burrows and foraging habitat) through **BIO-5**.

If western burrowing owl is present on-site, a non-disturbance buffer following the buffer guidance contained in the Staff Report on Burrowing Owl Mitigation will be implemented to ensure no take and full avoidance of the species occurs. Fencing or flagging shall be installed to create a non-disturbance buffer area where no work activities may be conducted. The initial non-disturbance buffer will be a 200-meter radius from the occupied burrow during the breeding season (generally February 1st – August 31st)~~, unless authorized by a qualified biologist~~. During the non-breeding season (generally September 1st – January 31st), no ground disturbing activities shall be permitted within an initial 50-meters of an occupied burrow. A larger or smaller buffer may be established as determined by ~~in consultation with~~ a qualified biologist with consideration of levels of disturbance caused by Project activities.

If avoidance of an occupied burrow is infeasible and take of the species may occur, the Project Proponent shall consult with CDFW to discuss the best path going forward which may include

obtaining take authorization through a CESA incidental take permit. Passive relocation, performed according to the Staff Report on Burrowing Owl Mitigation (CDFW, 2012) may be authorized through the incidental take permit as a minimization measure. ~~western burrowing owl may be passively relocated by a qualified biologist during the non-breeding season, or when owls have not laid eggs, or whenever juveniles are capable of independent survival. Passive translocation will follow a CDFW-approved Burrowing Owl Exclusion Plan or Passive Relocation Plan that will be prepared and approved by CDFW prior to implementing relocation efforts. At a minimum, the plan will be prepared by a qualified biologist in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. The Burrowing Owl Exclusion Plan or Passive Relocation Plan shall include the following performance standards:~~

- ~~Excavation shall require nonpowered hand tools. Sections of flexible plastic pipe or burlap bag shall be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow. One-way doors shall be installed at the entrance to the active burrow and other potentially active burrows within 160 feet of the active burrow and monitored for at least 48 hours after installation. If burrows will not be directly impacted by the project, one-way doors shall be installed to prevent use and shall be removed after ground-disturbing activities have concluded in the area. Only burrows that will be directly impacted by the project shall be excavated and filled.~~
- ~~Detailed methods and guidance for passive relocation of burrowing owls to off-site "replacement burrow site(s)" consisting of a minimum of two suitable, unoccupied burrows for every Burrowing Owl or pair to be passively relocated.~~
- ~~Monitoring and management of the replacement burrow site(s) and a reporting plan. The objective shall be to manage the replacement burrow sites for the benefit of Burrowing Owls (e.g., minimizing weed cover), with the specific goal of maintaining the functionality of the burrows for a minimum of 2 years.~~
- Monitoring active burrows during construction periods to ensure Burrowing Owls are not detrimentally affected. The Applicant, in consultation with CDFW, shall respond to monitoring results and implement additional measures to avoid disturbances that could result in nest failure during the breeding season, or impacts that could result in take or injury ~~or mortality~~ at any time.
- Compensatory Mitigation to offset impacts by purchasing and managing off-site habitat or by purchasing mitigation credit, as approved by CDFW. (see **BIO-5**).

Page 3.3-30 through 3.3-31

BIO-12 Qualified biologists shall conduct pre-construction den surveys for desert kit fox and American badger on the project site 14-2130 ~~30~~ days and 24 hours prior to any vegetation removal or ground disturbing construction activities. ~~Because Mojave desert tortoises will utilize shelter sites created by American badger and desert kit fox, these surveys may take place concurrently with desert tortoise preconstruction clearance surveys.~~ Pre-construction surveys for desert kit fox and American Badger will include disturbance areas and a 15030 ~~30~~-meter buffer to the extent allowable. The locations of American badger and desert kit fox dens will be recorded. Current status and use

by American badger and desert kit fox will be determined through the use of wildlife cameras, scopes, and~~/ or~~ tracking substrate. Inactive and unoccupied dens within the Project boundary will be collapsed after their status has been determined through monitoring ~~during clearance surveys~~. Active dens will be monitored, and a qualified biologist will establish a 50-meter non-disturbance buffer during the non-breeding season and a 150-meter non-disturbance buffer during the breeding/ pupping season (generally February 1 – May 15). If the den is in the central part of the site, a strip of vegetation at least 50-meters wide shall remain intact between the buffer and perimeter fencing to provide cover for the species. The buffer size may be amended by a qualified biologist through consultation with CDFW. Active burrows shall be avoided until they are confirmed unoccupied by a qualified biologist.

Burrow occupancy will be determined using a tracking medium such as diatomaceous earth or fine clay, ~~or~~ and infrared cameras placed at the entrance(s). If no tracks or evidence of activity is observed after 3 consecutive nights of monitoring, the burrow shall be scoped and excavated, and backfilled using nonpowered tools. If tracks or evidence of burrow occupancy is observed, ~~burrows shall be fitted with one-way trap doors for exclusion purposes. Infrared cameras will be used in conjunction with one-way trap doors to assess the effectiveness of exclusion efforts. At least forty-eight hours after installing one-way exclusion doors, and after confirming the effectiveness of exclusion efforts through photo review, the burrow will be scoped and backfilled using nonpowered tools. If occupancy monitoring reveals the burrow is being used for breeding/ reproductive purposes,~~ CDFW will be consulted to determine the course of action pertaining to exclusion efforts and passive translocation, which may include development of a management plan for CDFW's review and approval.

To guard against the spread of distemper and other diseases, equipment and tools used for burrow occupancy monitoring and excavation will be treated with a disinfectant that's proven effective. This includes but is not limited to accelerated hydrogen peroxide, potassium peroxymonosulfate, or a 1:20 dilution of household bleach. Fieldworker clothing will be washed in hot water and dried using a dryer.

CDFW will be notified in dealing with injured, sick, or dead American badger or desert kit fox.

3.4 Cultural and Tribal Cultural Resources

Page 3.4-17

CUL-1 The project proponent/owner shall conduct a Worker Education Awareness Program (WEAP) for relevant construction personnel working on the proposed project and conducting subsurface activities. Development of the WEAP shall include consultation with an archaeologist who meets Secretary of the Interior Professional Qualifications in Archaeology (Lead Archaeologist). The training shall include an overview of potential cultural resources that could be encountered during ground disturbing activities to facilitate worker recognition, avoidance, and subsequent immediate notification to the Lead Archaeologist. The consulting Tribal Monitor shall attend the WEAP training or pre-grade meeting, as outlined in their Tribal Monitoring Services Agreement (see **Mitigation Measure CUL-2**), to be in place prior to the start of construction.

CUL-2 The Lead Archaeologist shall prepare a Cultural Resources Monitoring and Treatment Plan to be implemented during ground-disturbing activities associated with project construction. The plan shall outline monitoring procedures and the process for the identification of cultural and tribal resources during project construction. The Morongo Band of Mission Indians and the YSMN shall be given the opportunity to be present and provide monitoring of ground clearing and ground disturbing activities. The Project Applicant shall arrange for a Tribal Monitoring Services Agreement to be in place prior to the start of construction by contacting the Morongo Band of Mission Indians and the YSMN. After monitoring has been completed, the Lead Archaeologist shall prepare a Monitoring and Treatment Report detailing the results of monitoring, to be submitted to the Director of the San Bernardino County Planning Division and the Morongo Band of Mission Indians and the YSMN for review and comment before it is filed with the appropriate California Historical Resources Information System (CHRIS) Information Center.

CUL-3 In the event that previously unknown pre-contact or historic-period archaeological resources (sites, features, or artifacts) are exposed during construction activities for the proposed project, all work occurring within 100 feet of the find shall immediately stop until the Lead Archaeologist can evaluate the significance of the find and determine whether or not additional study is warranted, in consultation with the County. The consulting Tribal Monitor shall support the Lead Archaeologist in evaluating the significance of the find and determining whether or not additional study is warranted, as applicable, and pursuant to their Tribal Monitoring Service Agreement (see **Mitigation Measure CUL-2**), to be in place prior to the start of construction.
Pursuant to CEQA Guidelines Section 15126.4(b)(3), proposed project redesign and preservation in place shall be the preferred means to avoid impacts to significant historical resources. Consistent with CEQA Guidelines Section 15126.4(b)(3)(C), if it is demonstrated that resources cannot be avoided, the qualified archaeologist shall develop additional treatment measures in consultation with the County, which may include testing for CRHR-eligibility, data recovery or other appropriate measures. The Monitoring and Treatment Report shall also document the evaluation and/or treatment of the resource.

3.8 Hazards and Hazardous Materials

Page 3.8-25

Finally, water would be used during construction for dust suppression purposes, which would secondarily reduce fire risk during construction due to the dampened soils on-site. The project would also include operational water supply for fire suppression, which would be contained within an on-site water tank in the southeast corner of the project, near the main entrance. Overnight Solar will truck water from the Mojave Solar Facility to Overnight Solar. No new permanent facilities will be constructed at the Mojave Solar Facility for the proposed water use. A temporary construction water tank will be placed next to the existing well on the Mojave Solar Facility to facilitate the delivery of water to the water trucks. Project water demand would be supplied by the existing wells at the adjacent Mojave Solar Facility. As discussed in Section 3.13, Utilities and Service Systems, of this EIR, there is sufficient water available to meet the future water demands of the project during normal, single dry, and multiple dry years through 2045, including for fire suppression purposes.

3.9 Hydrology and Water Quality

Page 3.9-17

Operations

To operate the project, only a small amount of water would be used (11 AFY), primarily as wash water for the solar panels which would run off into long shallow strip retention basins located along each solar array and either percolate on-site or drain off-site by way of these retention basins and existing on-site aquatic features. The project would also include operational water supply for fire suppression, which would be contained within an on-site water tank located in the southeast corner of the project, near the main entrance ~~next to one of the existing wells within the adjacent Mojave Solar Facility~~. Overnight Solar will truck water from the Mojave Solar Facility to Overnight Solar. No new permanent facilities will be constructed at the Mojave Solar Facility for the proposed water use. A temporary construction water tank will be placed next to the existing well on the Mojave Solar Facility to facilitate the delivery of water to the water trucks. This represents less than 0.05 percent of the average annual groundwater use within the MWA Centro subarea. The limited water use is not expected to pose a threat to the groundwater resources in the basin even over the long-term planning horizon. The current management requirements in place through the adjudication process has already produced an observable decline in groundwater use within the basin. Furthermore, the Mojave Solar Facility has secured water rights of 2,163 AFY. On average, the Mojave Solar Facility has produced water at a rate of 1,532 AFY to meet Mojave Solar Facility water demands. Therefore, the projected water demand associated with the project falls within the water rights allocation designated for the Mojave Solar Facility (**Appendix J**).

3.10 Land Use and Planning

Page 3.10-15

While the County's Development Code Section 82.04.040 determines that renewable energy-generating facilities are allowed on RL-zoned land with a CUP, the County Board of Supervisors adopted an amendment to the RECE of the Countywide Plan/Policy Plan on February 28, 2019, to include RE Policy 4.10, prohibiting utility-scale renewable energy development on lands zoned RL or on lands located within the boundary of an existing community plan. Accordingly, the project would undergo a Zoning Amendment and Countywide Plan/Policy Plan Amendment as part of the approval process so that it would not conflict with RE Policy 4.10. The project site would be rezoned from RL to Resource Conservation (RC) and redesignated from RL to RLM in the Countywide Plan/Policy Plan. The County's Development Code Section 82.03.040 determines that renewable energy generation facilities are allowed on RC-zoned land with the facilitation of a CUP. Thus, the project would also be subject to the approval of a CUP. With the rezone of the project from RL to RC, and land use designation change from RL to RLM, the project would be consistent with the RECE of the Countywide Plan/Policy Plan. ~~The project would require a variance from the height restrictions pursuant to Development Code Chapters 83.02.040(c)(2)(T) and 85.17. Specifically, the gen-tie poles would be 95 feet tall and the substation electrical equipment would be 65 feet tall at the highest point. Both project components would require a Major Variance. The project would obtain a height variance for both the gen-tie poles and the substation equipment, as these components would exceed the maximum allowable height of 52.5 feet for the RL and RC zoning districts. The height limit for these zoning districts is 35 feet; however, in~~

~~accordance with County Development Code Section 83.02.040(c)(2)(T), the maximum structure height specified in a land use zoning district may be exceeded by no more than 50 percent for structures including distribution and transmission cables and towers. The substation would be located within the project parcel, and within an RC zoning district upon the approval of the proposed Zoning Amendment. Transmission lines are permitted within the RL zoning district and therefore, the gen-tie corridor would not require a zoning amendment. Although the project would require a height variance, it would be addressed by the County Development Code and is included as part of the project. Furthermore, the project site is located adjacent to the Mojave Solar Facility and Lockhart Solar Facility, which both contain utility infrastructure and several existing transmission lines of varying heights. Thus, the proposed height variance would not be distinctive in this area due to the presence of the existing transmission lines and utility infrastructure adjacent to the project site. With the approval of the variance for on-site substation electrical equipment and the gen-tie pole height, the project would be consistent with zoning and related requirements.~~

Page 3.10-17

Overall, with approval of the zone change from RL to RC, approval of the Countywide Plan/Policy Plan Amendment from RL to RLM, and issuance of the CUP~~, and approval of the height variance for the on-site substation electrical equipment and the gen-tie line~~, the project would not result in a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. Therefore, impacts would be less than significant.

3.13 Utilities and Service Systems

Page 3.13-17 through 3.13-18

The project would require an estimated 330 AF of water during the approximately 30-year lifespan of the project, resulting in an annual water demand of 11 AFY. Water for project operation would be used for panel washing, general maintenance, and fire suppression purposes (**Appendix J**). The frequency of panel washing would be determined based on soiling of the photovoltaic (PV) panels and expected benefit from cleaning. However, panel washing would be required at least once per year and potentially up to 4 times per year. The project would also include operational water supply for fire suppression, which would be contained within an on-site water tank located in the southeast corner of the project, near the main entrance ~~next to one of the existing wells within the adjacent Mojave Solar Facility~~. Overnight Solar will truck water from the Mojave Solar Facility to Overnight Solar. No new permanent facilities will be constructed at the Mojave Solar Facility for the proposed water use. A temporary construction water tank will be placed next to the existing well on the Mojave Solar Facility to facilitate the delivery of water to the water trucks.

3.14 Wildfire

Page 3.14-16

Finally, the project would also include operational water supply for fire suppression. The project would obtain water from existing wells at the adjacent Mojave Solar Facility, and sufficient water supplies were determined to exist from this source for fire suppression purposes (**Appendix J**). Operational water for

fire suppression would be contained within an on-site water tank located in the southeast corner of the project, near the main entrance ~~next to one of the existing wells within the adjacent Mojave Solar Facility~~. SBC Fire maintains keys for all access gates at the Mojave Solar Facility. As discussed in Section 3.13, Utilities and Service Systems, of this EIR, there is sufficient water available to meet the future water demands of the project during normal, single dry, and multiple dry years through the project's lifespan, including for fire suppression purposes.

7.0 References

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Avian Power Line Interaction Committee (APLIC). 2006. Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006. Edison Electric Institute, APLIC, and the California Energy Commission. Washington, DC and Sacramento, CA. Available online at: https://www.nrc.gov/docs/ml1224/ml12243a391.pdf (accessed March 2025).

APLIC. 2012. Reducing Avian Collisions with Power Lines: The State of the Art in 2012. Edison Electric Institute and APLIC. Washington, DC. Available online at: https://www.resolutionmineeis.us/sites/default/files/references/avian-power-line-2012.pdf (accessed March 2025).

Page 7-5

Sheffield, S. 2021. Population dynamics and conservation of the western burrowing owl (*Athene cunicularia hypugaea*) in North America: a 20-year update.

Wilkerson, R.L., and R. B. Siegel 2010. Assessing changes in the distribution and abundance of burrowing owls in California, 1993-2007. Bird Populations 10:1-36.

Wilkerson, R.L., and R. B. Siegel 2011. Distribution and abundance of western burrowing owls (*Athene cunicularia hypugaea*) in southeastern California. The Southwestern Naturalist 56 (3):378-384.

APPENDIX A: NOTICE OF PREPARATION & ORIGINAL COMMENT LETTERS

County of San Bernardino

NOTICE OF PREPARATION OF A DRAFT EIR AND SCOPING MEETING

DATE: January 18, 2024

TO: Responsible Agencies and Interested Parties

SUBJECT: Notice of Preparation of a Draft Environmental Impact Report and Scoping Meeting

Pursuant to the California Environmental Quality Act (CEQA), the County of San Bernardino (County) must conduct a review of the environmental impacts of the Overnight Solar Project (project). Implementation of the project will require discretionary approvals from state and local agencies, and therefore, the project is subject to the environmental review requirements of CEQA. As the lead agency under CEQA, and due to the involvement of potentially significant impacts to the environment, the County is therefore issuing this Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the project.

PROJECT TITLE: OVERNIGHT SOLAR PROJECT

PROJECT APPLICANT: OVERNIGHT SOLAR LLC

ASSESSOR'S PARCEL NUMBERS: 0490-183-65 AND 0490-121-49 (GEN-TIE)

PROJECT DESCRIPTION:

The project includes development of a utility scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 150 megawatts (MW) of solar power and include a 150 MW battery energy storage system (BESS) on approximately 822 acres, plus a generation interconnect (gen-tie) corridor approximately 1.1 miles in length and approximately 80 feet in width, connecting the proposed facility to another existing gen-tie line associated with the Mojave Solar Facility and just south of the existing Alba Substation. The project would eventually connect to the existing Southern California Edison (SCE) Kramer Junction Substation via existing electrical infrastructure as described below. The project will be processed under a single Conditional Use Permit (CUP) and would include a Zoning Amendment and Policy Plan Amendment as described below. The project site is bordered to the north by the existing Lockhart Solar Facility, to the east by the existing Mojave Solar Facility, and to the west and south by undeveloped land. The project would be monitored remotely and would not require any full-time employees on-site; however, occasional operations and maintenance visits would occur. Namely, panel washing would occur at least once per year and potentially up to 4 times per year. Panel washing would require up to 12 employees with water trucks and would take approximately 20 days to complete. Additionally, infrequent site visits would occur during project operation for equipment repair or replacement, or for vegetation control. In the case of unanticipated issues arising, staff would be available to respond and be on site within 15 minutes.

Project components would include solar arrays, battery storage, inverters and switchgear, an on-site project substation, on-site access roads, perimeter fencing, lighting and signage, and a 230

kilovolt (kV) gen-tie line. The project site is primarily flat and contains desert vegetation. The project site is also currently vacant and undeveloped but contains several dirt roads scattered throughout the site and illegal dumping along the eastern and southeastern boundary. Additionally, several transmission lines transect the northernmost portion of the project parcel from east to west; however, these are located north of the proposed facility footprint.

PROJECT OBJECTIVES:

The project would provide San Bernardino County and the State of California with additional renewable energy sources that would assist the state in complying with the Renewables Portfolio Standard (RPS) under Senate Bill 100, which requires that by December 31, 2030, 60 percent of all electricity sold in the state shall be generated from renewable energy sources. The following are the project objectives:

- Site PV solar power-generating facilities and energy storage near existing utility infrastructure, including existing City of Los Angeles Department of Water and Power and SCE transmission lines, thereby achieving economies of scale to maximize shared transmission facilities with existing solar operations.
- Establish solar PV power-generating facilities and energy storage of sufficient size and configuration to produce reliable electricity at a competitive rate.
- Use proven and established PV and energy storage technology that is efficient and requires low maintenance.
- Assist the State of California in achieving or exceeding its RPS and greenhouse gas emissions reduction objectives by developing and constructing new California RPS-qualified solar power generation facilities producing approximately 150 MW of renewable electrical energy.
- Provide a new source of energy storage that assists the state in achieving or exceeding its energy storage mandates.
- Promote the County's Renewable Energy and Conservation Element (RECE) policies and be sited in an area identified as suitable for utility oriented renewable energy generation projects and be consistent with County land use regulations.
- Develop a solar power generation facility in San Bernardino County, which would support the economy by investing in the local community, creating local construction jobs, and increasing tax and fee revenue to the County.

PROJECT SITE:

The project site is in unincorporated Hinkley, California, approximately 6 miles north of the intersection of Harper Lake Road and State Route 58 (Figure 1). The project site consists of one vacant and undeveloped parcel consisting of desert vegetation. The project site is bordered to the north by the existing Lockhart Solar Facility, to the east by the existing Mojave Solar Facility, and to the west and south by undeveloped land. The project is also bordered by Kramer Road to the west, Hoffman Road to the north, and Lockhart Ranch Road to the east. As shown in Figure 3, the project gen-tie line would run along property already owned and operated by Overnight Solar immediately south of the existing Mojave Solar Facility along the north side of an existing

service roadway. From there, the proposed gen-tie line would connect with an existing gen-tie line approximately 1.1 miles east of the proposed solar facility. Vehicular access to the project site would be provided from Lockhart Ranch Road extending eastward to Harper Lake Road via State Route 58.

On April 8, 2017, the San Bernardino County Board of Supervisors adopted the General Plan RECE. The policies in this element, along with the County's Solar Ordinance (amending Development Code Chapter 84.29, Renewable Energy Generation Facilities), consist of specific goals, policies, and standards for renewable energy projects and specifically solar projects.

The County Board of Supervisors adopted an amendment to the RECE on February 28, 2019, to include RE Policy 4.10, prohibiting utility-scale renewable energy development on lands designated as RL (Rural Living) or on lands within the boundary of an existing community plan, unless an application for development of a renewable energy project has been accepted as complete in compliance with California Government Code Section 65943 before the effective date of the resolution.

The project site is zoned as RL and is also designated RL in the Countywide Plan/County Policy Plan. Given the project site's current zoning and land use designation of RL, the project would undergo a Zoning Amendment and Countywide Plan/County Policy Plan Amendment as part of the approval process to not conflict with RE Policy 4.10. The project site would be rezoned from RL to Resource Conservation (RC) and redesignated from RL to Resource/Land Management (RLM) in the Countywide Plan/County Policy Plan. The County's Development Code Section 82.03.040 determines that renewable energy generation facilities are allowed on RC-zoned land with the facilitation of a CUP.

