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**GAVIN NEWSOM, Governor**  
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Governor's Office of Planning & Research

**January 2 2024**

January 03, 2024

## STATE CLEARINGHOUSE

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Subject: **Enterprise Solar Storage Project by Enterprise Solar Storage, LLC  
Draft Environmental Impact Report (DEIR)  
State Clearinghouse No. 2023050214**

Dear Alexis Brito:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from Kern County Planning and Natural Resources Department (Kern County), as Lead Agency, for the Enterprise Solar Storage Project by Enterprise Solar Storage, LLC (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under 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

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. Likewise, to the extent implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

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

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

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

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Enterprise Solar Storage, LLC

**Objective:** The Project proposes to construct and operate a photovoltaic (PV) solar facility and associated infrastructure necessary to generate 600 megawatts (MW) of renewable electrical energy with up to 4,000 megawatt-hours (MWh), or approximately 1,000 MW of energy storage capacity, on approximately 2,320 acres across five noncontiguous sites. The proposed associated infrastructure includes laydown yards, a meteorological station, and a substation. PV panels, inverters, converters, foundations, and transformers will be installed onsite. The Project would also include preferred and optional generation-tie (gen-tie) routes to enter the Windhub Substation, only one of which would be constructed.

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**Location:** The Project site is located in several locations in an unincorporated area in southeastern Kern County, at the western edge of the Antelope Valley and south of the community of Mojave. Portions of the Project site are adjacent to State Route (SR)-58 and SR-14. The Project site is two miles southwest of California City, approximately eight miles north of the unincorporated community of Rosamond, and approximately eight miles northwest of Edwards Airforce Base. The Project site locations occur in Section 6 of Township 10 North, Range 11 West, Sections 20-26, 28, and 36 of Township 11 North, Range 12 West, and Sections 30 and 32 of Township 11 North, Range 11 West, with the interconnection facilities located in Section 17 and 20 of Township 11 North, Range 13 West. In addition, interconnection facilities are located within Sections 17 and 20 of Township 11 North, Range 13 of the San Bernadino Base Meridian (SBBM).

**Timeframe:** Undetermined; however, construction is anticipated to last for approximately 28 months.

## COMMENTS AND RECOMMENDATIONS

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

Aerial imagery of the Project boundary and its surroundings show the area contains desert scrub habitat, Joshua tree woodland, ruderal habitat, and annual grassland habitats, as well as disturbed and developed areas. Based on a review of the Project description, California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, several special-status species could potentially be impacted by Project activities.

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species, including the State threatened Mohave ground squirrel (*xerospermophilus mohavensis*) and Swainson's hawk (*Buteo swainsoni*); the State and federally threatened desert tortoise (*Gopherus agassizii*); the State candidate for listing Crotch's bumble bee (*Bombus crotchii*) and western Joshua tree (*Yucca brevifolia*); the State protected furbearing mammal desert kit fox (*Vulpes macrotis arsipus*); and the State species of special concern burrowing owl (*Athene cunicularia*) and northern California legless lizard (*Anniella pulchra*).

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CDFW also has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status plant species, including, but not limited to, the California Rare Plant Rank (CRPR) 1B.2 alkali mariposa-lily (*Calochortus striatus*), Barstow woolly sunflower (*Eriophyllum mohavense*), desert cymopterus (*Cymopterus deserticola*), and Latimer's woodland-gilia (*Saltugilia latimeri*); the 1B.1 pale-yellow layia (*Layia heterotricha*); the CRPR 1B.2 recurved larkspur (*Delphinium recurvatum*); the 2B.2 sagebrush loeflingia (*Loeflingia squarrosa var. artemistarum*); and the CRPR 1B.3 southern Sierra monardella (*Monardella linoides ssp. anemonoides*). CDFW also has concerns with potential impacts to migratory and non-migratory nesting birds.