PROJECT OVERVIEW AND DESIGN:

The project is subject to CUP approval in the RC zone and would require a Zoning Amendment and Policy Plan Amendment as described below:

- **Zoning Amendment**: The project includes a Zoning Amendment to change the zoning designation from RL to RC in order to be in compliance with the Countywide Plan/Policy Plan adopted October 27, 2020, and the RECE adopted August 8, 2017 (amended February 28, 2019).
- **Countywide Plan/County Policy Plan Amendment**: The project includes a Countywide Plan/Policy Plan Amendment to change the County Policy Plan land use designation from RL to RLM in order to be in compliance with the Countywide Plan/Policy Plan adopted October 27, 2020, and the RECE adopted August 8, 2017 (amended February 28, 2019).
- **CUP and Variance:** The project requires a CUP, which would cover the approximately 822-acre project site and include the installation of solar facilities capable of generating up to 150 MW of renewable electrical energy via solar PV modules mounted on a single-axis tracking racking system or a fixed-tilt racking system. Panels are proposed to be a maximum of 20 feet in height. The solar array would be connected to inverters and the project BESS. The inverters and transformers would be anywhere from 5 to 10 feet in height. The CUP would also include an on-site, fenced-in substation that would occupy an area of approximately 300 feet by 300 feet. Within the substation fence, the electrical

equipment would be approximately 70 feet in height at their highest points, and because of exceeding the maximum allowable height for RC designation (35-feet), a Variance will be required. A small one-story, rectangular control building, housing the communication and Supervisory Control and Data Acquisition (SCADA) system equipment (if required), would also be located within the substation footprint.

The 150 MW BESS is expected to be adjacent to the substation. Batteries adjacent to the substation would be contained within either steel enclosures similar to a shipping container or a freestanding building, approximately 10 feet in height. Individual lithium-ion cells form the core of the BESS. Individual cells are assembled either in series or parallel connection, to make up sealed battery modules. The battery modules would be installed in self-supporting racks electrically connected either in series or parallel to each other. The BESS enclosure would house the batteries and the BESS controller. The BESS controller is a multilevel control system and includes the battery modules, power conversion system (PCS), and medium-voltage (MV) system where the BESS input would connect at the point of interconnection (POI) with the electrical grid. The BESS enclosure would also be equipped to house required heating, ventilation, and air conditioning (HVAC) and fire protection/suppression systems.

The BESS enclosure would have a fire rating in conformance with County standards and specialized fire suppression systems. The BESS safety system typically includes a fire detection and suppression control system that would be triggered automatically when the system senses imminent fire danger. A fire suppression control system will be provided within each on-site battery enclosure. Components of the system would include a fire panel, aspirating hazard detection system, smoke/heat detectors, strobes/sirens, and suppression tanks.

- **Power Conversion System:** The PCS typically consists of an inverter, protection equipment, circuit breakers, air filter equipment, equipment terminals, and cabling. Electricity is transferred from the PV array (or power grid) to the project batteries during a battery charging cycle and from the project batteries to the power grid during a battery discharge cycle.

- **Gen-Tie Line:** From the project substation at the PV plant site, the proposed gen-tie line would be constructed to connect the proposed solar facility's output to the POI, which is an existing Mojave Solar Facility gen-tie line located 1.1 miles to the east, near the existing Alba Substation. After the POI, the existing gen-tie line then connects to the existing Sandlot Substation, which then connects with the Kramer Junction Substation via the existing 230-kV Kramer-Coolwater Transmission Line. Once connected with the Kramer Junction Substation (12 miles to the west) via existing transmission infrastructure, the power is ultimately delivered to the SCE power grid.

  The new gen-tie line would be approximately 1.1 miles in length and would run within the existing Mojave Solar Facility, along the northern or southern side of an existing drainage canal. No easements or rights-of-way (ROW) would be required.

The gen-tie poles are expected to be sufficient in height and rating to accommodate the electric circuit(s) necessary to interconnect the PV plant alternating current (AC) output with the existing gen-tie line just south of the Alba Substation. The on-site substation tie-in pole would be up to 65 feet in height while the gen-tie poles would be a maximum of up to 80 feet tall. The project would obtain a height variance for these poles and would be designed to meet all the latest National Electric Safety Code (NESC) requirements for high-voltage transmission lines.

No expansion of the existing Alba or Sandlot Substations' footprints is anticipated. SCE would conduct a limited scope of work within and surrounding the existing substations, as needed, to facilitate connection of the solar project to the SCE system.

- **Telecommunication Facilities:** Telecommunications equipment, such as a fiber-optic line, a SCADA system, and auxiliary power, would be installed throughout the project site at each inverter equipment pad, substation, and security system. Telecommunications equipment would be brought to the project from existing telecommunications infrastructure in the project vicinity and may be co-located on aboveground structures, such as transmission lines. Trenching could be required to install some of the telecommunications equipment. Fire protection would also be included in accordance with applicable requirements.

- **Site Access, Perimeter Fencing, and Lighting:** On-site access routes, with a minimum width of 26 feet, may be constructed along the project's fence line. All interior access roads would also be a minimum of 20 feet wide. All on-site roads would consist of compacted native soil in accordance with San Bernardino County Fire Department requirements. All roads would be stabilized with soil stabilization material, if necessary. Improvements to off-site access roads, including potential paving and widening, would be completed as required according to County standards and in consultation with the County Department of Public Works and Land Development Division.

  Fencing is proposed along the perimeter of the project site or set back a minimum of 15 feet from the existing/proposed ROW, as required by the County Development Code. Fencing shall be at least 7 feet tall, in compliance with the NESC around the PV plant. Fence construction can be 6 feet in height with a 1-foot extension of three rows of barbed wire to give an overall fence height meeting the 7-foot requirement. Chain-link fencing is likely to be used, potentially topped with 1 foot of barbed wire as mentioned above. In consultation with the County, slats or mesh may be added to the chain-link fence, as appropriate and in areas where needed, to manage windblown sand. Access gates would be installed at each site entry point. The on-site substation site would be separately fenced due to the high voltage presence of exposed electric equipment and to meet the safety clearance requirements of the NESC.

  Manual, timed, and motion sensor lights will be installed at access gates, equipment pads, and substations for maintenance and security purposes. Lighting would be shielded and aimed downward to the ground. In addition, remote-controlled cameras would be installed.

No other lighting is planned. Signage is proposed in compliance with all County regulations.

Construction

Timing and Phasing

Construction of the project is expected to occur over an approximately 27-month period, from approximately September 2024 until the end of October 2026. The project would be constructed in multiple phases: 1) site preparation and grading (including mobilization, fencing, preparation of laydown areas, and trenching); 2) solar array installation (including the installation of solar array structural components including cables, piles, racking systems, inverters, modules, and panels); and 3) BESS construction (including BESS installation, commissioning, and testing).

Site Preparation and Grading

Site preparation may consist of clearing, grubbing, scarifying, recompacting, and grading to level the project site and removing any mounds or holes that remain from the previous land use. Though grading is expected to occur throughout the project site, the project site's cut and fill would balance, and no importing or exporting of materials would be necessary. Actual quantities of earth to be moved are unknown at this time but would be determined once the engineering is started and completed. Approximately 200 acre-feet of water would be used during the first year of construction. Water would be pumped from local wells.

After grading, temporary fences would be placed around the project site, which would allow materials and equipment to be securely stored on-site and prevent theft and vandalism. Storage containers may be used to house tools and other construction equipment. In addition, security guards would regularly monitor the project site. In accordance with Mojave Desert Air Quality Management District requirements, the project would develop a dust control plan that describes all applicable dust control measures to address and suppress construction-related dust. Components of the plan are likely to include water trucks to spread water, as well as road stabilization with chemicals, gravel, or asphaltic pavement to mitigate visible fugitive dust from vehicular travel and wind erosion.

Construction Activities and Equipment

Construction of the project would be accomplished in multiple phases. Project construction for each phase is expected to consist of multiple stages.

1. The first stage would include fencing, site preparation, grading, and preparation of staging areas and on-site access routes.
2. The next stage would involve installation of the racking system, and equipment pads and foundations.
3. The next stage would include installation of solar panels and other electrical components.
4. The next stage would involve installation of site substation equipment and the gen-tie transmission line and all other balance of systems equipment including the BESS system.
5. The next stage would include the interconnection at the POI.

6. The final stage would include startup, testing, and placing the solar array facility into operation.

An average of 150 workers would be on-site during each phase of construction, depending on the activities. The peak number of workers on the project site at any one time is anticipated to be 300. The workforce would consist of laborers, craftspeople, supervisory personnel, and support personnel. On average, it is anticipated that each worker would generate one round trip to the project site per workday. Most workers would commute to the project site from nearby communities, such as Boron and Barstow, with some traveling from more distant areas, such as Victorville, Hesperia, and San Bernardino. Construction would generally occur during daylight hours, though exceptions may arise because of the need for nighttime work. Workers would reach the project site using Harper Lake Road to Lockhart Ranch Road. Portable toilet facilities would be installed for use by construction workers. Waste disposal would occur in a permitted off-site receiving facility. Domestic water for use by employees would be provided by the construction contractor through deliveries to the project site.

Solid and Nonhazardous Waste

The project would produce a small amount of solid waste from construction activities. This may include paper, wood, glass, plastics from packing material, waste lumber, insulation, scrap metal and concrete, empty nonhazardous containers, and vegetation waste. These wastes would be segregated, where practical, for recycling. Nonrecyclable wastes would be placed in covered dumpsters and removed on a regular basis by a certified waste-handling contractor for disposal at a Class III landfill. Vegetation waste generated by site clearing and grubbing would be chipped/mulched and spread on-site or hauled off-site to an appropriate green waste facility.

Hazardous Materials

Hazardous materials used during project construction would be typical of most construction projects of this type. Materials may include small quantities of gasoline, diesel fuel, oils, lubricants, solvents, detergents, degreasers, paints, ethylene glycol, dust palliative, herbicides, and welding materials/supplies. A hazardous materials business plan would be provided to the County Environmental Health Services Division (EHS) that would include a complete list of all materials used on-site and information regarding how the materials would be transported and in what form they would be used. This information would be recorded to maintain safety and prevent possible environmental contamination or worker exposure. During project construction, material safety data sheets (MSDS) for all applicable materials present at the site would be made readily available to on-site personnel.

Hazardous Waste

Small quantities of hazardous waste may be generated during project construction. These wastes may include waste paint, spent construction solvents, waste cleaners, waste oil, oily rags, waste batteries, and spent welding materials. Workers would be trained to properly identify and handle all hazardous materials. Hazardous waste would be either recycled or disposed of, as allowed by permitting, at a permitted and licensed treatment and/or disposal facility.

Operations

Operations and Maintenance Activities

The project would generate solar electricity from the PV system during daylight hours and may discharge power for sale onto the power supply grid from the BESS at various times during the daytime and nighttime. In addition, the operations would be monitored remotely via the SCADA system.

Operational vehicles would include light-duty trucks (e.g., flatbed pickup) and other light equipment for maintenance and PV module washing. Heavy equipment would not be used during normal operation. Large or heavy equipment may be brought to the facility infrequently for equipment repair or replacement or for vegetation control.

Operational Water Use

Water would be required for panel washing activities and general maintenance. The frequency of panel washing would be determined based on soiling of the PV panels and expected benefit from cleaning. Should cleaning be necessary, water would be sprayed on the PV panels to remove dust. An estimated 7-10 acre-feet per year of water annually would be necessary for panel washing. This water would be obtained from existing and operational water wells located within the adjacent Mojave Solar Facility.

Decommissioning

If operations at the project site were permanently terminated, the facility would be decommissioned. Most components of the proposed system are recyclable or can be resold for scrap value. Numerous recyclers for the various materials to be used on the project site operate in San Bernardino and Riverside Counties. Metal, scrap equipment, and parts that do not have free-flowing oil can be sent for salvage. Equipment containing any free-flowing oil would be managed as waste and would require evaluation. Oil and lubricants removed from equipment would be managed as used oil, which is a hazardous waste in California. Decommissioning would comply with federal, state, and local standards and all regulations that exist when the project is decommissioned, including the requirements of San Bernardino County Development Code Section 84.29.070.

The average life of a PV plant is generally considered to be 30 years, after which decommissioning and removal would be considered. Decommissioning would be determined by the PV plant owner, who would pay the costs for dismantling and having the materials transported off-site to either recyclers or permitted disposal sites. After materials removal, the site would be restored to its original condition or better (specifically, the removal of existing illegal trash dumping) so the land can be reused for other useful purposes.

The decommissioning would be performed by Overnight Solar or at such a time by the successor owner of the PV plant in accordance with the RECE of San Bernardino County, CA Goal RE-4 Environmental Compatibility Policy in general, and Policy RE-4.5 in particular, which governs the decommissioning requirements. A bond would be provided at the outset of construction to cover the agreed-upon costs of decommissioning and would be returned when decommissioning is satisfactorily accomplished.

EIR SCOPE

As set forth in the California Public Resources Code Section et seq., and the CEQA Guidelines, codified in the California Code of Regulations, Title 14, Section 15000 et seq, the County has determined, based on substantial evidence and in light of the whole record before the lead agency, that the project may have a significant effect on the environment and that an Environmental Impact Report shall be prepared for the project. (PRC Sections 21080(d) and (e); 21802.2(d); 21083(b); and CEQA Guidelines Sections 15060(d) and 15081)

The lead agency has initially identified the following environmental considerations as potentially significant effects of the project:

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology/Water Quality
- Land Use and Planning
- Noise
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems
- Wildfire

The EIR will assess the effects of the project on the environment, identify potentially significant impacts, identify feasible mitigation measures to reduce or eliminate potentially significant environmental impacts, and discuss potentially feasible alternatives to the project that may accomplish basic project objectives while lessening or eliminating any potentially significant project impacts.

The County conducted a preliminary review of the proposed project and has determined it is not likely to result in significant environmental effects to the following resources: Mineral Resources, Population and Housing, Public Services, and Recreation. Therefore, these topics will be discussed in the Effects Found Not to be Significant chapter of the EIR to the extent required to confirm the County's preliminary determination. If, during preparation of the EIR, an environmental effect is determined to result for one of these resources, a full analysis will be conducted for that resource topic in accordance with CEQA requirements.

RESPONSIBLE AGENCIES:

A responsible agency means a public agency other than the lead agency, which has permitting authority or approval power over some aspect of the overall project. This NOP provides a description of the project and solicits comments from responsible agencies, trustee agencies, federal, state and local agencies, and other interested parties on the scope and content of the environmental document to be prepared to analyze the environmental impacts of the project.

Comments received in response to this NOP will be reviewed and considered by the lead agency in determining the scope of the EIR. Due to time limits, as defined by CEQA, your response should be sent at the earliest possible date, but no later than thirty (30) days after publication of this notice. We need to know the views of your agency as to the scope and content of the

environmental information that is germane to you or to your agency's statutory responsibilities in connection with the project. Your agency may need to use the EIR prepared by our agency when considering your permit or other approval for the project.

OPPORTUNITY FOR PUBLIC REVIEW AND COMMENT:

The NOP is available for public review on the County's website at:

https://lus.sbcounty.gov/planning-home/environmental/desert-region/

Additionally, a copy of the NOP is available for public review at the following locations:

Jerry Lewis High Desert Government Center
15900 Smoke Tree Street, First Floor
Hesperia, CA 92345

San Bernardino County Government Center
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415

We would like to hear what you think. Comments and/or questions should be directed to Jon Braginton, Planner, via U.S. mail or email **by no later than 5:00 p.m. on February 19, 2024.**

County of San Bernardino, Land Use Services Department
Attn.: Jon Braginton, Planner
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415
Email: Jon.Braginton@lus.sbcounty.gov
(760) 776-6144

Please include name, phone number, and address of your agency's contact person in your response.

PUBLIC SCOPING MEETING:

The CEQA process encourages comments and questions from the public throughout the planning process. Consistent with Section 21083.9 of the CEQA statute, a Public Scoping Meeting will be held to solicit public comments on the scope and content of the EIR. A virtual scoping meeting will be held for this project. The date and meeting details are as follows:

Date and Time: **January 31, 2024/4:00 PM PST**

Place: **Via Microsoft Teams**

The Microsoft Teams meeting may also be accessed through the Microsoft Teams website by using the following Webinar ID:

Join on your computer, mobile app or room device

Meeting ID: 295 731 577 627
Passcode: Y9ReiD

Or call in (audio only)

+1 213-357-2812,,975221363# United States, Los Angeles

Phone Conference ID: 975 221 363#

If you require additional information, please contact Jon Braginton, Planner, at (760) 776-6144.

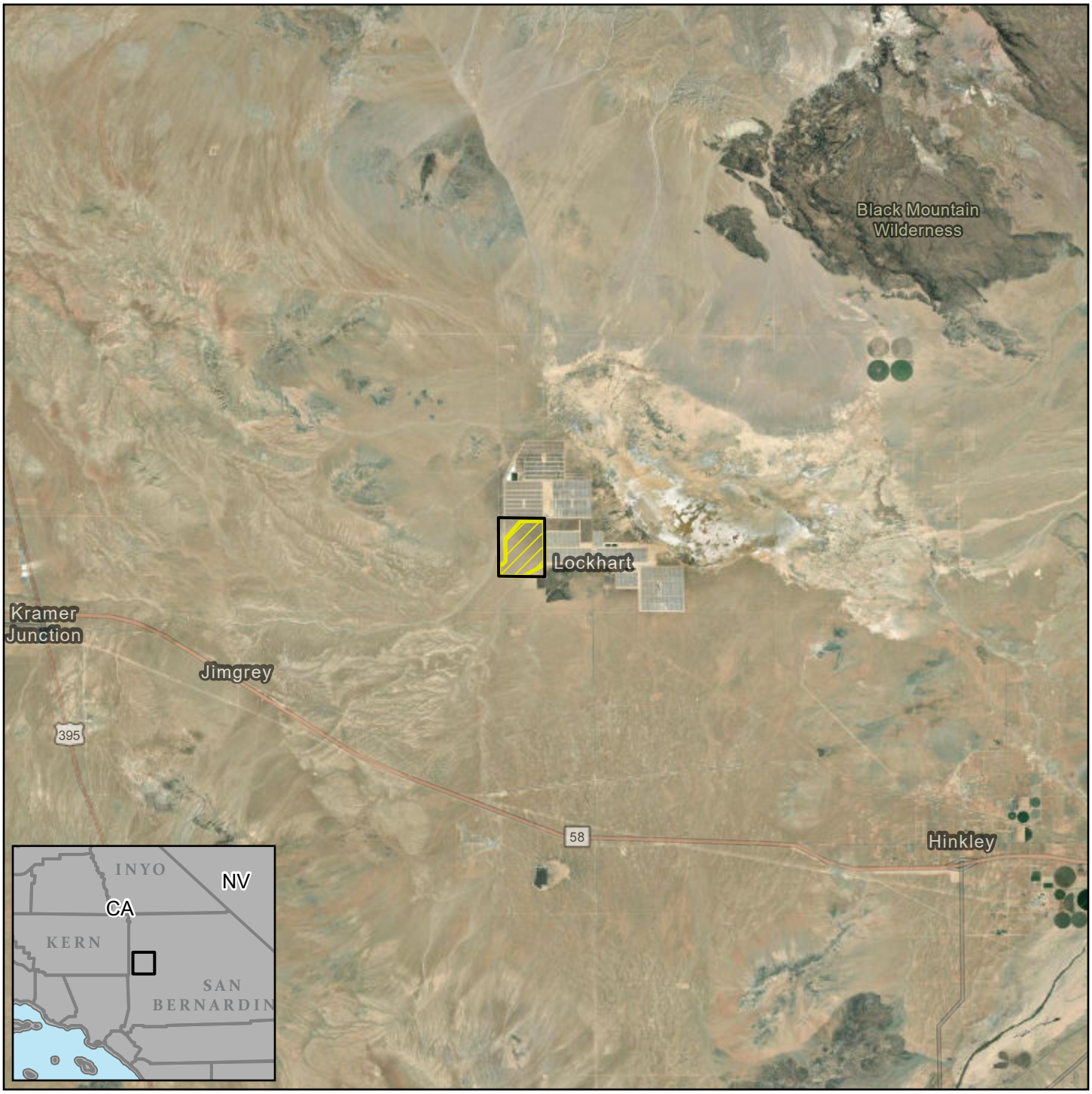

Figure 1
Regional Map

Overnight Solar
Overnight Solar, LLC

Project Site

Solar Array

TETRA TECH

1:200,000

0 2 4 Miles

N

Revised: 1/17/2024 | NOT FOR CONSTRUCTION

San Bernardino County, CA

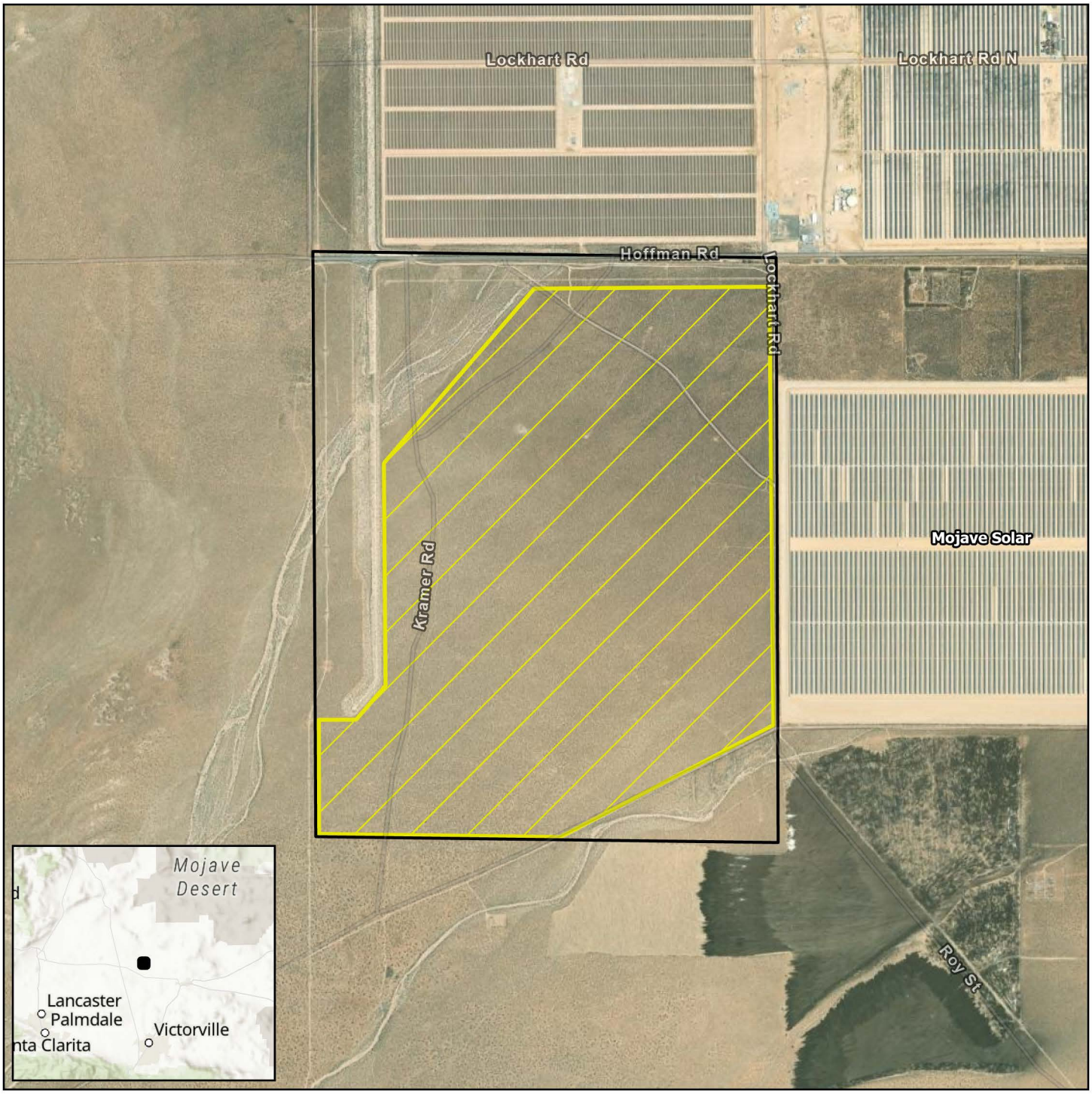

Figure 2
Location Map

Overnight Solar
Overnight Solar, LLC

Project Site

Solar Array

TETRA TECH

1:20,000

0 1,000 2,000 Feet

N

Revised: 1/17/2024 | NOT FOR CONSTRUCTION

San Bernardino County, CA

Figure 3
Conditional Use Permit Area

Overnight Solar
Overnight Solar, LLC

- Proposed Gen-tie
- 230 kV Kramer-Coolwater (SCE)
- 500 kV Transmission Line (LADWP)
- Existing Gen-tie
- Point of Interconnection
- Project Site
- Proposed Substation
- Solar Array