### **Mohave Ground Squirrel**

The DEIR notes that the Project site is within the range of Mohave ground squirrel (MGS) and there is suitable habitat within the Project area; however, the DEIR concludes there is low potential for MGS as the suitable habitat is of poor quality, nearby MGS surveys for other projects did not detect their presence, and recent evidence suggests that MGS are potentially absent from much of the western portion of their range. The DEIR does note that a reproductive population of MGS was documented 2.56 miles northeast of the Project site in 2023, but concludes this recent occurrence is separated by a number of barriers that would prohibit MGS from dispersing onto the Project site. As such, the DEIR notes that no focused MGS surveys were conducted as part of the biological technical studies to inform the DEIR. Mitigation Measure MM 4.4-11 was included to mitigate for impacts to MGS and states that, "Preconstruction surveys for small mammals including Mohave ground squirrel and southern grasshopper mouse shall be conducted within all suitable habitat 14 days prior to initial ground-disturbing activities. If a Mohave ground squirrel is found on the construction site, work shall be halted and redirected to areas not supporting this species, and consultation with Kern County and CDFW shall occur. A written report shall be sent to CDFW within 5 calendar days of the sighting. The report shall include the date, time of the finding or incident (if known), and location of the animal. If a dead Mohave ground squirrel is encountered, the remains shall be collected, frozen as soon as possible, and CDFW shall be contacted to determine where the remains would be sent." CDFW does not concur that this measure is sufficient to prevent the take of MGS. In addition to the 2023 documented occurrence of MGS 2.56 miles northeast of the Project site, CDFW is aware of additional potential MGS camera observations from 2023 located approximately 2.5 miles south of the southern portion of the Project site.

Due to the fact there are multiple recent MGS observations surrounding the Project site, the Project site has suitable habitat, and no focused MGS surveys were conducted to inform the DEIR, CDFW recommends the following to avoid the unauthorized take of MGS:

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### **Recommended Mitigation Measure 1: MGS Surveys Prior to Construction**

CDFW recommends that a qualified biologist, with appropriate permits, conduct protocol surveys for MGS following the methods described in the Mohave Ground Squirrel Survey Guidelines (CDFW 2023b) during the appropriate survey season and that these surveys be conducted in areas of potential habitat, including marginal habitat covering the entire Project site. Because of the large size of the Project site, it is recommended that the Project applicant propose a surveying methodology for CDFW review and approval prior to initiation of protocol surveys. It is also recommended that the results of these surveys be submitted to CDFW for evaluation. Please note MGS surveys are valid for one year and should be conducted during the survey season immediately prior to the initiation of ground-disturbing activities. As the Project is anticipated to occur over the course of 28 months, these protocol-level surveys may need to be repeated in certain areas over multiple survey seasons, depending on the timing of ground disturbance throughout the Project site.

### **Recommended Mitigation Measure 2: MGS Avoidance Buffer**

If protocol-level surveys cannot be completed the survey season immediately prior to ground disturbance for the Project, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. The Project proponent may also choose to assume presence of MGS and obtain an Incidental Take Permit (ITP) prior to initiating ground-disturbing activities.

### **Recommended Mitigation Measure 3: MGS Take Authorization**

If MGS is identified during surveys or at any time during Project construction, and a minimum 50-foot no disturbance buffer is not feasible, then CDFW recommends the Project obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

### **Swainson's Hawk**

Mitigation Measure MM 4.4-10 proposes to mitigate for impacts to Swainson's hawk (SWHA) by requiring additional surveys following the survey methodology developed by the California Energy Commission (CEC) and CDFW in the *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* (Antelope Valley SWHA Protocol) (CEC and CDFW 2010). These additional surveys would be dependent on the time between the survey efforts conducted to inform the DEIR and the start of Project construction. Mitigation Measure MM 4.4-10 would also require pre-construction surveys, avoidance buffers, and the potential need for mitigation. CDFW is

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concerned that several portions of Mitigation Measure MM 4.4-10 either conflict with the Antelope Valley SWHA Protocol, or do not adequately mitigate for the potential for take of SWHA. Additionally, CDFW is concerned with Kern County's misinterpretation of the mitigation recommendations outlined in the Antelope Valley SWHA Protocol. CDFW's concerns are provided in more detail below:

Mitigation Measure MM 4.4-10 states that, "During the nesting season (March 1 through September 15), ensure no new ground disturbances, habitat conversions, or other project-related activities that may cause nest abandonment or forced fledging shall occur within 0.5 mile of an active nest. Buffer zones may be adjusted in consultation with CDFW and with the County." CDFW does not concur with this measure, as any adjustment of a ½-mile SWHA buffer would potentially result in the unauthorized take of the species. As such, if preconstruction surveys detect a nesting SWHA, and a ½-mile no-disturbance buffer is not feasible, it is strongly recommended that the Project proponent consult with CDFW prior to any ground disturbing activities to obtain an ITP pursuant to Fish and Game Code section 2081 subdivision (b) to avoid the unauthorized take of SWHA.

Mitigation Measure MM 4.4-10 continues by stating that, "If active Swainson's hawk nests are found within a 0.5-mile radius of the project site during the preconstruction surveys, the project proponent/operator shall mitigate the loss of any moderate quality Swainson's hawk foraging habitat for any portion of the project site within 5-miles of an active nest at a 0.5:1 ratio. Mitigation lands may be nested with other compensatory lands provided it meets the necessary biological requirements and as determined by appropriate wildlife agency." CDFW does not concur with this portion of the measure as the amount of mitigation potentially required for impacts to SWHA foraging habitat is substantially less than what is recommended in the Antelope Valley SWHA Protocol (CEC and CDFW 2010), which recommends a minimum 2:1 mitigation ratio for impacted SWHA foraging habitat within a five-mile radius of an active SWHA nest. This mitigation ratio is also recommended in the Swainson's Hawk (*Buteo swainsoni*) Guideline Survey & Nesting Raptor Survey Report, which was prepared to inform the DEIR. As such, CDFW recommends the following:

#### **Recommended Mitigation Measure 4: SWHA Foraging Habitat Mitigation**

CDFW recommends compensation for the loss of SWHA foraging habitat as described in the Antelope Valley SWHA Protocol (CEC and CDFW 2010) to reduce impacts to foraging habitat to less than significant. The protocol recommends that mitigation for suitable habitat loss within a five-mile radius of an active SWHA nests occur at a minimum 2:1 ratio.

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## **Desert Tortoise**

Mitigation Measure MM 4.4-6 states that, “To protect special-status wildlife species from disturbance during construction, the actions described below shall occur. Within a maximum of 14 days of the start of ground disturbing activities, such as geotechnical drilling, vegetation clearing, and/or grading, the qualified biologist(s) shall conduct preconstruction surveys for special-status species within the Project site, as well as within a minimum of 500 feet (152 meters) from the Project site to account for any inadvertent impacts on adjacent areas. Methodology for preconstruction surveys shall be conducted as appropriate for desert tortoise, burrowing owl, desert kit fox, Swainson’s hawk, loggerhead shrike, Le Conte’s thrasher, and migratory birds, and shall follow USFWS and/or the CDFW survey protocol guidelines, where appropriate. Surveys need not be conducted for all areas of suitable habitat at one time; they may be phased so that surveys occur within 14 days of the portion of the Project site that would be disturbed. If evidence of occupation by a special-status species is observed, a suitable buffer shall be established by a qualified biologist that results in sufficient avoidance. Following the completion of the pre-construction desert tortoise surveys, the qualified biologist will prepare and submit to the USFWS, CDFW, and the Kern County Planning and Natural Resources Department a letter/memo summarizing the results of the surveys.” CDFW does not concur that Mitigation Measure MM 4.4-6, which requires a desert tortoise (DT) preconstruction survey, is sufficient to mitigate for impacts to desert tortoise. The Wildlife Report, prepared to support the conclusions reached in the DEIR, notes that the majority of the Project site was surveyed for DT in April and May of 2022. CDFW would like to note that the Preparing for Any Action That May Occur Within the Range of the Mojave Desert Tortoise (Desert Tortoise Protocol) (USFWS 2019) guidance document states that DT surveys are generally only valid for one year and as such, additional protocol-level surveys would potentially be needed for much of the Project site in 2024. Additionally, while not documented in CNDDDB, CDFW is aware of multiple occurrences of DT within one mile of the Project site that were documented in 2023 in similar habitat.