TETRA TECH

1:40,000

0 0.5 1 Miles

N

Revised: 1/17/2024 | NOT FOR CONSTRUCTION

San Bernardino County, CA

California Program Office
P.O. Box 401, Folsom, California 95763 | 916-313-5800
www.defenders.org

February 16, 2024

Jon Braginton, Planner
San Bernardino County
Land Use Services Department
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415
Delivered via email to: jon.braginton@lus.sbcounty.gov

RE: Scoping Comments for Overnight Solar Project
(SCH 2024010434)

Dear Mr. Braginton:

Thank you for the opportunity to provide comments in response to the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the proposed Overnight Solar Project (Project). Defenders of Wildlife (Defenders) is dedicated to protecting all wild animals and plants in their natural communities and has nearly 2.1 million members and supporters in the United States, with more than 316,000 residing in California.

Defenders strongly supports generation of electricity from renewable energy sources. A low-carbon energy future is critical for California's economy, communities and environment. Achieving this future—and how we achieve it—is critical for protecting California's internationally treasured wildlife, landscapes and diverse habitats. We believe transitioning to a renewable energy future need not exacerbate the ongoing extinction crisis by thoughtfully planning projects while protecting habitat critical to species.

Project Description

The proposed 822-acre utility-scale solar photovoltaic (PV) facility would generate up to 150 MW of solar power and include 150 MW of energy storage. It is bordered on the north by the existing Lockhart Solar Facility and to the east by the existing Mojave Solar Facility. The Project site is in unincorporated Hinkley and is 6 miles north of the intersection of Harper Lake Road and State Route 58.

The Project site may provide habitat to several special-status wildlife species, including but not limited to the following:[1]

[1] California Natural Diversity Database. Accessed 01/31/2024. https://wildlife.ca.gov/Data/CNDDB/Maps-and-Data

Table 1: Special Status Species' Habitat Within the Project Site

Common Name	Scientific Name	Status
American badger	*Taxidea taxus*	State Species of Special Concern
Burrowing owl	*Athene cunicularia*	State Species of Special Concern
Desert tortoise	*Gopherus agassizii*	Federal and State Threatened
Loggerhead shrike	*Lanius ludovicianus*	State Species of Special Concern
Mohave ground squirrel	*Xerospermophilus mohavensis*	State Threatened
Western Joshua tree	*Yucca brevifolia*	State Candidate Threatened
Yuma Ridgeway rail	*Rallus obsoletus yumanensis*	Federal Endangered and State Threatened

Comments

We offer the following comments on the scope of the DEIR for the proposed Project:

1. **Conduct Protocol Level Surveys**

   Considering the sensitive species and habitat located on the Project site, the surveys must adhere to species-specific protocols to provide thorough and accurate results that support impact analysis and identification of appropriate mitigation measures for each species. We recommend consultation with the trustee and responsible wildlife agencies to determine the scope and protocols for the biological surveys. Species-specific surveys should cover 100 percent of the project area and adjacent habitat.

   If the surveys find special-status species occurring on or near the Project site, we recommend consultation with state and wildlife agencies for recommended impact avoidance, minimization and mitigation measures, including compensatory mitigation.

   a. **Burrowing Owl**

      The Project site may provide a habitat for burrowing owls (BUOW) and are likely to occur given the surveys for the nearby Desert Breeze Solar Project observed four live owls and 29 suitable burrows. BUOWs are listed as a Species of Special Concern by the California Department of Fish and Wildlife (CDFW), and it is estimated that there are fewer than 10,000 breeding pairs in the state, with most existing on privately owned land.[2] Protocol-level surveys for BUOW should be performed across the entirety of the site and must conform to the current survey standards established in the *Burrowing Owl Survey Protocol and Mitigation Guidelines*[3] and the *Staff Report on Burrowing Owl Mitigation*.[4]

[2] California Department of Fish and Game. 2012. *Staff Report on Burrowing Owl Mitigation*.
[3] California Burrowing Owl Consortium. 1993. *Burrowing Owl Survey Protocol and Mitigation Guidelines*.
[4] California Department of Fish and Game. 2012. *Staff Report on Burrowing Owl Mitigation*.

The compensatory mitigation ratio for BUOW habitat should be assigned in consultation with CDFW. Additionally, if the surveys find occupied burrows, artificial burrows shall be established at a 1:1 Ratio in adjacent suitable habitats as stated within BUOW guidelines.[5]

b. Desert Tortoise

The desert tortoise (DT) is continuing to decline throughout its range despite being under federal and state Endangered Species Act protection as threatened.[6] The proposed Project area is located within the habitat for DT[7], and ten live DTs were observed[8], along with 45 DT burrows and six carcasses, on the nearby Desert Breeze Solar Project.

CDFW has previously stated that "[f]or desert tortoise … compensatory mitigation ratios from 1:1 to 5:1 of mitigation acres to impacted areas are most typical. The higher mitigation ratios are often used for impacts that most affect the species, such as impacts of high quality, connected, other important habitat areas, and impacts to areas with greater distribution and presence of the species. The low mitigation ratios are often used for impact areas with low habitat value and low to very low presence of the species."[9] Furthermore, CDFW stated that for the nearby Desert Breeze Solar Project, the final compensatory mitigation ratio will likely be higher than the minimum of 1:1 that was initially proposed for the project.[10] Defenders requests that adequate ratios are assigned that accurately considers the habitat quality, connectivity value and the presence of species.

c. Mohave Ground Squirrel

The Mohave ground squirrel (MGS) is listed as threatened under the California Endangered Species Act and has been proposed for listing under the federal Endangered Species Act.[11] It is found only in the Mojave Desert in California and has one of the smallest geographic ranges of any North American ground squirrel. The proposed Project site is within the range of MGS and contains predicted habitat.[12] We recommend that MGS surveys be conducted utilizing appropriate protocol-level survey methods[13] and mitigation measures developed in consultation with CDFW.

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[5] California Burrowing Owl Consortium. 1993. *Burrowing Owl Survey Protocol and Mitigation Guidelines*.
[6] Kissel, Amanda M., et al. 2023. Range-Wide Occupancy Trends for the Mohave Desert Tortoise (Gopherus Agassizii).
[7] See https://databasin.org/maps/new/#datasets=47f02745fd9443b6962d5a759ac590a8
[8] Kimley-Horn and Associates. 2023. *Desert Breeze Solar Project Draft Environmental Impact Report, SCH #2022090646*.
[9] California Department of Fish and Wildlife. 2021. *Notice of Preparation of a Draft Environmental Impact Report Lockhart Solar PV II Project State Clearinghouse No. 2021070070*.
[10] California Department of Fish and Wildlife. 2023. *Draft Environmental Impact Report Desert Breeze Solar (Project) State Clearinghouse No. 2022090646*.
[11] See https://defenders.org/sites/default/files/inline-files/Defenders%20et%20al.%20MGS%20Listing%20Petition%2012-13-23%20FINAL.pdf
[12] See https://databasin.org/datasets/063de529c9dd4635bb9f019cd0c0ca2a/
[13] California Department of Fish and Wildlife. 2023. *Mohave Ground Squirrel Survey Guidelines*.

If compensatory mitigation is deemed warranted based on survey results, Defenders requests adhering to CDFW's MGS Conservation Strategy, which sets the compensation ratio for MGS at a 2:1 ratio.[14]

2. Incidental Take Permit

Desert tortoise and burrowing owl were observed during the 2022 field surveys on the nearby Desert Breeze Solar Project site. Furthermore, Mohave ground squirrel was determined to have a moderate potential to occur within the Desert Breeze Project site. Given these recent and nearby findings, it is reasonable to assume that these species may occur on the Project site and take may occur. We recommended consultation with CDFW and US Fish and Wildlife Service (USFWS) for the need to obtain an Incidental Take Permit, which will require submission of a Habitat Conservation Plan by the applicant and approval by USFWS.

3. Additional Plans Need to be Included in the DEIR

Any additional monitoring, management, preservation, or translocation plans that are included as a mitigation strategy should be available as a part of the DEIR for public analysis and review. As a recent court case stated, "[t]he point of an EIR is to inform decisionmakers and the public about the environmental consequences of a project before approving it."[15] It is impossible for decisionmakers and the public to be fully informed on a project if key plans that aim to mitigate the environmental consequences are not available for review. Specifically, we request the inclusion of the following plans within the DEIR if they are deemed necessary following the protocol-level surveys and consultation with the appropriate wildlife agencies.

a. Raven Management Plan

Ravens are known predators of DT and are likely a significant impediment to desert tortoise recovery. Solar development and the associated infrastructure can be expected to increase raven threats to desert tortoises by providing raven perching, roosting and nesting sites. A Raven Management Plan should be included within the DEIR if DT or its sign is observed on the Project site.

b. Translocation and Monitoring Plan

If translocation of DT is deemed necessary, a translocation and monitoring plan shall be developed. However, the translocation of tortoises has an unproven track record of success. Therefore, any translocation plan included as an incidental take minimization strategy should be available as a part of the DEIR. The translocation plan should include methodologies for determining the success of the translocation and appropriate conservation measures for the

[14] California Department of Fish and Wildlife. 2019. *A Conservation Strategy for the Mohave Ground Squirrel*. https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=171301&inline

[15] *Make UC a Good Neighbor v. Regents of the University of California* (February 24, 2023) 88 Cal.App.5th 656.

translocated DT, impacts on the existing population at the translocation site, when/how the tortoises will be translocated, how tortoise diseases will be addressed, a raven management plan for the translocation site and continued monitoring of host and translocated tortoises.

c. Joshua Tree Preservation Plan

If any Joshua trees are found on the Project site, a Joshua Tree Preservation Plan should be included within the DEIR. This plan should comply with the California Endangered Species Act or Western Joshua Tree Conservation Act (WJTCA) take requirements and compensatory mitigation. Furthermore, the plan should include preservation, restoration, enhancement and translocation methods. The plan should preserve and mitigate at the habitat level and not simply for individual trees.

In accordance with the WJTCA, CDFW is developing a western Joshua tree conservation plan. We request consultation with CDFW in the creation of a Joshua Tree Preservation Plan to ensure it includes measures that align with the goals of the upcoming plan.

4. Cumulative impact

The ever-increasing large-scale renewable energy footprint within the California desert is significantly impacting biological resources in the region. San Bernardino County has a significant number of proposed and completed solar PV projects. As of June 2023, there were ten active renewable energy projects that, if developed, would result in the conversion of an additional 5,484.5 acres of land to utility-scale PV facilities. Additionally, two previously approved solar project sites border the north and east of the Project: the Lockhart Solar Facility and the Mojave Solar Facility. The Desert Breeze Solar Project is also located in close proximity.

This proposed Project would significantly contribute to the cumulative loss of the region's important and declining biological resources, including but not limited to BUOW, DT and MGS. The cumulative analysis on biological resources must detail the potential impacts on the individual biological resource level and provide specific data on the loss of habitat. We request the analysis include a detailed map of all existing and planned development with the remaining habitat and connectivity for DT and MGS.

Furthermore, CDFW has stated in several previous comments on proposed solar projects that staff is available for consultation in support of cumulative impact analyses.[16,17] We recommend consultation with CDFW to identify an acceptable methodology to evaluate cumulative impacts at the resource level.

[16] California Department of Fish and Wildlife. 2022. *Bullhead Solar Project by EDF Renewables, LLC Project (Project) Notice of Preparation (NOP) State Clearinghouse No. 2022110504*.

[17] California Department of Fish and Wildlife. 2023. *Enterprise Solar Storage Project (Project) Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) State Clearinghouse No. 2023050214*.

5. **Coordination with the Bureau of Land Management**
   It is essential that the county closely coordinates with the Bureau of Land Management (BLM) to identify and analyze the potential impacts of the Project on BLM lands, specifically any Areas of Critical Environmental Concern (ACECs), and ensure appropriate avoidance, minimization and mitigation of any adverse impacts. The Project site is adjacent to the Fremont-Kramer ACEC, and the Harper Dry Lake and Superior-Cronese ACECs are located in close proximity.

Thank you once again for the opportunity to provide scoping comments for the Overnight Solar Project. We look forward to reviewing the Draft EIR for the Project and request to be notified when it is available. Please feel free to contact me with any questions.

Respectfully submitted,

Sophia Markowska
Senior California Representative
408-603-4694
Smarkowska@defenders.org

DESERT TORTOISE COUNCIL
3807 Sierra Highway #6-4514
Acton, CA 93510
www.deserttortoise.org
eac@deserttortoise.org

Via email only

Date: February 12, 2024

Attn: Jon Braginton, Planner
County of San Bernardino, Land Use Services Department
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415
Jon.Braginton@lus.sbcounty.gov

RE: Overnight Solar Project Scoping Comments

Dear Mr. Braginton,

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer to receive emails for future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

We appreciate this opportunity to provide comments on the above-referenced project, and that the San Bernardino County Planning Department (County) contacted the Council directly via email on 1/18/2024, which facilitated Ed LaRue's attendance at the project specific webinar on 1/31/2024. Given the location of the proposed project in habitats likely occupied by the Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments include recommendations intended to enhance protection of this species and its habitat during activities authorized by the County, which we recommend be added to project terms and conditions in the authorizing document (e.g., conditional use permit, right of way grant, etc.) as appropriate. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), "… based on population reduction (decreasing density), habitat loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract disease/mycoplasmosis). *Gopherus agassizii* (sensu stricto) comprises tortoises in the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses have been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (sensu stricto) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units."

This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from Threatened to Endangered in California. In its status review, California Department of Fish and Wildlife (CDFW) (2024a) stated: "At its public meeting on October 14, 2020, the Commission considered the petition, and based in part on the Department's [CDFW] petition evaluation and recommendation, found sufficient information exists to indicate the petitioned action may be warranted and accepted the petition for consideration. The Commission's decision initiated this status review to inform the Commission's decision on whether the change in status is warranted."

Importantly, in their February 2024 status review, CDFW concluded: **"The Department's recommendation is that uplisting the Mojave Desert Tortoise is warranted."** Receipt of this [status review] report is to be placed on the agenda for the next available meeting [expected in April 2024] of the Commission after delivery [at the February meeting]. At that time, the report will be made available to the public for a 30-day public comment period prior to the Commission taking any action on the petition."

Before providing our specific comments below, we would like to express our serious concern with the intended timing of the planning process. During the 1/31/2024 webinar when LaRue asked about the results of requisite surveys for plant and animal species of special concern (CDFW 2024) [this includes the tortoise], the Tetra Tech consultants indicated that some surveys had been performed without revealing which ones. We were told that scoping comments are due by 2/19/2024 and the draft environmental impact report (Draft EIR) would be released within a month, in March 2024. We find this scheduling to be problematic, that it may even be dismissive of public input.

It is absolutely essential that requisite surveys be performed before the Draft EIR is written so that survey results can be published in the environmental document. The County must ensure quality control in this matter, even if it means that the consultants perform the surveys this spring and the Draft EIR is published on a realistic schedule in the summer or fall of 2024. For example, Mohave ground squirrel surveys (CDFW 2023) must be performed from March through July of a given year. If these surveys have not already been performed, they must be performed and the results documented in the Draft EIR, which means it would need to be published sometime after July 2024. Other requisite surveys for rare plant communities, plants, and animals are listed herein, and must be performed *before* writing the Draft EIR for the analysis to be complete.

Comments Specific to the Notice of Preparation

In addition to the webinar presentation on 1/31/2024, the Council's sole source of project information is in the County's Notice of Preparation of a Draft Environmental Impact Report and Scoping Meeting, dated 1/18/2024 (herein "Notice;" all page numbers reference the Notice). Page 1 indicates: "The project includes development of a utility scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 150 megawatts (MW) of solar power and include a 150 MW battery energy storage system (BESS) on approximately 822 acres, plus a generation interconnect (gen-tie) corridor approximately 1.1 miles in length and approximately 80 feet in width, connecting the proposed facility to another existing gen-tie line associated with the Mojave Solar Facility and just south of the existing Alba Substation…The project site is bordered to the north by the existing Lockhart Solar Facility, to the east by the existing Mojave Solar Facility, and to the west and south by undeveloped land."

The project description on page 1 indicates "The project would provide San Bernardino County and the State of California with additional renewable energy sources that would assist the state in complying with the Renewables Portfolio Standard (RPS) under Senate Bill 100, which requires that by December 31, 2030, 60 percent of all electricity sold in the state shall be generated from renewable energy sources." Unlike most solar projects that have been developed on leased public lands from the Bureau of Land Management (BLM), this project would be developed on private lands. When asked to analyze rooftop solar as an alternative to developing public lands, the BLM routinely says that it has no jurisdiction over private lands and that such an alternative is infeasible. For this project, we believe that considering a rooftop solar alternative is prudent, and ask that such an alternative be included in the Draft EIR. To be clear, we define "rooftop solar" as installing solar panels over areas that are already developed – commercial and industrial buildings, parking lots, farm fields used for growing shaded or partially shaded crops, etc.

Page 1 indicates, "…panel washing would occur at least once per year and potentially up to 4 times per year. Panel washing would require up to 12 employees with water trucks and would take approximately 20 days to complete." On page 6, we also read, "Approximately 200 acre-feet of water would be used during the first year of construction." Further, "Components of the plan are likely to include water trucks to spread water, as well as road stabilization with chemicals, gravel, or asphaltic pavement to mitigate visible fugitive dust from vehicular travel and wind erosion."

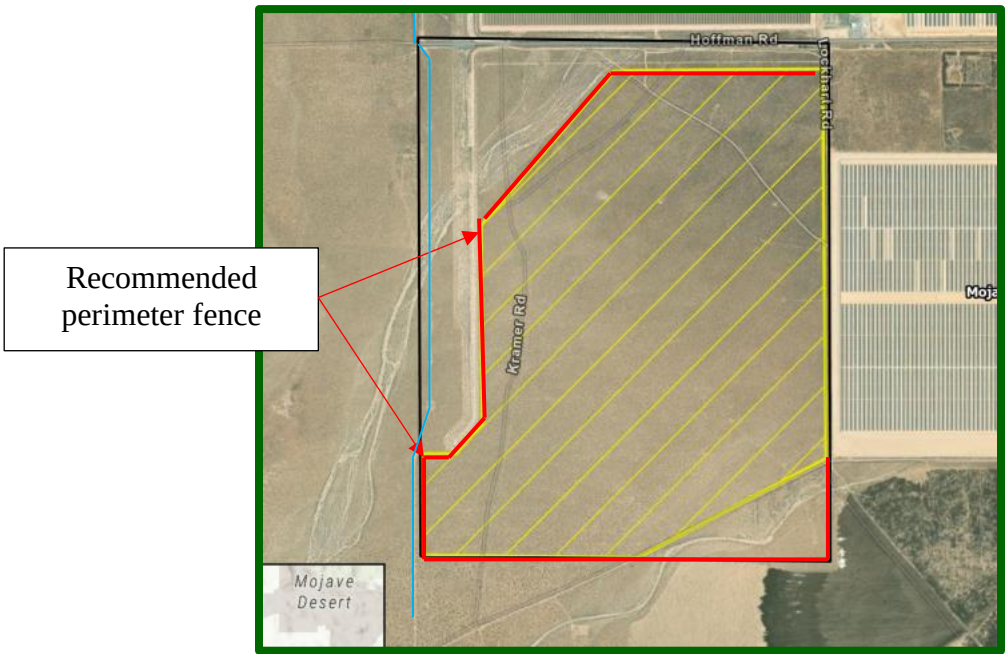
Please be sure the Draft EIR addresses current aquifer characteristics and how this project, combined with the other existing and proposed solar projects, including the Desert Breeze solar project, may affect the aquifer. Our relatively more pertinent concern with the use of so much water is the attraction of known predators, including common ravens and coyotes, into the project area, potentially increasing depredation of tortoises in adjacent areas. Panel washing and dust suppression if not applied in a conscientious manner will result in water puddling onsite and runoff into adjacent areas, which are both human-subsidized water sources for these predators.