As the Project site contains suitable habitat for DT, surveys were last conducted for most of the site in 2022, a potential DT burrow was documented in 2022, CDFW is aware of multiple recent occurrences of DT in the immediate vicinity, and there is a strong potential that DT could utilize the Project site over the life of the Project, CDFW strongly recommends the following:

### **Recommended Mitigation Measure 5: DT Take Authorization**

As CDFW is aware of multiple occurrences of DT in the immediate Project vicinity from 2023 and there is a strong potential that DT would utilize the Project site over the life of the Project, CDFW strongly recommends the Project obtain an ITP

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pursuant to Fish and Game Code section 2081 subdivision (b), to avoid the unauthorized take of DT.

### **Recommended Mitigation Measure 6: DT Surveys Prior to Construction**

While CDFW strongly recommends the Project obtain an ITP, in the absence of an ITP, CDFW recommends that additional surveys following the Desert Tortoise Protocol (USFWS 2019) be conducted during the survey season immediately prior to construction. Survey results should be submitted to both CDFW and the United States Fish and Wildlife Service (USFWS). If surveys indicate the presence or potential presence of desert tortoise, CDFW recommends the Project obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

Mitigation Measure MM 4.4-7 states that, "The project site shall be fenced to keep terrestrial wildlife species from entering the project site during construction, but will provide openings post-construction to enable wildlife to move freely through the project site during operation (e.g., create 4- to 7-inch portals or openings in the fence raising the fence 7 inches above the ground and knuckling the bottom of the fence [i.e., wrapping the fencing material back to form a smooth edge] to protect wildlife passing underneath). A desert tortoise exclusion fence is not required unless desert tortoises are found on site during the preconstruction surveys. This fencing shall be constructed of silt fence material, metal flashing, plastic sheeting, or other materials that will prohibit wildlife from climbing the fence or burrowing below the fence. The fencing shall be buried approximately 12 inches below the surface and extend a minimum of 30 inches above grade. Fencing shall be installed prior to issuance of grading or building permits and shall be maintained during all phases of construction and decommissioning. The fencing shall be inspected by a qualified biologist at a regular interval and immediately after all major rainfall events through the duration of construction and decommissioning activities. Any needed repairs to the fence shall be performed on the day of their discovery. Outside temporarily fenced exclusion areas, the project operator shall limit the areas of disturbance. Parking areas, new roads, staging, storage, excavation, and disposal site locations shall be confined to the smallest areas possible. These areas shall be flagged and disturbance activities, vehicles, and equipment shall be confined to these flagged areas." As noted above, suitable habitat for DT is present within the Project footprint, a potential DT burrow was documented during surveys conducted in support of the DEIR, and several DT were documented within the immediate vicinity of the Project site in 2023. As such, it is recommended that the Project consult with CDFW to obtain an ITP and to facilitate discussions on the installation of desert tortoise fencing during construction.



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### **Crotch's Bumble Bee**

Mitigation Measure MM 4.4-17 states that, "Pre-construction surveys for Crotch's bumble bee and nests shall be conducted within all suitable habitat prior to initial ground disturbing activities. Surveys shall follow the survey methodologies set out in the CDFW Survey Considerations for CESA Candidate Bumble Bee (CDFW, 2023d). The surveys can be phased with project build-out. The purpose of this survey will be to identify active nest colonies inside of permanent and temporary impact areas.