The Draft EIR must analyze if this new use would result in an increase of common ravens and other predators of the desert tortoise in the region. Future operations must include provisions for monitoring and managing raven predation on tortoises as a result of the proposed action. A raven monitoring and management plan must include reducing human subsidies for food, water, and sites for nesting, roosting, and perching to address local impacts. The proponent must contribute to the National Fish and Wildlife Foundation's Raven Management Fund for regional and cumulative impacts. It is very important that for any of the gen-tie options the proponent should use transmission towers that prevent raven nesting. For example, the tubular monopole design with insulators on horizontal cross arms is preferable to lattice towers, which should not be used.

Please ensure that all standard measures to mitigate the local, regional, and cumulative impacts of raven predation on the tortoise are included in the Draft EIR, including developing a raven management plan for this specific project. USFWS (2010) provides a template for a project-specific management plan for common ravens. This template includes sections on construction, operation, maintenance, and decommissioning (including restoration) with monitoring and adaptive management during each project phase.

Page 6 indicates, "After grading, temporary fences would be placed around the project site, which would allow materials and equipment to be securely stored on-site and prevent theft and vandalism." We then read on page 6, under *Construction Activities and Equipment*, that "1. The first stage would include fencing, site preparation, grading, and preparation of staging areas and on-site access routes." These two statements seem to contradict one another, stating that fences would be installed after grading versus the "…first stage would include fencing."

Please clarify in the Draft EIR the timing of installation and the type of fence(s) that will be installed. We strongly recommend that the entire "solar array" be fenced as depicted by the yellow lines in the following aerial - as opposed to the "project site" depicted as a black line in the aerial - by a 1 x 2-inch mesh galvanized fence *before* any ground disturbance occurs.



For this project, the site itself and areas to the south and west are undeveloped, apparently intact habitats that likely support desert tortoises. We note that 10 tortoises were found on the nearby proposed Desert Breeze facility (see footnote above). Installing the tortoise exclusion fence before the vegetation is brushed will help accomplish two important things: (1) allow authorized biologists to perform clearance surveys (USFWS 2009) within the fenced area, and (2) prevent tortoises from entering the area before it is cleared and during construction. Since adjacent areas to the west and south will hopefully continue to support tortoises, it is important that the perimeter fence be installed before there is any ground disturbance to prevent tortoise immigration into the development footprint. If strategically planned, the proponent would be able to attach the tortoise exclusion fence, that is, the same 1 x 2-inch mesh that encloses the site to the bottom of the permanent perimeter fence before any grading occurs, which we assume would be chain-link or similar material to ensure it is visible to the public. Please be sure to consult Chapter 8 of the Desert Tortoise Field Manual (USFWS 2009) for the proper materials, specifications, and installation of tortoise exclusion fences.

Page 7 indicates, "An average of 150 workers would be on-site during each phase of construction, depending on the activities. The peak number of workers on the project site at any one time is anticipated to be 300. The workforce would consist of laborers, craftspeople, supervisory personnel, and support personnel. On average, it is anticipated that each worker would generate one round trip to the project site per workday. Most workers would commute to the project site from nearby communities, such as Boron and Barstow, with some traveling from more distant areas, such as Victorville, Hesperia, and San Bernardino. Construction would generally occur during daylight hours, though exceptions may arise because of the need for nighttime work. Workers would reach the project site using Harper Lake Road to Lockhart Ranch Road."

Harper Lake Road was fitted with a tortoise exclusion fence decades ago, but we have found that its maintenance has been problematic, that there are gaps, and that tortoises may still enter onto the asphalt surface. Even if no tortoises are found onsite and incidental take permits are not required (see discussion below), we recommend that tortoise awareness programs be administered to all construction and maintenance workers prior to and during construction and on an annual basis for maintenance workers. This recommendation is intended, in part, to be sure project-related personnel are aware of tortoises occurring along Harper Lake Road north of Highway 58 and particularly along the unfenced Helendale Road located south of Highway 58 with the objective of eliminating road mortality injury, and/or collection of tortoises by personnel associated with this project.

We superimposed a red line on the aerial photograph on the previous page to signify our recommendation for fence placement. We have intentionally placed the fence line along the "solar array" footprint rather than the "project site" denoted by the rectangular black line for several important reasons. That being said, if the areas to the west and northwest of the solar array are to be developed with ancillary features that need to be enclosed within the perimeter fence, we understand that a perimeter fence aligned with the "project site" would be required. And, if so, please consider the following.

We are concerned that a named road, "Kramer Road," would be blocked as the result of project development. There is also an unnamed road denoted by a light blue line in the aerial on the previous page that coincides with another existing, unimproved road. If the project site rather than the solar array is fenced, this road would also be blocked. In our experience, when existing roads are closed, if an alternative route is not provided, "social trails" will be created outside the perimeter fence. In many cases, these roads have a greater impact to air quality, soils, vegetation, wildlife than a well-defined graded road. So, please be sure the Draft EIR addresses the issue of vehicle access after the site is fenced. Please be sure that the perimeter fence right-of-way accommodates a public-use roadway immediately outside the fence to minimize the creation and impacts of social trails.

Additional Comments for Issues Not Given in the Notice of Preparation

Surveys

The Mojave desert tortoise is listed as threatened under the Federal Endangered Species Act (FESA) and California Endangered Species Act (CESA). These legal designations prohibit the "take" of the tortoise by anyone without prior authorization (e.g., incidental take permit), and for this project, require mitigation for the "impacts of the taking." Note than "take" includes capture, harm, or harassment of tortoises.

To determine whether take would occur, the USFWS has two types of surveys for the Mojave desert tortoise, 100% coverage surveys (USFWS 2019) and tortoise clearance surveys (USFWS 2009). One-hundred-percent surveys specify transect width, approval of the biologist conducting the surveys, area to be surveyed (i.e., actions area), and in some cases, the time of year. One-hundred-percent surveys are conducted to determine whether tortoises/tortoise sign are present in the "action area" for the proposed project (USFWS 2019). The "action area" is defined in 50 Code of Federal Regulations 402.2 and the USFWS Desert Tortoise Field Manual (USFWS 2009) as "all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action" (50 Code of Federal Regulations §402.02). Thus, the 100% coverage survey area is larger than the project footprint/project site. CDFW has adopted the USFWS's 100% coverage survey as the methodology to use (https://wildlife.ca.gov/Conservation/Survey-Protocols#377281283-reptiles) to determine tortoise presence/use of the action area and whether take would occur. Please be sure that the proponent's consultants speak with the USFWS and CDFW to determine an appropriate action area for this project, the surveys are conducted following the protocols for each survey type, the biologist(s) conducting the surveys are approved by the USFWS and CDFW prior to conducting the surveys, and the survey results of the entire action area be documented in the Draft EIR.

The methodology and results of the 100% coverage survey are documented and submitted to USFWS and CDFW. If any tortoise sign is found, the project proponent should coordinate with USFWS and CDFW to determine whether "take" under the FESA and CESA is likely to occur from implementation of the proposed project. If USFWS or CDFW determines that the construction, operation/use, maintenance, or decommissioning of the proposed project is likely to result in take of the tortoise, the project proponent must obtain a Section 10(a)(1)(B) incidental take permit from the USFWS and a Section 2081 incidental take permit from the CDFW prior to conducting any ground disturbance.

The incidental take permit will require that the project proponent conduct clearance surveys (USFWS 2009). If any tortoises are found, the incidental take permit(s) will include instructions on moving tortoises, which is a type of take, from the area to be impacted as well as other measures to minimize and mitigate the impacts of the taking.

We remind the County that this and any other actions funded, carried out, or authorized by the County such as issuance of a permit, must comply with FESA and CESA. Therefore, the County should require the project proponent to comply with the USFWS (2019) and CDFW 100% coverage survey protocol for the tortoise, and if the agencies determine an incidental take permit is required, the project proponent must obtain these incidental permits prior to initiating any clearance surveys (USFWS 2009) or ground disturbing activities. The County should require the applicant to obtain incidental take permits if USFWS and/or CDFW determine that a permit is needed.

Prior to performing surveys, the proponent's consultant should access the California Natural Diversity Data Base (CNDDB; CDFW 2024c) to determine the special status species reported from the region, the results of which need to be published in the Draft EIR. The project proponent should implement focused surveys for **all** special status species that may use the project area (including gen-tie lines and other ancillary facilities) using the appropriate methodologies for each taxa as specified by the USFW and CDFW, as follows: Mojave desert tortoise (USFWS 2009, 2019); Mohave ground squirrel (CDFW 2023); Swainson's hawk (CDFW 2010); American badger (Wearn and Glover-Kapfer 2017); kit fox (USFWS 2011); burrowing owl (CDFG 2012); Mojave fringe-toed lizards (*Uma scoparia*) (University of California Riverside, Center for Conservation Biology 2005); and special status native plant populations and natural communities (e.g., Spine scale Scrub, Winterfat Scrubland, and Joshua Tree Woodland) (CDFG 2009, CDFW 2018).

A jurisdictional waters analysis should be performed for all potential impacts to washes, streams, and drainages. This analysis should be reviewed by the CDFW as part of the permitting process and a Streambed Alteration Agreement acquired, if deemed necessary by CDFW.

<u>Impacts Analysis to Tortoise Conservation Areas and Linkage Habitats</u>

To assist the County and proponent with their cumulative effects analysis in the Draft EIR of the direct, indirect, synergistic, and cumulative impacts of the Proposed Project on the Mojave desert tortoise, we provide Appendix A with current information on its status and trends.

The West Mojave Plan (BLM 2005, 2006) created an exclusion area within the surrounding Fremont-Kramer and Superior-Cronese Critical Habitat Units, which completely surrounded the single existing solar development at the time, referred to as the "LUZ facility." Since then, several thousand acres of new solar facilities have been developed (Mojave and Lockhart solar facilities) and proposed (Desert Breeze and this one). It is important that the Draft EIR analyze the direct, indirect, synergistic, and cumulative effects of this and other solar developments that are surrounded by the two critical habitat units, Areas of Critical Environmental Concern (ACEC), National Conservation Lands (NCL), and nearby Wilderness Areas to the north. We ask specifically that the Draft EIR analyze the potential heat sink effects (Sinervo et al. 2013) that this and adjacent solar projects may be having on the tortoise populations in critical habitat.

Wildlife corridors are areas that are used periodically, and may not be continuously occupied by wildlife species. Consequently, a one-day visit to a project site would not provide sufficient information that the project site or nearby areas would not interfere substantially with the movement of any native resident wildlife species or established native resident wildlife corridors.

An online search of scientific literature (e.g., Google Scholar) would reveal the existence of scientific papers on areas important for connectivity for species such as the Mojave desert tortoise. For example, for the tortoise, Averill-Murray et al. (2021) published a paper on connectivity of Mojave desert tortoise populations and linkage habitat. The authors emphasized that "[m]aintaining an ecological network for the Mojave desert tortoise, with a system of core habitats (TCAs = Tortoise Conservation Areas) connected by linkages, is necessary to support demographically viable populations and long-term gene flow within and between TCAs."

"Ignoring minor or temporary disturbance on the landscape could result in a cumulatively large impact that is not explicitly acknowledged (Goble, 2009); therefore, understanding and quantifying all surface disturbance on a given landscape is prudent." Furthermore, "habitat linkages among TCAs must be **wide enough** [emphasis added] to sustain multiple home ranges or local clusters of resident tortoises (Beier, et al., 2008; Morafka, 1994), while accounting for edge effects, in order to sustain regional tortoise populations." Consequently, effective linkage habitats are not long narrow corridors. Any development within them has an edge effect (i.e., indirect impact) that extends from all sides into the linkage habitat further narrowing or impeding the use of the linkage habitat, depending on the extent of the edge effect.

Averill-Murray et al. (2021) further notes that "To help maintain tortoise inhabitance and permeability across all other non-conservation-designated tortoise habitat, all surface disturbance could be limited to less than 5-percent development per square kilometer because the 5-percent threshold for development is the point at which tortoise occupation drops precipitously (Carter, et al., 2020a)." They caution that the upper threshold of 5-percent development per square kilometer may not maintain population sizes needed for demographic or functional connectivity; therefore, development thresholds should be lower than 5-percent.

The lifetime home range for the Mojave desert tortoise is more than 1.5 square miles (3.9 square kilometers) of habitat (Berry 1986) and, as previously mentioned, may make periodic forays of more than 7 miles (11 kilometers) at a time (Berry 1986).

For the Mohave ground squirrel, CDFW published "A Conservation Strategy for the Mohave Ground Squirrel, *Xerospermophilus mohavensis*" in CDFW (2019). This document contains a map with linkage areas among the identified populations of the Mohave ground squirrel. Information from documents like these should be used to support the existence or absence of wildlife linkages in the project area and nearby.

We add that the fundamentals of conservation biology include the need for gene flow between populations to maintain genetic diversity; this enables a species to more likely survive, especially during climate change, which enables biodiversity. Thus, linkage habitats are important as they provide connectivity among wildlife populations to maintain viability and biodiversity.

Indirect impacts

We request that the Draft EIR address the effects of the proposed action on global warming and the effects that global warming may have on the proposed action. For the latter, we recommend including: an analysis of habitats within the project that may provide refugia for tortoise populations; an analysis of how the proposed action would contribute to the spread and proliferation of nonnative invasive plant species; how this spread/proliferation would affect the desert tortoise and its habitats (including the frequency and size of human-caused fires); and how the proposed action may affect the likelihood of human-caused fires. We strongly urge the Proponent to develop and implement a management and monitoring plan using this analysis and other relevant data that would reduce the transport to and spread of nonnative seeds and other plant propagules within the project area and eliminate/reduce the likelihood of human-caused fires. The plan should integrate vegetation management with fire management and fire response.

Mitigation and Monitoring Plans

The Draft EIR should include appropriate mitigation and monitoring plans for all direct, indirect, and cumulative effects to the tortoise and its habitats; the mitigation and monitoring plans should use the best available science with a commitment to implement the mitigation commensurate to impacts to the tortoise and its habitats. Mitigation and monitoring should include a fully-developed desert tortoise translocation plan; tortoise predator management plan; non-native plants species management plan; fire prevention and management plan; compensation plan for the degradation and loss of tortoise habitat that includes protection of the acquired, improved, and restored habitat in perpetuity for the tortoise from future development and human use; a plan to protect tortoise translocation area(s) from future development and human use in perpetuity; and habitat restoration plan for the project site when the lease is terminated and the proposed project is decommissioned.

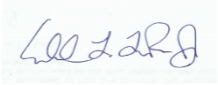
These mitigation and monitoring plans should include implementation schedules that are tied to key actions of the construction, operation, maintenance, decommissioning, and restoration phases of the project so that mitigation occurs concurrently with or in advance of the impacts. The plans should specify success criteria, include a monitoring plan to collect data to determine whether success criteria have been met, and identify actions that would be required if the mitigation measures do not meet the success criteria.

The Draft EIR, based on the results of the tortoise protocol surveys, must discuss the displacement of tortoises from the impact area. Will these tortoises be relocated into adjacent areas or are they to be translocated into distant areas? The Draft EIR should present the intended approach to relocating/translocating displaced tortoises. Additionally, there should be a discussion of previous translocation efforts, such as at Fort Irwin National Training Center and more recently at Twentynine Palms Marine Corps Base, to ensure that translocation standards are up-to-date and acceptable to both USFWS and CDFW.

We appreciate this opportunity to provide the above comments and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by San Bernardino County that may affect desert tortoises, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above.

Please respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this Project.

Respectfully,



Edward L. LaRue, Jr., M.S.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

cc. Heidi Calvert, Regional Manager, Region 6 – Inland and Desert Region, California Department of Fish and Wildlife, Heidi.Calvert@wildlife.ca.gov
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Literature Cited

Averill-Murray, R.C., T.C. Esque, L.J. Allison, S. Bassett, S.K. Carter, K.E. Dutcher, S.J. Hromada, K.E. Nussear, and K. Shoemaker. 2021. Connectivity of Mojave Desert tortoise populations—Management implications for maintaining a viable recovery network. U.S. Geological Survey Open-File Report 2021–1033, 23 p., https://doi.org/ 10.3133/ ofr20211033. https://pubs.usgs.gov/of/2021/1033/ofr20211033.pdf

Beier, P., D.R. Majka, and W.D. Spencer. 2008. Forks in the road—Choices in procedures for designing wildland linkages. Conservation Biology 22(4): 836–851, https://doi.org/ 10.1111/ j.1523- 1739.2008.00942.x. https://conbio.onlinelibrary.wiley.com/doi/epdf/10.1111/j.1523-1739.2008.00942.x

Berry, K.H. 1986. Desert tortoise (*Gopherus agassizii*) relocation: Implications of social behavior and movements. Herpetologica 42:113-125. https://www.jstor.org/stable/3892242

Berry, K.H., L.J. Allison, A.M. McLuckie, M. Vaughn, and R.W. Murphy. 2021. *Gopherus agassizii*. The IUCN Red List of Threatened Species 2021: e.T97246272A3150871. https://dx.doi.org/10.2305/IUCN.UK.2021-2.RLTS.T97246272A3150871.en

[BLM] U.S. Bureau of Land Management. 2005. Final Environmental Impact Report and Statement for the West Mojave Plan, a Habitat Conservation Plan and California Desert Conservation Area Plan Amendment. Dated January 2005. Moreno Valley, CA.

[BLM] U.S. Bureau of Land Management. 2006. Record of Decision: West Mojave Plan, an Amendment to the California Desert Conservation Area Plan 1980. Dated March 2006. Sacramento, CA.

Carter, S.K., K.E. Nussear, T.C. Esque, I.I.F. Leinwand, E. Masters, R.D. Inman, N.B. Carr, and L.J. Allison. 2020. Quantifying development to inform management of Mojave and Sonoran desert tortoise habitat in the American southwest. Endangered Species Research 42: 167–184. https://doi.org/ 10.3354/ esr01045. https://www.int-res.com/articles/esr2020/42/n042p167.pdf

[CDFG] California Department of Fish and Game. 2009. Protocols for surveying and evaluating impacts to special status native plant populations and natural communities. California Natural Resources Agency, Department of Fish and Wildlife, 24 November 2009. Sacramento, CA.

[CDFG] California Department of Fish and Game. 2010. Swainson's hawk survey protocols, impact avoidance, and minimization measures for renewable energy projects in the Antelope Valley of Los Angeles and Kern Counties, California. State of California, California Energy Commission and Department of Fish and Game, 2 June 2010. Sacramento, CA.

[CDFG] California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. The 7 March 2012 memo replacing 1995 staff report, State of California Natural resources Agency, Department of Fish and Wildlife. Sacramento, CA.

[CDFW] California Department of Fish and Wildlife. 2018. Protocols for surveying and evaluating impacts to special status native plant populations and natural communities. California Natural Resources Agency, Department of Fish and Wildlife, 20 March 2018. Sacramento, CA. https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline

[CDFW] California Department of Fish and Wildlife. 2019. A Conservation Strategy for the Mohave ground squirrel (*Xerospermophilus mohavensis*). Dated July 2019, 128 pp.

[CDFW] California Department of Fish and Wildlife. 2023. Mohave Ground Squirrel Survey Guidelines (January 2003; revised July 2010, October 2023). Unpublished guidelines produced by CDFW. Sacramento, CA.

[CDFW] California Department of Fish and Wildlife. 2024a. Status Review for Mojave Desert Tortoise (*Gopherus agassizii*). Report to the California Fish and Game Commission. California Department of Fish and Wildlife, 715 P Street, Sacramento, CA 95814. 228 pp. with appendices. https://fgc.ca.gov/CESA#adt

[CDFW] California Department of Fish and Wildlife. 2024b. What is a species of special concern? https://wildlife.ca.gov/Conservation/SSC

[CDFW] California Department of Fish and Wildlife. 2024c. Electronic database of rare plant and animal species reported to The State Resources Agency, Natural Heritage Division, California Natural Diversity Data Base. Updated monthly. Sacramento, CA.

Defenders of Wildlife, Desert Tortoise Preserve Committee, and Desert Tortoise Council. 2020. A Petition to the State of California Fish And Game Commission to move the Mojave desert tortoise from listed as threatened to endangered. Formal petition submitted 11 March 2020. https://defenders.org/sites/default/files/2020-03/Desert%20Tortoise%20Petition%203_20_2020%20Final_0.pdf

Goble, D.D. 2009. The endangered species act—What we talk about when we talk about recovery: Natural Resources Journal, v. 49, p. 1–44. https://www.jstor.org/stable/24889187

Morafka, D.J. 1994. Neonates–Missing links in the life histories of North American tortoises, in Bury, R.B., and Germano, D.J., eds., Biology of North American tortoises: Washington, D.C., National Biological Survey, Fish and Wildlife Research, v. 13, p. 161–173.

Sinervo, B., J. Lovich, J Ennen, D. Miles, R. Cooper, and R. Huey. 2013. The impact of solar farms and wind farms on population persistence and extinction of the desert tortoise, *Gopherus agassizii*. Paper presented at the Effects of Energy Development on Herps Symposium, Galisteo/Aztec, Saturday 13 July 2013.

University of California Riverside, Center for Conservation Biology. 2005. Coachella Valley Multiple Species Habitat Conservation Plan Monitoring Program (Final Report). 2002-2005 unpublished progress report to Coachella Valley Association of Governments. Riverside, CA. 164 pp. (Coachella Valley fringe-toed lizard survey protocol revised in 2007).

[USFWS] U.S. Fish and Wildlife Service. 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*). December 2009. Region 8, Sacramento, California. https://www.fws.gov/sites/default/files/documents/Desert-Tortoise-Field-Manual.pdf

[USFWS] U.S. Fish and Wildlife Service. 2010. Common raven predation on the desert tortoise. USFWS, Ventura Fish and Wildlife Office, Ventura, CA.

[USFWS] USFWS. 2011. Standard recommendations for the protection of the San Joaquin kit fox prior to or during ground disturbance. https://www.fws.gov/sites/default/files/documents/survey-protocols-for-the-san-joaquin-kit-fox.pdf

[USFWS] U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Dated 21 August 2017. Reno, NV.

Wearn, O. R. and P. Glover-Kapfer. 2017. Camera-trapping for conservation: a guide to best-practices. WWF Conservation Technology Series 1. WWF-UK, Woking, United Kingdom.

Appendix A. Demographic Status and Trend of the Mojave Desert Tortoise (*Gopherus agassizii*)

We provide the following information on the status and trend of the listed population of the desert tortoise to assist the County with its analysis of the direct, indirect, and cumulative impacts of the proposed project on the Mojave desert tortoise.

BLM's implementation of a conservation strategy for the Mojave desert tortoise in its resource management plans through 2020 has resulted in the following changes in the status for the tortoise throughout its range and in Nevada from 2004 to 2014 (Table 1; USFWS 2015) and 2004 to 2020 (Table 2). There are 17 populations of Mojave desert tortoise described below that occur in the Critical Habitat Units (CHUs) and Tortoise Conservation Areas (TCAs); 14 are on lands managed by the BLM.

The Desert Tortoise Council (Council) has serious concerns about direct, indirect, and cumulative sources of human mortality for the Mojave desert tortoise given the status and trend of the species range-wide, within each of the five recovery units, and within the TCAs that comprise each recovery unit.

Densities of Adult Mojave Desert Tortoises: A few years after listing the Mojave desert tortoise under the Federal Endangered Species Act (FESA), the U.S. Fish and Wildlife Service (USFWS) published a Recovery Plan for the Mojave desert tortoise (USFWS 1994a). It contained a detailed population viability analysis. In this analysis, the minimum viable density of a Mojave desert tortoise population is 10 adult tortoises per mile^2 (3.9 adult tortoises per km^2). This assumed a male-female ratio of 1:1 (USFWS 1994a, page C25) and certain areas of habitat with most of these areas geographically linked by adjacent borders or corridors of suitable tortoise habitat. Populations of Mojave desert tortoises with densities below this density are in danger of extinction (USFWS 1994a, page 32). The revised recovery plan (USFWS 2011) designated five recovery units for the Mojave desert tortoise that are intended to conserve the genetic, behavioral, and morphological diversity necessary for the recovery of the entire listed species (Allison and McLuckie 2018).

Range-wide, densities of adult Mojave desert tortoises declined more than 32% between 2004 and 2014 (Table 1) (USFWS 2015). At the recovery unit level, between 2004 and 2014, densities of adult desert tortoises declined, on average, in every recovery unit except the Northeastern Mojave (Table 1). Adult densities in the Northeastern Mojave Recovery Unit increased 3.1% per year (SE = 4.3%), while the other four recovery units declined at different annual rates: Colorado Desert (–4.5%, SE = 2.8%), Upper Virgin River (–3.2%, SE = 2.0%), Eastern Mojave (–11.2%, SE = 5.0%), and Western Mojave (–7.1%, SE = 3.3%)(Allison and McLuckie 2018). However, the small area and low starting density of the tortoises in the Northeastern Mojave Recovery Unit (lowest density of all Recovery Units) resulted in a small overall increase in the number of adult tortoises by 2014 (Allison and McLuckie 2018). In contrast, the much larger areas of the Eastern Mojave, Western Mojave, and Colorado Desert recovery units, plus the higher estimated initial densities in these areas, explained much of the estimated total loss of adult tortoises since 2004 (Allison and McLuckie 2018).

At the population level, represented by tortoises in the TCAs, densities of 10 of 17 monitored populations of the Mojave desert tortoise declined from 26% to 64% and 11 have densities less than 3.9 adult tortoises per km^2 (USFWS 2015).

Population Data on Mojave Desert Tortoise: The Mojave desert tortoise was listed as threatened under the FESA in 1990. The listing was warranted because of ongoing population declines throughout the range of the tortoise from multiple human-caused activities. Since the listing, the status of the species has changed. Population numbers (abundance) and densities continue to decline substantially (please see Tables 1 and 2).

Table 1. Summary of 10-year trend data for 5 Recovery Units and 17 CHUs/TCAs for the Mojave desert tortoise, *Gopherus agassizii* (=Agassiz's desert tortoise). The table includes the area of each Recovery Unit and CHU/TCA, percent of total habitat for each Recovery Unit and CHU/TCA, density (number of breeding adults/km^2 and standard errors = SE), and the percent change in population density between 2004-2014. Populations below the viable level of 3.9 adults/km^2 (10 adults per mi^2) (assumes a 1:1 sex ratio) and showing a decline from 2004 to 2014 are in red (Allison and McLuckie 2018, USFWS 2015).

Recovery Unit Designated CHU/TCA	Surveyed area (km^2)	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/km^2 (SE)	% 10-year change (2004–2014)
Western Mojave, CA	**6,294**	**24.51**	**2.8 (1.0)**	**–50.7 decline**
Fremont-Kramer	2,347	9.14	2.6 (1.0)	–50.6 decline
Ord-Rodman	852	3.32	3.6 (1.4)	–56.5 decline
Superior-Cronese	3,094	12.05	2.4 (0.9)	–61.5 decline
Colorado Desert, CA	**11,663**	**45.42**	**4.0 (1.4)**	**–36.25 decline**
Chocolate Mtn AGR, CA	713	2.78	7.2 (2.8)	–29.77 decline
Chuckwalla, CA	2,818	10.97	3.3 (1.3)	–37.43 decline
Chemehuevi, CA	3,763	14.65	2.8 (1.1)	–64.70 decline
Fenner, CA	1,782	6.94	4.8 (1.9)	–52.86 decline
Joshua Tree, CA	1,152	4.49	3.7 (1.5)	+178.62 increase
Pinto Mtn, CA	508	1.98	2.4 (1.0)	–60.30 decline
Piute Valley, NV	927	3.61	5.3 (2.1)	+162.36 increase
Northeastern Mojave	**4,160**	**16.2**	**4.5 (1.9)**	**+325.62 increase**
Beaver Dam Slope, NV, UT, AZ	750	2.92	6.2 (2.4)	+370.33 increase
Coyote Spring, NV	960	3.74	4.0 (1.6)	+ 265.06 increase
Gold Butte, NV & AZ	1,607	6.26	2.7 (1.0)	+ 384.37 increase
Mormon Mesa, NV	844	3.29	6.4 (2.5)	+ 217.80 increase
Eastern Mojave, NV & CA	**3,446**	**13.42**	**1.9 (0.7)**	**–67.26 decline**
El Dorado Valley, NV	999	3.89	1.5 (0.6)	–61.14 decline
Ivanpah Valley, CA	2,447	9.53	2.3 (0.9)	–56.05 decline
Upper Virgin River	**115**	**0.45**	**15.3 (6.0)**	**–26.57 decline**
Red Cliffs Desert	115	0.45	15.3 (6.0)	–26.57 decline
Total amount of land	**25,678**	**100.00**		**–32.18 decline**

Density of Juvenile Mojave Desert Tortoises: Survey results indicate that the proportion of juvenile desert tortoises has been decreasing in all five recovery units since 2007 (Allison and McLuckie 2018). The probability of encountering a juvenile tortoise was consistently lowest in the Western Mojave Recovery Unit. Allison and McLuckie (2018) provided reasons for the decline in juvenile desert tortoises in all recovery units. These included decreased food availability for adult female tortoises resulting in reduced clutch size, decreased food availability resulting in increased mortality of juvenile tortoises, prey switching by coyotes from mammals to tortoises, and increased abundance of common ravens that typically prey on smaller desert tortoises.

Declining adult tortoise densities through 2014 have left the Eastern Mojave adult numbers at 33% (a 67% decline of their 2004 levels) (Allison and McLuckie 2018, USFWS 2015). Such steep declines in the density of adults are only sustainable if there are suitably large improvements in reproduction and juvenile growth and survival. However, the proportion of juveniles has not increased anywhere in the range of the Mojave desert tortoise since 2007, and in the Eastern Mojave Recovery Unit the proportion of juveniles in 2014 declined from 14 to 11 percent (a 21% decline) of their representation since 2007 (Allison and McLuckie 2018).

The USFWS and Utah Division of Wildlife Resources have continued to collect density data on the Mojave desert tortoise since 2014. The results are provided in Table 2 along with the analysis USFWS (2015) conducted for tortoise density data from 2004 through 2014. These data show that adult tortoise densities in most Recovery Units continued to decline in density since the data collection methodology was initiated in 2004. In addition, in the Northeastern Mojave Recovery Unit that had shown an overall increase in tortoise density between 2004 and 2014, subsequent data indicate a decline in density since 2014 (USFWS 2016, 2018, 2019, 2020, 2022a, 2022b).

Table 2. Summary of data for Agassiz's desert tortoise, *Gopherus agassizii* (=Mojave desert tortoise) from 2004 to 2021 for the 5 Recovery Units and 17 CHUs/TCAs. The table includes the area of each Recovery Unit and CHU/TCA, percent of total habitat for each Recovery Unit and CHU/TCA, density (number of breeding adults/km^2 and standard errors = SE), and percent change in population density between 2004-2014 (USFWS 2015). Populations below the viable level of 3.9 breeding individuals/km^2 (10 breeding individuals per mi^2) (assumes a 1:1 sex ratio) (USFWS 1994a, 2015) or showing a decline from 2004 to 2014 are in **red.**

Recovery Unit: Designated CHU/TCA &	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/ km^2 (SE)	% 10-year change (2004–2014)	2015 density/ km^2	2016 density/ km^2	2017 density/ km^2	2018 density/ km^2	2019 density/ km^2	2020 density/ km^2	2021 density/ km^2
Western Mojave, CA	**24.51**	**2.8 (1.0)**	**–50.7 decline**							
Fremont-Kramer	9.14	2.6 (1.0)	–50.6 decline	4.5	No data	4.1	No data	2.7	1.7	No data
Ord-Rodman	3.32	3.6 (1.4)	–56.5 decline	No data	No data	3.9	2.5/3.4*	2.1/2.5*	No data	1.9/2.5*
Superior-Cronese	12.05	2.4 (0.9)	–61.5 decline	2.6	3.6	1.7	No data	1.9	No data	No data
Colorado Desert, CA	**45.42**	**4.0 (1.4)**	**–36.25 decline**							
Chocolate Mtn AGR, CA	2.78	7.2 (2.8)	–29.77 decline	10.3	8.5	9.4	7.6	7.0	7.1	3.9
Chuckwalla, CA	10.97	3.3 (1.3)	–37.43 decline	No data	No data	4.3	No data	1.8	4.6	2.6
Chemehuevi, CA	14.65	2.8 (1.1)	–64.70 decline	No data	1.7	No data	2.9	No data	4.0	No data
Fenner, CA	6.94	4.8 (1.9)	–52.86 decline	No data	5.5	No data	6.0	2.8	No data	5.3
Joshua Tree, CA	4.49	3.7 (1.5)	+178.62 increase	No data	2.6	3.6	No data	3.1	3.9	No data

Recovery Unit: Designated CHU/TCA	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/km^2 (SE)	% 10-year change (2004–2014)	2015	2016	2017	2018	2019	2020	2021
Pinto Mtn, CA	1.98	2.4 (1.0)	–60.30 decline	No data	2.1	2.3	No data	1.7	2.9	No data
Piute Valley, NV	3.61	5.3 (2.1)	+162.36 increase	No data	4.0	5.9	No data	No data	No data	3.9
Northeastern Mojave AZ, NV, & UT	**16.2**	**4.5 (1.9)**	**+325.62 increase**							
Beaver Dam Slope, NV, UT, & AZ	2.92	6.2 (2.4)	+370.33 increase	No data	5.6	1.3	5.1	2.0	No data	No data
Coyote Spring, NV	3.74	4.0 (1.6)	+ 265.06 increase	No data	4.2	No data	No data	3.2	No data	No data
Gold Butte, NV & AZ	6.26	2.7 (1.0)	+ 384.37 increase	No data	No data	1.9	2.3	No data	No data	2.4
Mormon Mesa, NV	3.29	6.4 (2.5)	+ 217.80 increase	No data	2.1	No data	3.6	No data	5.2	5.2
Eastern Mojave, NV & CA	**13.42**	**1.9 (0.7)**	**–67.26 decline**							
El Dorado Valley, NV	3.89	1.5 (0.6)	–61.14 decline	No data	2.7	5.6	No data	2.3	No data	No data
Ivanpah Valley, CA	9.53	2.3 (0.9)	–56.05 decline	1.9	No data	No data	3.7	2.6	No data	1.8

Recovery Unit: Designated CHU/TCA	% of total habitat area in Recovery Unit & CHU/TCA	2004 density/ km^2	2014 density/km^2 (SE)	% 10-year change (2004–2014)	2015	2016	2017	2018	2019	2020	2021
Upper Virgin River, UT & AZ	**0.45**		**15.3 (6.0)**	**–26.57 decline**							
Red Cliffs Desert**	0.45	29.1 (21.4-39.6)**	15.3 (6.0)	–26.57 decline	15.0	No data	19.1	No data	17.2	No data	
Range-wide Area of CHUs - TCAs/Range-wide Change in Population Status	**100.00**			**–32.18 decline**							

*This density includes the adult tortoises translocated from the expansion of the MCAGCC, that is resident adult tortoises and translocated adult tortoises.

**Methodology for collecting density data initiated in 1999.

Abundance of Mojave Desert Tortoises: Allison and McLuckie (2018) noted that because the area available to tortoises (i.e., tortoise habitat and linkage areas between habitats) is decreasing, trends in tortoise density no longer capture the magnitude of decreases in abundance. Hence, they reported on the change in abundance or numbers of the Mojave desert tortoise in each recovery unit (Table 2). They noted that these estimates in abundance are likely higher than actual numbers of tortoises, and the changes in abundance (i.e., decrease in numbers) are likely lower than actual numbers because of their habitat calculation method. They used area estimates that removed only impervious surfaces created by development as cities in the desert expanded. They did not consider degradation and loss of habitat from other sources, such as the recent expansion of military operations (753.4 km^2 so far on Fort Irwin and the Marine Corps Air Ground Combat Center), intense or large scale fires (e.g., 576.2 km^2 of critical habitat that burned in 2005), development of utility-scale solar facilities (as of 2015, 194 km^2 have been permitted) (USFWS 2016), or other sources of degradation or loss of habitat (e.g., recreation, mining, grazing, infrastructure, etc.). Thus, the declines in abundance of Mojave desert tortoise are likely greater than those reported in Table 3.

Table 3. Estimated change in abundance of adult Mojave desert tortoises in each recovery unit between 2004 and 2014 (Allison and McLuckie 2018). Decreases in abundance are in red.

Recovery Unit	Modeled Habitat (km^2)	2004 Abundance	2014 Abundance	Change in Abundance	Percent Change in Abundance
Western Mojave	23,139	131,540	64,871	-66,668	-51%
Colorado Desert	18,024	103,675	66,097	-37,578	-36%
Northeastern Mojave	10,664	12,610	46,701	34,091	270%
Eastern Mojave	16,061	75,342	24,664	-50,679	-67%
Upper Virgin River	613	13,226	10,010	-3,216	-24%
Total	**68,501**	**336,393**	**212,343**	**-124,050**	**-37%**

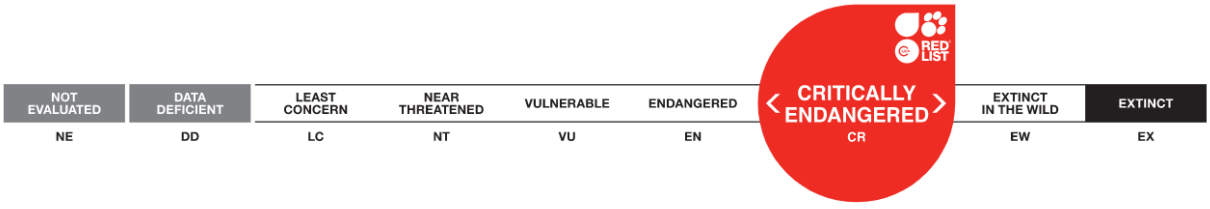
Habitat Availability: Data on population density or abundance does not indicate population viability. The area of protected habitat or reserves for the subject species is a crucial part of the viability analysis along with data on density, abundance, and other population parameters. In the Desert Tortoise (Mojave Population) Recovery Plan (USFWS 1994a), the analysis of population viability included population density and size of reserves (i.e., areas managed for the desert tortoise) and population numbers (abundance) and size of reserves. The USFWS Recovery Plan reported that as population densities for the Mojave desert tortoise decline, reserve sizes must increase, and as population numbers (abundance) for the Mojave desert tortoise decline, reserve sizes must increase (USFWS 1994a). In 1994, reserve design (USFWS 1994a) and designation of critical habitat (USFWS 1994b) were based on the population viability analysis from numbers (abundance) and densities of populations of the Mojave desert tortoise in the early 1990s. Inherent in this analysis is that the lands be managed with reserve level protection (USFWS 1994a, page 36) or ecosystem protection as described in section 2(b) of the FESA, and that sources of mortality be reduced so recruitment exceeds mortality (that is, lambda > 1)(USFWS 1994a, page C46).

Habitat loss would also disrupt the prevailing population structure of this widely distributed species with geographically limited dispersal (isolation by resistance Dutcher et al. 2020). Allison and McLuckie (2018) anticipate an additional impact of this habitat loss/degradation is decreasing resilience of local tortoise populations by reducing demographic connections to neighboring populations (Fahrig 2007). Military and commercial operations and infrastructure projects that reduce tortoise habitat in the desert are anticipated to continue (Allison and McLuckie 2018) as are other sources of habitat loss/degradation.

Allison and McLuckie (2018) reported that the life history of the Mojave desert tortoise puts it at greater risk from even slightly elevated adult mortality (Congdon et al. 1993; Doak et al. 1994), and recovery from population declines will require more than enhancing adult survivorship (Spencer et al. 2017). The negative population trends in most of the TCAs for the Mojave desert tortoise indicate that this species is on the path to extinction under current conditions (Allison and McLuckie 2018). They state that their results are a call to action to remove ongoing threats to tortoises from TCAs, and possibly to contemplate the role of human activities outside TCAs and their impact on tortoise populations inside them.

Densities, numbers, and habitat for the Mojave desert tortoise declined between 2004 and 2014 and densities continue to decline in most Recovery Units since 2014. As reported in the population viability analysis, to improve the status of the Mojave desert tortoise, reserves (area of protected habitat) must be established and managed. When densities of tortoises decline, the area of protected habitat must increase. When the abundance of tortoises declines, the area of protected habitat must increase. We note that the Desert Tortoise (Mojave Population) Recovery Plan was released in 1994 and its report on population viability and reserve design was reiterated in the 2011 Revised Recovery Plan as needing to be updated with current population data (USFWS 2011, p. 83). With lower population densities and abundance, a revised population viability analysis would show the need for greater areas of habitat to receive reserve level of management for the Mojave desert tortoise. In addition, we note that none of the recovery actions that are fundamental tenets of conservation biology has been implemented throughout most or all of the range of the Mojave desert tortoise.

IUCN Species Survival Commission: The Mojave desert tortoise is now on the list of the world's most endangered tortoises and freshwater turtles. It is in the top 50 species. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers Mojave desert tortoise to be Critically Endangered (Berry et al. 2021). As such, it is a "species that possess an extremely high risk of extinction as a result of rapid population declines of 80 to more than 90 percent over the previous 10 years (or three generations), a current population size of fewer than 50 individuals, or other factors." It is one of three turtle and tortoise species in the United States to be critically endangered. This designation is more grave than endangered.



Literature Cited in Appendix A

Allison, L.J. and A.M. McLuckie. 2018. Population trends in Mojave desert tortoises (*Gopherus agassizii*). Herpetological Conservation and Biology 13(2):433–452.

Berry, K.H., L.J. Allison, A.M. McLuckie, M. Vaughn, and R.W. Murphy. 2021. *Gopherus agassizii*. The IUCN Red List of Threatened Species 2021: e.T97246272A3150871. https://dx.doi.org/10.2305/IUCN.UK.2021-2.RLTS.T97246272A3150871.en

Congdon, J.D., A.E. Dunham, and R.C. van Loeben Sels. 1993. Delayed sexual maturity and demographics of Blanding's Turtles (*Emydoidea blandingii*): implications for conservation and management of long-lived organisms. Conservation Biology 7:826–833.

Doak, D., P. Karieva, and B. Klepetka.1994. Modeling population viability for the Desert Tortoise in the Western Mojave. Ecological Applications 4:446–460.

Dutcher, K.E., A.G. Vandergast, T.C Esque, A. Mitelberg, M.D. Matocq, J.S. Heaton, and K.E. Nussear. 2020. Genes in space: what Mojave desert tortoise genetics can tell us about landscape connectivity. Conservation Genetics 21:289–303(2020).

Fahrig, L. 2007. Non-optimal animal movement in human-altered landscapes. Functional Ecology 21:1003–1015.

Murphy, R.W., K.H. Berry, T. Edwards, and A.M. McLuckie. 2007. A genetic assessment of the recovery units for the Mojave population of the Desert Tortoise, *Gopherus agassizii*. Chelonian Conservation and Biology 6:229–251.

Murphy, R.W., K.H. Berry, T. Edwards, A.E. Leviton, A. Lathrop, and J. D. Riedle. 2011. The dazed and confused identity of Agassiz's land tortoise, *Gopherus agassizii* (Testudines, Testudinidae) with the description of a new species, and its consequences for conservation. ZooKeys 113: 39–71. doi: 10.3897/zookeys.113.1353.

Spencer, R.-J., J.U. Van Dyke, and M.B. Thompson. 2017. Critically evaluating best management practices for preventing freshwater turtle extinctions. Conservation Biology 31:1340–1349.

Turtle Conservation Coalition. 2018. Turtles in Trouble: The World's 25+ Most Endangered Tortoises and Freshwater Turtles. www.iucn-tftsg.org/trouble.

[USFWS] U.S. Fish and Wildlife Service. 1994a. Desert tortoise (Mojave population) Recovery Plan. U.S. Fish and Wildlife Service, Region 1, Portland, Oregon. 73 pages plus appendices.

[USFWS] U.S. Fish and Wildlife Service. 1994b. Endangered and threatened wildlife and plants; determination of critical habitat for the Mojave population of the desert tortoise. Federal Register 55(26):5820-5866. Washington, D.C.

[USFWS] U.S. Fish and Wildlife Service. 2011. Revised Recovery Plan for the Mojave Population of the Desert Tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, California and Nevada Region, Sacramento, California.

[USFWS] U.S. Fish and Wildlife Service. 2015. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2013 and 2014 Annual Reports. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. https://www.fws.gov/sites/default/files/documents/USFWS.2015%20report.%20Rangewide%20monitoring%20report%202013-14.pdf

[USFWS] U.S. Fish and Wildlife Service. 2016. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2015 and 2016 Annual Reporting. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. https://www.fws.gov/sites/default/files/documents/USFWS.2016%20report.%20Rangewide%20monitoring%20report%202015-16.pdf

[USFWS] U.S. Fish and Wildlife Service. 2018. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2017 Annual Reporting. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. https://www.fws.gov/sites/default/files/documents/USFWS.2018%20report.%20Rangewide%20monitoring%20report%202017.pdf

[USFWS] U.S. Fish and Wildlife Service. 2019. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2018 Annual Reporting. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. https://www.fws.gov/sites/default/files/documents/USFWS.2019%20report.%20Rangewide%20monitoring%20report%202018.pdf

[USFWS] U.S. Fish and Wildlife Service. 2020. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2019 Annual Reporting. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. 42 pages. https://www.fws.gov/sites/default/files/documents/2019_Rangewide%20Mojave%20Desert%20Tortoise%20Monitoring.pdf

[USFWS] U.S. Fish and Wildlife Service. 2022a. Range-wide Monitoring of the Mojave Desert Tortoise (Gopherus agassizii): 2020 Annual Reporting. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. https://www.fws.gov/sites/default/files/documents/USFWS.2022%20report.%20Rangewide%20monitoring%20report%202020.pdf

[USFWS] U.S. Fish and Wildlife Service. 2022b. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2021 Annual Reporting. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada. https://www.fws.gov/sites/default/files/documents/USFWS.2022%20report.%20Rangewide%20monitoring%20report%202021.pdf

Lahontan Regional Water Quality Control Board

February 8, 2024

File: Environmental Doc Review
San Bernardino County

Jon Braginton
Land Use Services Department
385 N. Arrowhead Avenue, First Floor
San Bernardino, CA 92415
Jon.Braginton@lus.scbounty.gov

Comments on the Notice of Preparation of a Draft Environmental Impact Report, Overnight Solar Project, San Bernardino County

The California Regional Water Quality Control Board, Lahontan Region (Water Board) staff received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the above-referenced Project (Project) on January 24, 2024. The NOP was prepared by San Bernardino County (County) and submitted in compliance with provisions of the California Environmental Quality Act (CEQA). Based on our review of the NOP, we recommend the following: (1) natural drainage channels and flow paths should be maintained through the Project site to ensure no net loss of function and value of waters of the state; and (2) a site-specific Storm Water Pollution Prevention Plan (SWPPP) should be prepared that identifies a combination of sediment and erosion control best management practices (BMPs) to effectively treat storm water runoff during the life of the Project. Our comments are outlined below.

WATER BOARD'S AUTHORITY

All groundwater and surface waters are considered waters of the State. All waters of the State are protected under California law. State law assigns responsibility for protection of water quality in the Lahontan Region to the Lahontan Water Board. Some waters of the State are also waters of the United States. The Federal Clean Water Act (CWA) provides additional protection for those waters of the State that are also waters of the United States.

The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) contains policies that the Water Board uses with other laws and regulations to protect the quality of waters of the State within the Lahontan Region. The Basin Plan sets forth water quality standards for surface water and groundwater of the Region, which include designated beneficial uses as well as narrative and numerical objectives which must be maintained or attained to protect those uses. The Basin Plan can be accessed via the Water Board's web site at

http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/references.shtml.

WATER QUALITY CONCERNS

Our comments on the Project are outlined below.

1. In general, the installation of Photovoltaic (PV) grid systems for these types of projects has the potential to hydrologically modify natural drainage systems. Of particular concern is the collection of onsite storm water runoff and the concentrated discharge of that storm water to natural drainage channels. Design alternatives that are compatible with low impact development (LID) should be considered. LID components include: maintaining natural drainage paths and landscape features to slow and filter runoff and maximize groundwater recharge; managing runoff as close to the source as possible; and maintaining vegetated areas for storm water management and onsite infiltration. We recommend natural drainage channels and flow paths be maintained through the Project site to avoid no net loss of function and value of waters of the state as a result of Project implementation.

2. A Project-specific SWPPP and implementation of site-specific erosion and sediment control BMPs is an effective way to reduce potentially significant water quality impacts to a less than significant level. To that end, we recommend the development and implementation of a Project-specific SWPPP during both the construction and post-construction phases of the Project. The SWPPP should be applicable to all areas of the Project site, including the solar fields, access roads to and through the site, and the gen-tie line. Please note that temporary BMPs need to be implemented for the Project until such time that vegetation has been restored to pre-Project conditions or permanent BMPs are in place and functioning.

3. The DEIR should identify post-construction storm water management as a significant Project component, and a variety of BMPs that effectively treat post-construction storm water runoff, particularly maintaining native vegetation, should be evaluated as part of the Project. Based on our experience with other solar developments in the Mojave Desert, native vegetation is the most efficient and cost-effective post-construction BMP to treat storm water runoff. Because revegetating disturbed soils in the desert is particularly challenging due to low rainfall, extreme climatic conditions, and relatively slow growth rates, we strongly encourage Project proponents to maintain and mow existing vegetation rather than clear and grub the entire site during construction. For those projects where native vegetation is maintained, we have observed that the need to implement temporary BMPs is greatly minimized and the costs associated with implementation and maintenance of post-construction BMPs is significantly reduced.

4. The Project site is located within the Lockhart Hydrologic Area (628.40) of the Harper Lake Hydrologic Sub Unit (628.42), and groundwater beneath the Project site is contained within the Middle Mojave River Valley Groundwater Basin (6-47). The beneficial uses of these water resources are listed either by watershed (for surface waters) or by groundwater basin (for groundwater) in Chapter 2 of the Basin Plan. We request that the DEIR identify and list the beneficial uses of the water resources within the Project area and include an analysis of the Project's potential impacts to water quality and hydrology with respect to those beneficial uses.

PERMITTING REQUIREMENTS

A number of activities associated with the proposed Project may have the potential to impact waters of the State and, therefore, may require permits issued by either the State Water Board or Lahontan Water Board. The required permits may include the following.

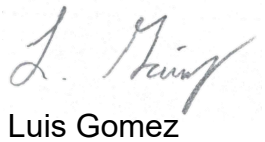
1. Streambed alteration and/or discharge of fill material to a surface water may require a CWA, section 401 water quality certification for impacts to federal waters (waters of the U.S.), or dredge and fill waste discharge requirements for impacts to non-federal waters, both issued by the Lahontan Water Board. All unavoidable permanent impacts to waters of the State must be mitigated to ensure no net loss of beneficial use and wetland function and value. Water Board staff coordinate mitigation requirements with staff from federal and other state regulatory agencies. In determining appropriate mitigation ratios for impacts to waters of the State, we consider Basin Plan requirements (minimum 1.5 to 1 mitigation ratio for impacts to wetlands) and utilize 12501-SPD Regulatory Program Standard Operating Procedure for Determination of Mitigation Ratios, published December 2012 by the US Army Corps of Engineers, South Pacific Division.

2. Land disturbance of more than 1 acre may require a CWA, section 402(p) storm water permit, including a National Pollutant Discharge Elimination System (NPDES) General Construction Storm Water Permit, Water Quality Order (WQO) 2022-0057-DWQ, obtained from the State Water Board, or individual storm water permit obtained from the Lahontan Water Board.

We request that the draft DEIR recognize the potential permits that may be required for the Project, as outlined above, and identify the specific activities that may trigger these permitting actions in the appropriate sections of the environmental document. Information regarding these permits, including application forms, can be downloaded from our web site at http://www.waterboards.ca.gov/lahontan/. Early consultation with Water Board staff regarding potential permitting is recommended.

Thank you for requesting our consultation. If you have any questions regarding this letter, please contact me at (760) 313-1295 (Luis.Gomez@waterboards.ca.gov) or Christina Guerra, Senior Engineering Geologist, at (760) 241-7333

(Christina.Guerra@waterboards.ca.gov). Please send all future correspondence regarding this Project to the Water Board's email address at Lahontan@waterboards.ca.gov and be sure to include the Project name in the subject line.



Luis Gomez
Engineering Geologist

cc: CA Dept. of Fish and Wildlife (AskR6@wildlife.ca.gov)
State Clearinghouse (SCH 2018041007) (state.clearinghouse@opr.ca.gov)

Mojave Desert Air Quality Management District
Brad Poiriez, *Executive Director*
14306 Park Avenue, Victorville, CA 92392-2310
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www.MDAQMD.ca.gov • @MDAQMD

January 30, 2024

County of San Bernardino, Land Use Services Department
Attn.: Jon Braginton, Planner
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415

Project: OVERNIGHT SOLAR PROJECT

Dear Mr. Braginton:

The Mojave Desert Air Quality Management District (District) has received a request for comments on the proposed Overnight Solar Project. The proposed project includes development of a utility scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 150 megawatts (MW) of solar power and include a 150 MW battery energy storage system (BESS) on approximately 822 acres, plus a generation interconnect (gen-tie) corridor approximately 1.1 miles in length and approximately 80 feet in width, connecting the proposed facility to another existing gen-tie line associated with the Mojave Solar Facility and just south of the existing Alba Substation.

We have reviewed the project as proposed and based on the information available to us at this time, the District recommends that the County requires the owner/operator obtain Solar Permits as listed in District Rule 302 and a Dust Control Plan (DCP) for the planned solar facility. The most current Dust Control Plan Requirements and Dust Control Plan Submission Form are available at https://www.mdaqmd.ca.gov/permitting/compliance-forms.

Other District requirements include:

- Signage compliant with Rule 403 Attachment B shall be erected at each project site entrance not later than the commencement of construction.

- Use a water truck to maintain moist disturbed surfaces and actively spread water during visible dusting episodes to minimize visible fugitive dust emissions. For projects with exposed sand or fines deposits (and for projects that expose such soils through earthmoving), chemical stabilization or covering with a stabilizing layer of gravel will be required to eliminate visible dust/sand from sand/fines deposits.

- All perimeter fencing shall be wind fencing or the equivalent, to a minimum of four feet of height or the top of all perimeter fencing. The owner/operator shall maintain the wind fencing as needed to keep it intact and remove windblown dropout. This wind fencing

requirement may be superseded by local ordinance, rule or project-specific biological mitigation prohibiting wind fencing.

- All maintenance and access vehicular roads and parking areas shall be stabilized with chemical, gravel or asphaltic pavement sufficient to eliminate visible fugitive dust from vehicular travel and wind erosion. Take actions to prevent project-related trackout onto paved surfaces, and clean any project-related trackout within 24 hours. All other earthen surfaces within the project area shall be stabilized by natural or irrigated vegetation, compaction, chemical or other means sufficient to prohibit visible fugitive dust from wind erosion.

- Obtain District permits for any miscellaneous process equipment that may not be exempt under District Rule 219 including, but not limited to: Internal Combustion Engines with a manufacture's maximum continuous rating greater than or equal to 50 brake horsepower.

- Comply with all applicable provisions listed in Rule 403 – *Fugitive Dust Control*.

Thank you for the opportunity to review this planning document, the District looks forward to reviewing the DEIR. If you have any questions regarding this letter, please contact me at (760) 245-1661, extension 1846, or Bertrand Gaschot at extension 4020.

Sincerely,

Chris Anderson
Planning and Air Monitoring Supervisor

CJA/bg OverNight Solar Project 2024 30 Jan

Mohave Ground Squirrel Conservation Council
P.O. Box 1660
Wrightwood, CA 92397
Email: ed.larue@mgsconservation.org

Via email only

Date: 16 February 2024 Draft version #2 as of 2/13/2024

Attn: Jon Braginton, Planner
County of San Bernardino, Land Use Services Department
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415
Jon.Braginton@lus.sbcounty.gov

RE: Overnight Solar Project Scoping Comments

Dear Mr. Braginton,

The Mohave Ground Squirrel Conservation Council (MGSCC) is a nonprofit organization established to assure the perpetual survival of viable populations of Mohave Ground Squirrels (MGS) throughout their historical range and any future expansion areas. The MGS, for the purposes of the MGSCC, means the mammal species known scientifically as *Xerospermophilus mohavensis*. Among our objectives pertinent to this letter is to support and to advocate for such legislative, policy, and conservation measures as will contribute to ensuring the continued survival of viable MGS populations, the connectivity of these populations, and the maintenance of their habitats in a natural condition.

We appreciate this opportunity to provide comments on the above-referenced project, and that the San Bernardino County Planning Department (County) contacted MGSCC directly via email on 1/18/2024, which facilitated Ed LaRue's attendance at the project specific webinar on 1/31/2024. Given the location of the proposed project in habitats likely occupied by the MGS, our comments include recommendations intended to enhance protection of this species and its habitat during activities authorized by the County, which we recommend be added to project terms and conditions in the authorizing document (e.g., conditional use permit, right of way grant, etc.) as appropriate. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

The plight of the MGS is dire, which led the MGSCC to coauthor a petition with the Defenders of Wildlife in October 2023 to federally list the MGS as Threatened and to designate critical habitat for the species (Defenders of Wildlife et al. 2023[1]). We expect that the Draft EIR will document the status and trends of the MGS using available information, to document the plight of the species and how this project will contribute to or detract from the conservation of the species. For the MGS, CDFW (2019) published "A Conservation Strategy for the Mohave Ground Squirrel, *Xerospermophilus mohavensis*." That document contains a map with linkage areas among the specific MGS regions. Information from documents like this should be used to identify the nearest MGS Core Population Areas and linkage corridors relative to the subject property.

[1] https://www.dropbox.com/scl/fi/7h890e4r25ljpyyhvwq5c/Defenders-et-al.-MGS-Listing-Petition-12-13-23-FINAL.pdf?rlkey=f7ln6at8apxcovi8qgtr5g2qk&dl=0

Before providing our specific comments below, we would like to express our serious concern with the intended timing of the planning process. During the 1/31/2024 webinar when LaRue asked about the results of requisite surveys for plant and animal species of special concern that may occur in the area (CDFW 2024) [this includes the MGS], the Tetra Tech consultants indicated that some surveys had been performed without revealing which ones. We were told that scoping comments are due by 2/19/2024 and the draft environmental impact report (Draft EIR) would be released within a month, in March 2024. We find this scheduling to be problematic, that it may even be dismissive of public input.

It is absolutely essential that requisite surveys be performed *before* the Draft EIR is written so that survey results can be published in the environmental document. The County must ensure quality control in this matter, even if it means that the consultants perform the surveys this spring/summer and the Draft EIR is published on a realistic schedule in the summer or fall of 2024. For example, MGS surveys (CDFW 2023) must be performed from March through July of a given year. If these surveys have not already been performed, they must be performed and the results documented in the Draft EIR, which means it would need to be published sometime after July 2024.

It is our strong recommendation that the site be live-trapped and that tissue be collected from any captured MGS to determine if any of them have hybridized with round-tailed ground squirrels (*Xerospermophilus tereticaudis*). In 2014 at a site located approximately four miles south of the proposed site, an adult female MGS and four juveniles were captured by eight live traps placed in the vicinity of an incidental observation. When the tissue was analyzed, the female and three of the juveniles were determined to be MGS and the fourth juvenile was a hybrid. Given the proximity of the site to this location, we feel that it is scientifically important to determine if the squirrels captured are MGS or hybrids.

Further with regards to MGS surveys, as we stated above, when asked about existing surveys during the webinar, the Tetra Tech biologists were not forthcoming with what types of surveys had been performed. If MGS surveys were performed in 2023 and no MGS were captured, those surveys must be repeated in 2024 to determine if MGS continue to be absent; i.e., the validity of a negative survey is one year. As per the CDFW (2023) Guidelines for compliance with CESA, "negative survey results are valid until the start of the next survey season (March of the subsequent year)." So, even if MGS surveys were performed in 2023 and no MGS were captured, new surveys must be performed in 2024 to meet CDFW standards. Given these observations, we believe that it is critical that the proponent perform MGS trapping surveys in 2024, using the recently revised survey protocol (CDFW 2023), and that the release of the Draft EIR be postponed until those studies are completed in July 2024 so that results can be documented in the Draft EIR.

Note that the proponent also may implement the alternative approach of assuming presence and mitigating accordingly. Although the CDFW ultimately decides what the mitigation ratio would be for replacing lost habitats, the proponent can expect a minimum compensation ratio of 3:1; for each acre of land developed, three acres of occupied habitats must be purchased and protected in perpetuity. If this alternative is selected, it is advisable that the proponent's biologist performs a search of the California Natural Diversity Database (CDFW 2024; CNDDB), document the nearest known locations of MGS records to the subject property, and use that information in the Draft EIR to analyze the potential direct, indirect, synergistic, and cumulative impacts of the proposed project on the species and its habitats.

The West Mojave Plan (BLM 2005, 2006) created an exclusion area within the surrounding Fremont-Kramer and Superior-Cronese Areas of Critical Environmental Concern (ACEC), coinciding with the Mohave Ground Squirrel Conservation Area (MGSCA), which completely surrounded the single existing solar development at the time, referred to as the "LUZ facility." Since then, several thousand acres of new solar facilities have been developed (Mojave and Lockhart solar facilities) and proposed (Desert Breeze and this one). It is important that the Draft EIR analyze the direct, indirect, synergistic, and cumulative effects of this and other solar developments that are surrounded by the MGSCA, ACEC, and National Conservation Lands (NCL), and nearby Wilderness Areas to the north as well as proposed/planned solar projects in the area. We ask specifically that the Draft EIR analyze the potential heat sink effects (Sinervo et al. 2013) that this and adjacent solar projects may be having/will have on the MGS populations in the MGSCA.

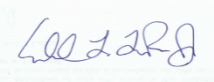
The Draft EIR should include appropriate mitigation and monitoring plans for all impacts to the MGS and its habitats; the mitigation and monitoring plans should use the best available science with a commitment to implement the mitigation commensurate to impacts to the MGS and its habitats. Mitigation and monitoring should include a fully-developed MGS translocation plan; MGS predator management plan; non-native plants species management plan; fire prevention and management plan; compensation plan for the degradation and loss of MGS habitat that includes protection of the acquired, improved, and restored habitat in perpetuity for the MGS from future development and human use; a plan to protect MGS translocation area(s) from future development and human use in perpetuity; and habitat restoration plan for the project site when the lease is terminated and the proposed project is decommissioned.

These mitigation and monitoring plans should include implementation schedules that are tied to key actions of the construction, operation, maintenance, decommissioning, and restoration phases of the project so that mitigation occurs concurrently with or in advance of the impacts. The plans should specify success criteria, include a science-based monitoring plan to collect data to determine whether success criteria have been met, and identify actions that would be required if the mitigation measures do not meet the success criteria and require their implementation quickly.

The Draft EIR, based on the results of the MGS protocol surveys, must discuss the displacement of MGS from the impact area. Will these MGS be relocated into adjacent areas or are they to be translocated into distant areas? The Draft EIR should present the intended approach to relocating/translocating displaced MGS. We ask that this translocation plan and, in fact, all the mitigation/monitoring plans listed above be published as appendices to the Draft EIR. It is unacceptable to promise or allude to plans in the Draft EIR that "will be developed in the future," which precludes the public from having an opportunity to provide feedback on how to minimize and mitigate impacts in those mitigation and monitoring plans.

We appreciate this opportunity to provide comments on this project and trust they will help protect MGS during any resulting authorized activities. Herein, we reiterate that the Mohave Ground Squirrel Conservation Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the County that may affect the species, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Respectfully,



Edward L. LaRue, Jr., M.S.
Ecosystems Advisory Committee, Chairperson
Mohave Ground Squirrel Conservation Council

cc. Heidi Calvert, Regional Manager, Region 6 – Inland and Desert Region, California Department of Fish and Wildlife, Heidi.Calvert@wildlife.ca.gov

Brandy Wood, Region 6 – Desert Inland Region, California Department of Fish and Wildlife, Brandy.Wood@wildlife.ca.gov

Literature Cited

[BLM] U.S. Bureau of Land Management. 2005. Final Environmental Impact Report and Statement for the West Mojave Plan, a Habitat Conservation Plan and California Desert Conservation Area Plan Amendment. Dated January 2005. Moreno Valley, CA.

[BLM] U.S. Bureau of Land Management. 2006. Record of Decision: West Mojave Plan, an Amendment to the California Desert Conservation Area Plan 1980. Dated March 2006. Sacramento, CA.

[CDFW] California Department of Fish and Wildlife. 2019. A Conservation Strategy for the Mohave ground squirrel (*Xerospermophilus mohavensis*). Dated July 2019, 128 pp.

[CDFW] California Department of Fish and Wildlife. 2023. Mohave Ground Squirrel Survey Guidelines (January 2003; revised July 2010, October 2023). Unpublished guidelines produced by CDFW. Sacramento, CA.

[CDFW] California Department of Fish and Wildlife. 2024c. Electronic database of rare plant and animal species reported to The State Resources Agency, Natural Heritage Division, California Natural Diversity Data Base. Updated monthly. Sacramento, CA.

Defenders of Wildlife, Desert Tortoise Preserve Committee, Inc., Mohave Ground Squirrel Conservation Council and Dr. Philip Leitner. 2023. Petition to List the Mohave Ground Squirrel (*Xerospermophilus mohavensis*) as Threatened Under the Endangered Species Act. Dated December 13, 2023. 170 pp.

Sinervo, B., J. Lovich, J Ennen, D. Miles, R. Cooper, and R. Huey. 2013. The impact of solar farms and wind farms on population persistence and extinction of the desert tortoise, *Gopherus agassizii*. Paper presented at the Effects of Energy Development on Herps Symposium, Galisteo/Aztec, Saturday 13 July 2013.

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Of Counsel
MARC D. JOSEPH
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October 9, 2024

Via U.S. Mail and Email

Heidi Duron, Planning Director
Land Use Services Department
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San Bernardino, CA 92415-0187
Email: Heidi.Duron@lus.sbcounty.gov; PlanningCSU@lus.sbcounty.gov

Lynna Monell, Clerk of the Board
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Email: COB@sbcounty.gov

Via Email Only

Jon Braginton, Planner
Email: Jon.Braginton@lus.sbcounty.gov

Re: Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report – Overnight Solar and Battery Storage Project (Project No. PROJ-2023-00087)

Dear Ms. Duron, Ms. Monell, and Mr. Braginton:

We are writing on behalf of California Unions for Reliable Energy ("CURE") to request ***immediate access*** to any and all documents referenced, incorporated by reference, and relied upon in the Draft Environmental Impact Report ("DEIR") prepared for the Overnight Solar and Battery Storage Project (Project No. PROJ-2023-00087) ("Project"), proposed by Overnight Solar, LLC ("Applicant"). *This request excludes a copy of the DEIR and any documents that are currently available on the County of San Bernardino website*.[1] A-1

The Project proposes the construction and operation of a 150 megawatt (MW) photovoltaic solar facility with a 150 MW Battery Energy Storage System. The Project site is located on approximately 825 acres at 41650 Lockhart Rd., Hinkley, San Bernardino County, California (Assessor Parcel Number: 0490-183-65).

[1] Accessed https://lus.sbcounty.gov/planning-home/environmental-2/desert-region/ on October 9, 2024.

Our request for ***immediate access*** to all documents referenced in the DEIR is made pursuant to the California Environmental Quality Act ("CEQA"), which requires that all documents referenced, incorporated by reference, and relied upon in an environmental review document be made available to the public for the entire comment period.[2]

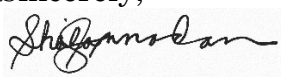
Please use the following contact information for all correspondence:

U.S. Mail
Sheila M. Sannadan
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Email
ssannadan@adamsbroadwell.com

If you have any questions, please call me at (650) 589-1660 or email me at ssannadan@adamsbroadwell.com. Thank you for your assistance with this matter.

Sincerely,



Sheila M. Sannadan
Legal Assistant

SMS:acp

[2] *See* Public Resources Code § 21092(b)(1) (stating that "all documents referenced in the draft environmental impact report" shall be made "available for review"); 14 Cal. Code Reg. § 15087(c)(5) (stating that all documents incorporated by reference in the EIR . . . shall be readily accessible to the public"); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442, as modified (Apr. 18, 2007) (EIR must transparently incorporate and describe the reference materials relied on in its analysis); *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 ("[W]hatever is required to be considered in an EIR must be in that formal report. . ."), internal citations omitted.

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

November 15th, 2024
Sent via email

Jon Braginton
Senior Planner
San Bernardino County
385 North Arrowhead Ave, First Floor
San Bernardino, CA 92415-0187

Dear Mr. Braginton:

OVERNIGHT SOLAR PROJECT (PROJECT)
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH# 2024010434

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from San Bernardino County for the Project pursuant 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, we appreciate 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 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

[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.

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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Atlantica

Objective: The objective of the Project is to construct a photovoltaic (PV) solar array and battery energy storage system (BESS) facility with an on-site substation and associated site improvements, including fencing and access roads, on approximately 596 acres of land. A generation interconnect (gen-tie) corridor is proposed to connect from the on-site substation to the existing Mojave Solar Facility approximately 1 mile away. The proposed project would connect the existing Sandlot Substation via the Southern California Edison Kramer-Coolwater Transmission Line, which will deliver the energy generated by the solar array to the electrical grid.

Location: Lockhart, CA, approximately 10 miles northwest of Hinkley. State Route 58 is approximately 5.6 miles south of the Project site, and US Highway 395 is approximately 10.5 miles west. The Project is bound by the Mojave Solar Facility to the east and Lockhart Solar Facility to the North.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Bernardino 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 document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT 1: B-1

Section: 3.3 Biological Resources, Page: 3.3-29

Issue: Pre-construction survey target species and timing

Specific impact: Preconstruction surveys for desert kit fox and American badger potentially occurring concurrently with Mojave Desert tortoise clearance surveys

Why impact would occur: CDFW specifies that clearance surveys for desert tortoise cannot be combined with surveys conducted for other species using the same personnel to avoid the potential of missing desert tortoise sign or individuals. The timing for conducting desert tortoise clearance surveys and burrowing mammal surveys (desert kit fox and American badger) prior to Project activities is also different. Desert tortoise clearance surveys occur immediately following installation of exclusionary fencing during desert tortoise active season. Desert kit fox and American badger surveys should occur no more than twenty-one days and no less than fourteen days prior to start of Project activities to allow for monitoring of occupancy.

Evidence impact would be significant: According to the US Fish and Wildlife Service (USFWS), trained surveyors detected an average of 63% of model tortoises within 5m of either side of the transect line during a 100% coverage survey training (USFWS, 2019). As live tortoises are more difficult to locate than placed model targets due to their variable size, there should be no distraction in the way of surveying for other species during a desert tortoise survey, otherwise the potential for missing desert tortoise individuals and sign increases.

Recommended Potentially Feasible Mitigation Measure(s) to Minimize Significant Impacts: CDFW recommends amending the measure for desert kit fox and American badger to occur as stand-alone pre-construction surveys. Reconnaissance surveys are not sufficient in identifying all biological resources and individuals of protected species that may be impacted by Project activities.

Mitigation Measure BIO-12: Qualified biologists shall conduct pre-construction den surveys for desert kit fox and American badger on the project site 14 **– 21** ~~30~~ days and 24 hours prior to any vegetation removal or ground disturbing construction activities. ~~Because Mojave desert tortoises will utilize shelter sites created by American badger and desert kit fox, these surveys may take place concurrently with desert tortoise preconstruction clearance surveys.~~ Pre-construction surveys for desert kit fox and American Badger will include disturbance areas and a **150** ~~30~~ meter buffer to the extent allowable. The locations of American badger and desert kit fox dens will be recorded. Current status and use by American badger and desert kit fox will be determined through the use of wildlife cameras, scopes, and~~/ or~~ tracking substrate. Inactive and unoccupied dens **within the Project boundary** will be collapsed **after their status has been determined through monitoring** ~~during clearance surveys~~. Active dens will be monitored, and a qualified biologist will establish a 50-meter non-disturbance buffer during the non-breeding season and a 150-meter non-disturbance buffer during the breeding/pupping season (**generally** February 1 –May 15). **If the den is in the central part of the site, a strip of vegetation at least 50-meters wide shall remain intact between the buffer and perimeter fencing to provide cover for the species.** The buffer size may be amended by a qualified biologist through consultation with CDFW. Active burrows

shall be avoided until they are confirmed unoccupied by a qualified biologist. Burrow occupancy will be determined using a tracking medium such as diatomaceous earth or fine clay, ~~or~~ **and** infrared cameras placed at the entrance**(s)**. If no tracks or evidence of activity is observed after 3 consecutive nights of monitoring, the burrow shall be scoped and **excavated, and** backfilled using nonpowered tools. If tracks or evidence of burrow occupancy is observed, ~~burrows shall be fitted with one-way trap doors for exclusion purposes. Infrared cameras will be used in conjunction with one-way trap doors to assess the effectiveness of exclusion efforts. At least forty-eight hours after installing one-way exclusion doors, and after confirming the effectiveness of exclusion efforts through photo review, the burrow will be scoped and backfilled using nonpowered tools. If occupancy monitoring reveals the burrow is being used for breeding/ reproductive purposes,~~ CDFW will be consulted to determine the course of action pertaining to exclusion efforts and passive translocation**, which may include development of a management plan for CDFW's review and approval**. To guard against the spread of distemper and other diseases, equipment and tools used for burrow occupancy monitoring and excavation will be treated with a disinfectant that's proven effective. This includes but is not limited to accelerated hydrogen peroxide, potassium peroxymonosulfate, or a 1:20 dilution of household bleach. Fieldworker clothing will be washed in hot water and dried using a dryer. CDFW will be notified in dealing with injured, sick, or dead American badger or desert kit fox.

COMMENT 2: B-2

Section 3.3 Biological Resources, Page 3.3-25

Issue: The Project may have impacts to desert tortoise, a CESA threatened and candidate endangered species.

Specific impact: Desert tortoise is a State threatened and candidate endangered species and federally threatened species. This species is impacted by ongoing threats, including loss, degradation, and fragmentation of habitat, due to development. Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in the direct mortality and/or injury to desert tortoise. Project construction and related activities may result in collision with or crushing by vehicles or heavy equipment; entrapment within open trenches and pipes; entrapment of entanglement within materials and equipment staged and moved; crushing or burial of individuals or eggs in burrows; destruction of burrows and refugia; and increased predation.

Why impact would occur: This Project is located adjacent to USFWS designated desert tortoise critical habitat, and desert tortoise individuals and sign have been found on the Project site. CDFW appreciates the inclusion of mitigation measure BIO-4, but is concerned that the periodic nature of checking the exclusion fencing may not be sufficient in minimizing take of desert tortoise, especially as the

proposed forthcoming translocation plan (per consultation with CDFW) includes very short distance translocation to a portion of the parcel that is not within the impact area or Project footprint, but immediately adjacent to Project impacts.

Evidence impact would be significant: Desert tortoise is a CESA-listed species. Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Desert tortoise populations have declined significantly in recent decades as a result of human activities in their native habitat, including land development, off-road vehicle use, overgrazing, agricultural development, military activities, predation, and the spread of invasive species (USFWS 2011). The desert tortoise population in the western Mojave Desert has declined by 90% since the 1980s. Desert tortoise can take up to 20 years to reach sexual maturity, which limits their ability to recover even small losses in population numbers (USFWS 2011).

Recommended Potentially Feasible Mitigation Measure(s) to Minimize Significant Impacts:

Mitigation Measure BIO-4: Desert tortoise exclusionary fencing shall be installed around the facility, in conjunction with the security fence, according to the specifications provided by the USFWS Desert Tortoise Field Manual (2009) **and applicable permits**. The installation of desert tortoise exclusionary fencing will precede any ground-disturbing construction activities **associated with construction of the solar facility**. Installation of desert tortoise exclusionary fencing will be supervised by a Designated Biologist ~~or Biological Monitor~~. **Once the installation is complete, Designated Biologists and** Biological Monitors shall perform a clearance survey for desert tortoise within the exclusionary perimeter fencing, in accordance with the 2019 USFWS Clearance Survey Protocol for the Mojave Desert Tortoise. If the species is determined present within the project site, individual(s) ~~shall be allowed to leave the site on their own or~~ will be relocated**, per a translocation plan reviewed and approved by USFWS and CDFW**, by a **Designated B**~~b~~iologist that is authorized to relocate desert tortoise by USFWS and CDFW. Disturbance activities shall be monitored, as follows:

- Environmental awareness training (see BIO-2) shall include education on desert tortoise and Mohave ground squirrel, protective status, and avoidance measures to be implemented by all personnel, including looking under vehicles and equipment prior to moving. If desert tortoises or other protected species are encountered, such vehicles shall not be moved until they have voluntarily moved away from the vehicle and out of harm's way, or a qualified biologist has moved them.

- If a desert tortoise is present, a **Designated Biologist** ~~Biological Monitor~~ shall be present during all disturbance activities in the vicinity of exclusionary fencing ~~(if required)~~ and shall have the authority to stop work as needed to avoid direct

impacts to desert tortoises. ~~Periodic biological~~ **Daily** inspections **of the fence's perimeter** and maintenance shall be conducted during the construction period to ensure the integrity of exclusionary fencing ~~(if required)~~. Work may proceed within the excluded area when the **Designated Biologist** ~~Biological Monitor~~ confirms all desert tortoises have left the excluded area.

- Should desert tortoises be found during construction activities, the **Designated Biologist and/or** Biological Monitor shall have the authority to stop work as needed to avoid direct impacts to tortoises, and further consultations with the USFWS and CDFW shall take place prior to relocating the desert tortoises.

Trash and food items shall be contained in closed containers and removed daily to reduce attractiveness to opportunistic predators of desert tortoise (e.g., ravens, coyotes, feral dogs).

Employees shall not bring pets to the construction site.

COMMENT 3: B-3

Section 3.3 Biological Resources, Page 3.3-26

Issue: Potential take of candidate CESA-listed species, western burrowing owl

Specific impact: Western burrowing owl habitat has been identified within the Project footprint and adjacent properties. Sign has also been observed within the Project footprint, including a potential satellite burrow. CDFW appreciates the inclusion of mitigation measure BIO-7 but is concerned about the addition of excavation and passive relocation, as passive eviction has become a high risk of take from exposure, predation, and heat stress. CDFW strongly recommends passive relocation only be performed under the take authorization of a CESA incidental take permit due to the risk of take.

Why impact would occur: Impacts to burrowing owls from the Project could include take of burrowing owls, their nest, or eggs, or destroying nest, foraging, or over-wintering habitat, thus impacting burrowing owl populations. Impacts can result from grading, earthmoving, burrow blockage, heavy equipment compaction and crushing of burrows, general Project disturbance that has the potential to stress owls at occupied burrows, and other activities. Burrowing owls also have a high potential to move into disturbed areas since they are adapted to highly modified habitats (Chipman et al., 2008; Coulombe, 1971).

Evidence impact would be significant: Burrowing owl is a candidate species for CESA-listing, which gives the species protection under CESA during its candidacy. Take of any CESA-listed species or candidate is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Take of individual burrowing owls

and their nest is also defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture, or kill, or the attempt to hunt, pursue, catch, capture, or kill." The petition to list western burrowing owl under CESA states passive relocation's effectiveness as an attempt to mitigate direct harm to the species remains questionable and lack of monitoring provides no information about the fate of the individuals (CDFW, 2024). CDFW's evaluation notes the petition in sum contained enough information regarding factors threatening burrowing owl survival and reproduction, which included passive relocation (CDFW, 2024). Additionally, CDFW is concerned that the stress and exposure associated with passive relocation with one-way doors could result in mortality.

Recommended Potentially Feasible Mitigation Measure(s) to Minimize Significant Impacts: CDFW recommends the following changes to MM BIO-7:

Mitigation Measure BIO-7: ~~Not more than 30 days~~ **P**rior to project disturbance activities, a qualified biologist(s) familiar and experienced with western burrowing owl shall perform a take **avoidance** pre-construction ~~clearance~~ survey for **burrowing owl occupation** ~~this species~~ in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. **The surveys shall include 100 percent coverage of the Project site and 500-m buffer in adjacent habitat. A report summarizing the surveys including all requirement for survey reports shall be submitted to CDFW for review.** If western burrowing owl are not detected during pre-construction surveys, and if no burrows **or perch sites** have active sign (~~tracks~~ **molted feathers, cast pellets, prey remains, eggshell fragments, decoration, or excrement** ~~or scat~~), then construction related activities may begin and no further action shall be required. **Mitigation shall be provided for burrowing owl habitat (loss of burrows and foraging habitat) through BIO-5.** If western burrowing owl is present on-site, a non-disturbance buffer **following the buffer guidance contained in the Staff Report on Burrowing Owl Mitigation** will be implemented **to ensure no take and full avoidance of the species occurs**. Fencing or flagging shall be installed to create a non-disturbance buffer area where no work activities may be conducted. The **initial** non-disturbance buffer will be a 200-meter radius from the occupied burrow during the breeding season (**generally** February 1st – August 31st), ~~unless authorized by a qualified biologist~~. During the non-breeding season (**generally** September 1st – January 31st), no ground disturbing activities shall be permitted within **an initial** 50-meters of an occupied burrow. A **larger or** smaller buffer may be established **as determined by** ~~in consultation with~~ a qualified biologist **with consideration of levels of disturbance caused by Project activities**.

If avoidance of an occupied burrow is infeasible **and take of the species may occur**, **the Project Proponent shall consult with CDFW to discuss the best path going forward which may include obtaining take authorization through a CESA incidental take permit. Passive relocation, performed according to the Staff Report on Burrowing Owl Mitigation (CDGW, 2012) may be authorized through**

the incidental take permit as a minimization measure. ~~western burrowing owl may be passively relocated by a qualified biologist during the non-breeding season, or when owls have not laid eggs, or whenever juveniles are capable of independent survival. Passive translocation will follow a CDFW approved Burrowing Owl Exclusion Plan or Passive Relocation Plan that will be prepared and approved by CDFW prior to implementing relocation efforts. At a minimum, the plan will be prepared by a qualified biologist in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. The Burrowing Owl Exclusion Plan or Passive Relocation Plan shall include the following performance standards:~~

- ~~Excavation shall require nonpowered hand tools. Sections of flexible plastic pipe or burlap bag shall be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow. One-way doors shall be installed at the entrance to the active burrow and other potentially active burrows within 160 feet of the active burrow and monitored for at least 48 hours after installation. If burrows will not be directly impacted by the project, one-way doors shall be installed to prevent use and shall be removed after ground-disturbing activities have concluded in the area. Only burrows that will be directly impacted by the project shall be excavated and filled.~~

- ~~Detailed methods and guidance for passive relocation of burrowing owls to off-site "replacement burrow site(s)" consisting of a minimum of two suitable, unoccupied burrows for every Burrowing Owl or pair to be passively relocated.~~

- ~~Monitoring and management of the replacement burrow site(s) and a reporting plan. The objective shall be to manage the replacement burrow sites for the benefit of Burrowing Owls (e.g., minimizing weed cover), with the specific goal of maintaining the functionality of the burrows for a minimum of 2 years.~~

- Monitoring active burrows during construction periods to ensure Burrowing Owls are not detrimentally affected. The Applicant, in consultation with CDFW, shall respond to monitoring results and implement additional measures to avoid disturbances that could result in nest failure during the breeding season, or impacts that could result in **take or** injury ~~or mortality~~ at any time.

- Compensatory Mitigation to offset impacts by purchasing and managing off-site habitat or by purchasing mitigation credit, as approved by CDFW. (see BIO-5)

COMMENT 4: B-4

Section 3.3 Biological Resources, Page 3.3-5

Issue: Mitigation measure BIO-5 does not define the amount of mitigation required

Specific impact: Mitigation measure BIO-5 does not specify the quantity of land required to offset impacts to Mojave desert tortoise, Mohave ground squirrel, and western burrowing owl. CDFW is concerned that the acquired land meant to offset impacts to these three CESA protected species may, in actuality, be less than necessary for adequate mitigation of Project impacts for the purposes of CEQA.

Why impact would occur: Without specificity on the acreage of land that will be acquired to reduce Project impact, mitigation measure BIO-5 lacks the specific performance standard for developing final mitigation and defers mitigation. Mitigation measure BIO-5 also does not identify specific actions or monitoring requirements that will allow these performance standards to be met. CDFW is concerned that the measure is vague and conveys that the feasibility and effectiveness of mitigation measure BIO-5 is not guaranteed. A clear measure of compliance allows the public and regulatory agencies to determine the extent of the mitigation considered and to provide a standard for judging compliance. With the currently proposed mitigation measure BIO-5, interested parties cannot know how the mitigation measure should be interpreted and applied.

Evidence impact would be significant: Under the CEQA Guidelines § 15126.4, formulation of mitigation measures should not be deferred to a future time, unless the Lead Agency commits to the mitigation, adopts specific performance standards the mitigation will achieve, and identifies the potential actions that can feasibly achieve that performance standard.

Recommended Potentially Feasible Mitigation Measure to Minimize Significant Impacts: CDFW recommends the DEIR identify the mitigation required to lessen Project impacts to each CESA-listed species and recommends changes to MM BIO-5.

Mitigation Measure BIO-5: The Applicant shall acquire land **at a 2:1 ratio (2 acres of compensatory mitigation land per 1 acre of Project impact)** to offset impacts to Mojave desert tortoise, Mohave ground squirrel, and western burrowing owl. ~~as applicable, as well as~~ **The Applicant shall also** follow any regulations pertaining to applicable agency permits and agency coordination, such as Incidental Take Permits (ITPs) **for all three species**. As ~~applicable and as required and~~ approved by USFWS and CDFW, offsite compensatory mitigation land shall be **permanently** put into a conservation easement and managed **in perpetuity** with the goal of providing suitable habitat**, prohibiting activities incompatible with species' use,** and ensuring long-term protection for these species.

The compensatory mitigation land shall be occupied by the species, contiguous with other protected habitat and/or is of higher quality than the habitat being destroyed by the Project.

In addition, permanent impacts to western burrowing owl habitat will be mitigated with (a) permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and (b) sufficiently large acreage, and presence of fossorial mammals. Selection of acquired mitigation lands should consider the potential human and wildlife conflicts or incompatibility, including but not limited to, human foot and vehicle traffic, and predation by cats, loose dogs and urban-adapted wildlife, and incompatible species management. The acquired mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Acquired mitigation lands should be on, adjacent or proximate to the impact site where possible and where habitat is sufficient to support burrowing owls present. Where there is insufficient habitat on, adjacent to, or near project sites where western burrowing owls will be excluded, acquire mitigation lands with burrowing owl habitat away from the project site. The selection of mitigation lands should then focus on consolidating and enlarging conservation areas located outside of urban and planned growth areas, within foraging distance of other conserved lands. If mitigation lands are not available adjacent to other conserved lands, the Applicant will coordinate with CDFW to increase the mitigation land acreage requirement to ensure a selected site is of sufficient size.

II. Editorial Comments and/or Suggestions

Comment 1: Under Section 3.3.1.2 *Special-Status Species*, the species name for desert kit fox is incorrect. Desert kit fox is a subspecies of kit fox, with the scientific name *Vulpes macrotis macrotis*. The subspecies name listed in the document is that of the San Joaquin kit fox, *Vulpes macrotis mutica.* This distinction is important, as the San Joaquin kit fox is a threatened listed species under CESA as well as federally endangered, while take of desert kit fox is prohibited under Cal. Code Regs. Tit. 14 § 460. Please amend the document to reflect the correct subspecies found on the Project site. B-5

Comment 2: On October 25th, 2024, western burrowing owl became a candidate CESA-listed species. At the time this DEIR was submitted for public review, the Fish and Game Commission's vote on the petition had not occurred. Please update the document to reflect the current protection status of western burrowing owl before finalizing the EIR. B-6

Comment 3: Golden Eagle is a CDFW Watch List Species, as well as Fully Protected (Fish and Game Code section 3511). CDFW suggests revisions to BIO-2. B-7

ENVIRONMENTAL DATA B-8

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 (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

ENVIRONMENTAL DOCUMENT FILING FEES B-9

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 DEIR to assist San Bernardino County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Marlee Poff, Senior Environmental Scientist (Specialist) at (909) 544-2513 or Marlee.Poff@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Ashley Rosales *for*
C2A3834574CB4FD...

Brandy Wood
Environmental Program Manager

Attachment
Attachment 1. Mitigation Monitoring and Reporting Program (MMRP)

ec: Office of Planning and Research, State Clearinghouse, Sacramento

REFERENCES

California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline)

California Department of Fish and Wildlife (CDFW). 2024. Petition Evaluation for Western Burrowing Owl (*Athene cunicularia hypugaea*). Report to the Fish and Game Commission. California Department of Fish and Wildlife, P.O. Box 944209, Sacramento CA 94244-2090. 19 pp.

Chipman, Erica D., et al. "Effects of human land use on western Burrowing Owl foraging and activity budgets." *Journal of Raptor Research* 42.2 (2008): 87-98.

Coulombe, Harry N. "Behavior and population ecology of the burrowing owl, Speotyto cunicularia, in the Imperial Valley of California." *The Condor* 73.2 (1971): 162-176.

Fish and Game Commission. 2024. Office of Administrative Law's Notice ID #Z2024-0326-01 and Z2024-1015-05 Petition to list Western Burrowing Owl (*Athene cunicularia hypugaea*) as Threatened or Endangered.

Trulio, Lynne A. "Passive relocation: a method to preserve Burrowing Owls on disturbed sites (relocalización pasiva: un método para preservar individuos de Speotyto cunicularia en lugares disturbados)." *Journal of Field Ornithology* (1995): 99-106.

U.S. Fish and Wildlife Service (USFWS). 2019. *Preparing for Any Action that May Occur Within the Range of the Mojave Desert Tortoise (Gopherus agassizii).* U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA, USA.

U.S. Fish and Wildlife Service (USFWS). 2011. *Revised recovery plan for the Mojave population of the desert tortoise (Gopherus agassizii).* U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA, USA.

ATTACHMENT 1

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirement. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing mitigation measures.

Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
BIO-4: Desert tortoise exclusionary fencing shall be installed around the facility, in conjunction with the security fence, according to the specifications provided by the USFWS Desert Tortoise Field Manual (2009) and applicable permits. The installation of desert tortoise exclusionary fencing will precede any ground-disturbing construction activities associated with construction of the solar facility. Installation of desert tortoise exclusionary fencing will be supervised by a Designated Biologist. Once the installation is complete, Designated Biologists and Biological Monitors shall perform a clearance survey for desert tortoise within the exclusionary perimeter fencing, in accordance with the 2019 USFWS Clearance Survey Protocol for the Mojave Desert Tortoise. If the species is determined present within the project site, individual(s) will	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

be relocated, per a translocation plan reviewed and approved by USFWS and CDFW, by a Designated Biologist that is authorized to relocate desert tortoise by USFWS and CDFW. Disturbance activities shall be monitored, as follows: • Environmental awareness training (see BIO-2) shall include education on desert tortoise and Mohave ground squirrel, protective status, and avoidance measures to be implemented by all personnel, including looking under vehicles and equipment prior to moving. If desert tortoises or other protected species are encountered, such vehicles shall not be moved until they have voluntarily moved away from the vehicle and out of harm's way, or a qualified biologist has moved them. • If a desert tortoise is present, a Designated Biologist shall be present during all disturbance activities in the vicinity of exclusionary fencing and shall have the authority to stop work as needed to avoid direct impacts to desert tortoises. Daily inspections of the fence's perimeter and maintenance shall be conducted during the construction period to ensure the integrity of exclusionary fencing. Work may proceed within the excluded area when the Designated Biologist confirms all desert tortoises have left the excluded area. • Should desert tortoises be found during construction activities, the Designated Biologist and/or Biological Monitor shall have the authority to stop work as needed		

to avoid direct impacts to tortoises, and further consultations with the USFWS and CDFW shall take place prior to relocating the desert tortoises. Trash and food items shall be contained in closed containers and removed daily to reduce attractiveness to opportunistic predators of desert tortoise (e.g., ravens, coyotes, feral dogs). Employees shall not bring pets to the construction site.		
BIO-5: The Applicant shall acquire land at a 2:1 ratio (2 acres of compensatory mitigation land per 1 acre of Project impact) to offset impacts to Mojave desert tortoise, Mohave ground squirrel, and western burrowing owl. The Applicant shall also follow any regulations pertaining to applicable agency permits and agency coordination, such as Incidental Take Permits (ITPs) for all three species. As approved by USFWS and CDFW, offsite compensatory mitigation land shall be permanently put into a conservation easement and managed in perpetuity with the goal of providing suitable habitat, prohibiting activities incompatible with species' use, and ensuring long-term protection for these species. The compensatory mitigation land shall be occupied by the species, contiguous with other protected habitat and/or is of higher quality than the habitat being destroyed by the Project. In addition, permanent impacts to western burrowing owl habitat will be mitigated with (a) permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and (b) sufficiently large acreage, and presence of fossorial mammals. Selection of acquired mitigation lands should consider the potential human and wildlife conflicts or incompatibility, including but not limited to, human foot and vehicle traffic, and predation by cats, loose dogs and urban-adapted wildlife, and incompatible species management. The acquired mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Acquired mitigation lands should be on, adjacent or proximate to the impact site where possible and where habitat is sufficient to support burrowing owls present. Where there is insufficient habitat on, adjacent to, or near project sites where western burrowing owls will be excluded, acquire mitigation lands with burrowing owl habitat away from the project site. The selection of mitigation lands should then focus on consolidating and enlarging conservation areas located outside of urban and planned growth areas, within foraging distance of other conserved lands. If mitigation lands are not available adjacent to other conserved lands, the Applicant will coordinate with CDFW to increase the mitigation land acreage requirement to ensure a selected site is of sufficient size.		
BIO-7: Prior to project disturbance activities, a qualified biologist(s) familiar and experienced with western burrowing owl shall perform a take	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

avoidance pre-construction survey for burrowing owl occupation in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. The surveys shall include 100 percent coverage of the Project site and 500-m buffer in adjacent habitat. A report summarizing the surveys including all requirement for survey reports shall be submitted to CDFW for review. If western burrowing owl are not detected during pre-construction surveys, and if no burrows or perch sites have active sign (molted feathers, cast pellets, prey remains, eggshell fragments, decoration, or excrement), then construction related activities may begin and no further action shall be required. Mitigation shall be provided for burrowing owl habitat (loss of burrows and foraging habitat) through BIO-5. If western burrowing owl is present on-site, a non-disturbance buffer following the buffer guidance contained in the Staff Report on Burrowing Owl Mitigation will be implemented to ensure no take and full avoidance of the species occurs. Fencing or flagging shall be installed to create a non-disturbance buffer area where no work activities may be conducted. The initial non-disturbance buffer will be a 200-meter radius from the occupied burrow during the breeding season (generally February 1st – August 31st). During the non-breeding season (generally September 1st – January 31st), no ground disturbing activities shall be permitted within an initial 50-meters of an occupied burrow. A larger or smaller buffer may be established as determined by a qualified biologist with consideration of levels of disturbance caused by Project activities. If avoidance of an occupied burrow is infeasible and take of the species may		

occur, the Project Proponent shall consult with CDFW to discuss the best path going forward which may include obtaining take authorization through a CESA incidental take permit. Passive relocation, performed according to the Staff Report on Burrowing Owl Mitigation (CDGW, 2012) may be authorized through the incidental take permit as a minimization measure. • Monitoring active burrows during construction periods to ensure Burrowing Owls are not detrimentally affected. The Applicant, in consultation with CDFW, shall respond to monitoring results and implement additional measures to avoid disturbances that could result in nest failure during the breeding season, or impacts that could result in take or injury at any time. • Compensatory Mitigation to offset impacts by purchasing and managing off-site habitat or by purchasing mitigation credit, as approved by CDFW. (see BIO-5)		
BIO-12: Qualified biologists shall conduct pre-construction den surveys for desert kit fox and American badger on the project site 14 – 21 days and 24 hours prior to any vegetation removal or ground disturbing construction activities. Pre-construction surveys for desert kit fox and American Badger will include disturbance areas and a 150 ~~30~~-meter buffer to the extent allowable. The locations of American badger and desert kit fox dens will be recorded. Current status and use by American badger and desert kit fox will be determined through the use of wildlife cameras, scopes, and tracking	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

substrate. Inactive and unoccupied dens within the Project boundary will be collapsed after their status has been determined through monitoring. Active dens will be monitored, and a qualified biologist will establish a 50-meter non-disturbance buffer during the non-breeding season and a 150-meter non-disturbance buffer during the breeding/pupping season (generally February 1 –May 15). If the den is in the central part of the site, a strip of vegetation at least 50-meters wide shall remain intact between the buffer and perimeter fencing to provide cover for the species. The buffer size may be amended by a qualified biologist through consultation with CDFW. Active burrows shall be avoided until they are confirmed unoccupied by a qualified biologist. Burrow occupancy will be determined using a tracking medium such as diatomaceous earth or fine clay, and infrared cameras placed at the entrance(s). If no tracks or evidence of activity is observed after 3 consecutive nights of monitoring, the burrow shall be scoped and excavated, and backfilled using nonpowered tools. If tracks or evidence of burrow occupancy is observed, CDFW will be consulted to determine the course of action pertaining to exclusion efforts and passive translocation, which may include development of a management plan for CDFW's review and approval. To guard against the spread of distemper and other diseases, equipment and tools used for burrow occupancy monitoring and excavation will be treated with a disinfectant that's proven effective. This includes but is not limited to accelerated hydrogen peroxide, potassium peroxymonosulfate, or a 1:20 dilution of household bleach. Fieldworker clothing will be washed in hot water and dried		

using a dryer. CDFW will be notified in dealing with injured, sick, or dead American badger or desert kit fox.		

TRIBAL HISTORIC PRESERVATION OFFICE

VIA ELECTRONIC MAIL

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Jon Braginton,
Planner
San Bernardino County
Land Use Services Department
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San Bernardino, CA 92415-0187

MORONGO BAND OF MISSION INDIANS
A SOVEREIGN NATION

November 18, 2024

RE: **AB-52 Consultation for Overnight Solar Project (PROJ-2023-00087) Draft EIR (DEIR)**

The Morongo Band of Mission Indians (Tribe/MBMI) Tribal Historic Preservation Office received the County of San Bernardino's (County) letter regarding the above referenced project on October 3, 2024. The proposed Overnight Solar Project (Project) is located within the ancestral territory and traditional use area of the Cahuilla and Serrano people of the Morongo Band of Mission Indians.

THPO staff reviewed the DEIR and comment as follows:

Tribe commends the County's efforts researching the ethnohistorical background of this area, including specifying that the "Vanyumé" were a subdivision of the Serrano proper, often referred to as the "Desert Serrano" (Sutton and Earle 2017). C-1

Projects within this area, especially those located near Harper Dry Lake, are particularly sensitive for cultural resources regardless of the presence or absence of remaining surface artifacts and features. Mojave Desert archaeologists recognize the Harper Lake area as an area of particular interest. Tribal experience with other projects in the area supports this fact. As indicated in the "Environmental Setting" section of the DEIR, "the pluvial conditions at Harper's Dry Lake facilitated a transient increase in occupation" (Page 3.4-2) during the Holocene; this statement suggests the likelihood of discovering associated cultural resources that indicate the long-term and periodic use of this area as it supported rising populations.

Furthermore, it is widely understood that the desert surface is subject to periodic sheetwash, flooding, aeolian activity, and erosion, all of which affect the depositional context of cultural resources.

Because Tribal cultural resources are non-renewable and therefore of high importance to the Morongo Tribe, tribal participation (a.k.a. Tribal Monitors) is requested by MBMI THPO during all ground-disturbing activities that will take place for this Project.

Tribe looks forward to working with San Bernardino County to protect these irreplaceable resources out of respect for ancestors of the Morongo people who left them there, and for the people of today and for generations to come.

Tribe has identified some fundamental concerns with current DEIR "Project Impacts and Mitigation" section (3.4.5). These include:

1. The attendance of and participation by Consulting Tribe(s) during the Worker Education Awareness Program (WEAP) or pre-grade meeting. See MBMI CR-4 C-2
2. The treatment and disposition of inadvertent discoveries. See MBMI CR-6, A-D. C-3

3. The treatment of inadvertently discovered human remains. Most importantly, please include that **no photographs are to be taken except by the coroner, with written approval by the consulting Tribe[s].** See MBMI CR-7, A-D. C-4
4. A final report(s) created as part of the Project shall be submitted to the Lead Agency and Consulting Tribe(s) for review and comment before it is filed with the appropriate Archaeological Information Center. C-5

Please be sure to address the above concerns in the FINAL EIR. Thank you.

Please see the following Morongo Band of Mission Indians Standard Mitigation Measures to be included in the Project Environmental Document: C-6

Cultural Resource Mitigation Measures:

CR-1: **Tribal Monitoring Services Agreement** Prior to the issuance of grading permits, the applicant shall enter into a Tribal Monitoring Services Agreement with the Morongo Band of Mission Indians (MBMI) for the Project. The Tribal Monitor shall be on-site during all ground-disturbing activities (including, but not limited to, clearing, grubbing, tree and bush removal, grading, trenching, fence post placement and removal, construction excavation, excavation for all utility and irrigation lines, and landscaping phases of any kind). The Tribal Monitor shall have the authority to temporarily divert, redirect, or halt the ground-disturbing activities to allow identification, evaluation, and potential recovery of cultural resources.

CR-2: **Retention of Archaeologist** Prior to any ground-disturbing activities (including, but not limited to, clearing, grubbing, tree and bush removal, grading, trenching, fence post replacement and removal, construction excavation, excavation for all utility and irrigation lines, and landscaping phases of any kind), and prior to the issuance of grading permits, the Applicant shall retain a Qualified Archaeologist who meets the U.S. Secretary of the Interior Standards (SOI). The Archaeologist shall be present during all ground disturbing activities to identify any known or suspected archaeological and/or cultural resources. The Archaeologist will conduct a Cultural Resource Sensitivity Training, in conjunction with the Tribe[s] Tribal Historic Preservation Officer (THPO), and/or designated Tribal Representative. The training session will focus on the archaeological and tribal cultural resources that may be encountered during ground-disturbing activities as well as the procedures to be followed in such an event.

CR-3: **Cultural Resource Management Plan** Prior to any ground-disturbing activities the project Archaeologist shall develop a Cultural Resource Management Plan (CRMP) and/or Archaeological

Monitoring and Treatment Plan (AMTP) to address the details, timing, and responsibilities of all archaeological and cultural resource activities that occur on the project site. This Plan shall be written in consultation with the consulting Tribe[s] and shall include the following: approved Mitigation Measures (MM)/Conditions of Approval (COA), contact information for all pertinent parties, parties' responsibilities, procedures for each MM or COA, and an overview of the project schedule.

CR-4: Pre-Grade Meeting The retained Qualified Archeologist and Consulting Tribe[s] representative shall attend the pre-grade meeting with the grading contractors to explain and coordinate the requirements of the monitoring plan.

CR-5: On-site Monitoring During all ground-disturbing activities the Qualified Archaeologist and the Tribal Monitor shall be on-site full-time. The frequency of inspections shall depend on the rate of excavation, the materials excavated, and any discoveries of Tribal Cultural Resources as defined in California Public Resources Code Section 21074. Archaeological and Tribal Monitoring will be discontinued when the depth of grading and the soil conditions no longer retain the potential to contain cultural deposits. The Qualified Archaeologist, in consultation with the Tribal Monitor, shall be responsible for determining the duration and frequency of monitoring.

CR-6: Inadvertent Discovery of Cultural Resources In the event that previously unidentified cultural resources are unearthed during construction, the Qualified Archaeologist and the Tribal Monitor shall have the authority to temporarily divert and/or temporarily halt ground-disturbance operations in the area of discovery to allow for the evaluation of potentially significant cultural resources. Isolates and clearly non-significant deposits shall be minimally documented in the field and collected so the monitored grading can proceed.

If a potentially significant cultural resource(s) is discovered, work shall stop within a 60-foot perimeter of the discovery and an Environmentally Sensitive Area (ESA) physical demarcation/barrier constructed. All work shall be diverted away from the vicinity of the find, so that the find can be evaluated by the Qualified Archaeologist and Tribal Monitor[s]. The Archaeologist shall notify the Lead Agency and consulting Tribe[s] of said discovery. The Qualified Archaeologist, in consultation with the Lead Agency, the consulting Tribe[s], and the Tribal Monitor, shall determine the significance of the discovered resource. A recommendation for the treatment and disposition of the Tribal Cultural Resource shall be made by the Qualified Archaeologist in consultation with the Tribe[s] and the Tribal Monitor[s] and be submitted to the Lead Agency for review and approval. Below are the possible treatments and dispositions of significant cultural resources in order of CEQA preference:

A. Full avoidance.

B. If avoidance is not feasible, Preservation in place.

C. If Preservation in place is not feasible, all items shall be reburied in an area away from any future impacts and reside in a permanent conservation easement or Deed Restriction

D. If all other options are proven to be infeasible, data recovery through excavation and then curation in a Curation Facility that meets the Federal Curation Standards (CFR 79.1)

CR-7: Inadvertent Discovery of Human Remains The Morongo Band of Mission Indians requests the following specific conditions to be imposed in order to protect Native American human remains and/or cremations. **No photographs are to be taken except by the coroner, with written approval by the consulting Tribe[s].**

A. Should human remains and/or cremations be encountered on the surface or during any and all ground-disturbing activities (i.e., clearing, grubbing, tree and bush removal, grading, trenching,

   fence post placement and removal, construction excavation, excavation for all water supply, electrical, and irrigation lines, and landscaping phases of any kind), work in the immediate vicinity of the discovery shall immediately stop within a 100-foot perimeter of the discovery. The area shall be protected; project personnel/observers will be restricted. The County Coroner is to be contacted within 24 hours of discovery. The County Coroner has 48 hours to make his/her determination pursuant to State and Safety Code §7050.5. and Public Resources Code (PRC) § 5097.98.

B. In the event that the human remains and/or cremations are identified as Native American, the Coroner shall notify the Native American Heritage Commission within 24 hours of determination pursuant to subdivision (c) of HSC §7050.5.

C. The Native American Heritage Commission shall immediately notify the person or persons it believes to be the Most Likely Descendant (MLD). The MLD has 48 hours, upon being granted access to the Project site, to inspect the site of discovery and make his/her recommendation for final treatment and disposition, with appropriate dignity, of the remains and all associated grave goods pursuant to PRC §5097.98

D. If the Morongo Band of Mission Indians has been named the Most Likely Descendant (MLD), the Tribe may wish to rebury the human remains and/or cremation and sacred items in their place of discovery with no further disturbance where they will reside in perpetuity. The place(s) of reburial will not be disclosed by any party and is exempt from the California Public Records Act (California Government Code § 6254[r]). Reburial location of human remains and/or cremations will be determined by the Tribe's Most Likely Descendant (MLD), the landowner, and the City Planning Department.

CR-8: **FINAL REPORT:** The final report[s] created as a part of the project (AMTP, isolate records, site records, survey reports, testing reports, etc.) shall be submitted to the Lead Agency and Consulting Tribe[s] for review and comment. After approval of all parties, the final reports are to be submitted to the appropriate Information Center, and the Consulting Tribe[s].

This letter does not conclude consultation. Upon review of the requested Measures the MBMI THPO may further provide recommendations or guidance.

The lead contact for this Project is Bernadette Ann Brierty, Tribal Historic Preservation Officer (THPO). MBMI Tribal Archaeologist, Sarah Bertman is assisting the Tribe in the review of this project. Please do not hesitate to contact us at ABrierty@morongo-nsn.gov, THPO@morongo-nsn.gov, sbertman@morongo-nsn.gov or (951) 663-2842, should you have any questions. The Tribe looks forward to meaningful government-to-government consultation with the County.

Respectfully,

Bernadette Ann Brierty

Bernadette Ann Brierty
Tribal Historic Preservation Officer
Morongo Band of Mission Indians

CC: Morongo THPO

October 8, 2024

County of San Bernardino
Land Use Services Department – Planning Division
Attention: Joe Braginton
385 N Arrowhead Avenue, First Floor
San Bernardino, CA 92415

Regarding: PROJ 2023-00087 and PVAR 2024-00005

Dear Joe,

This is to confirm that the Mojave Water Agency has no conflict with this project. D-1

Sincerely,
Christy Huiner
Senior Water Resource Analyst
Engineering Department
Mojave Water Agency
chuiner@mojavewater.org
760-946-7066

Braginton, Jon

From: Jill Mccormick <historicpreservation@quechantribe.com>
Sent: Thursday, October 17, 2024 1:45 PM
To: Braginton, Jon
Subject: NOA/NOI to Adopt an Environmental Impact Report Overnight Solar Project

Follow Up Flag: Follow up
Flag Status: Flagged

Good morning,
This email is to inform you that we do not wish to comment on this project. The Ft. Yuma Quechan Tribe Historic Preservation Office defers to the more local Tribes on this matter. E-1

Thank you,
H. Jill McCormick, M.A.

Historic Preservation Office
Ft. Yuma Quechan Indian Tribe
P.O. Box 1899
Yuma, AZ 85366-1899
Office: 760-919-3631
Cell: 928-920-6521