- i. If active Crotch's bumble bee nests are present within the project footprint or a 50-foot buffer surrounding the project footprint, an appropriate no disturbance buffer zone should be established around the nest to reduce the risk of disturbance or accidental take. The buffer will provide at least 50 feet of clearance around nest entrances.
- ii. If establishment of a no-work buffer is feasible, construction activities will not occur within the no-work buffer until a qualified biologist determines that the colony is no longer active (i.e., no Crotch's bumble bees are seen flying in or out of the nest for three consecutive days indicating the colony has completed its nesting season and the next season's queens have dispersed from the colony). Once the nest has been determined inactive, construction activities within the no-work buffer(s) will be allowed to resume.
- iii. If avoidance of the nest is not feasible, the project proponent/operator shall consult with the CDFW regarding potential for project activities to result in take of the Crotch's bumble bee and shall comply with all avoidance, minimization, and compensatory mitigation requirements set forth in any ITP issued for the project by CDFW authorizing take of the species."

CDFW concurs with the portion of the measure to conduct Crotch's bumble bee (CBB) surveys following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023c) immediately prior to construction; however, those surveys should be conducted during the appropriate survey season for CBB immediately prior to construction, and, in the event a Crotch's bumble bee (CBB) nest is detected within the Project, consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. If take cannot be avoided, CDFW recommends the Project obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

### **Western Joshua Tree**

Mitigation Measure MM 4.4-13 states that, "Prior to the issuance of a grading permit, the project proponent/operator shall develop a Joshua Tree Preservation Plan. The Plan

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shall be prepared by a qualified biologist preapproved by Kern County and shall be approved by the appropriate agencies, including Kern County, prior to implementation. At a minimum, the plan shall identify the methods utilized, as applicable, that the project is taking to comply with any CDFW CESA and Western Joshua Tree Conservation Act take requirements and compensatory mitigation related to the protection or mitigation of impacted Joshua Trees and documentation of any such CDFW take authorization and mitigation shall be provided to the Kern County Planning and Natural Resources Department.” CDFW concurs with this measure, but strongly recommends the following as western Joshua tree (WJT) were documented throughout the Project site:

#### **Recommended Mitigation Measure 7: WJT Avoidance Buffer**

In the absence of obtaining an ITP for the take of WJT, CDFW recommends a minimum no-disturbance buffer for an individual WJT of 290 feet. A 290-foot no-disturbance buffer is warranted to not only avoid impacts to individual trees, but potential impacts to the seed bank as it has been documented that 290 feet is the maximum distance of seed dispersal by rodents (Vander Wall et al. 2006).

#### **Recommended Mitigation Measure 8: WJT Take Authorization**

If a minimum 290 foot no disturbance buffer for each identified WJT is not feasible, then CDFW recommends the Project obtain take authorization for WJT through issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b). Additionally, with the passage of the Western Joshua Tree Conservation Act in July 2023, the Project may also have the option to obtain take authorization through issuance of an ITP, pursuant to Fish and Game Code section 1927.3.

#### **Desert Kit Fox**

Mitigation Measure MM 4.4-12 states that, “Unoccupied potential dens for desert kit fox or American badger shall have a minimum 30- foot (9-meter) avoidance buffer established.

1. An occupied den outside of the pup-rearing season shall be flagged and ground disturbing activities avoided within 100 feet (30 meters) of the occupied den. An occupied den during the pup-rearing season, also known as a maternity den, should not be disturbed and a minimum 500-foot (152-meter) avoidance buffer established.”

CDFW does not concur with this portion of the measure and recommends that the buffer recommendations outlined in the Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance (USFWS 2011)

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document be followed for any potential, known, or natal/pupping desert kit fox (DKF) dens.

Mitigation Measure MM 4.4-7 states that, "The project site shall be fenced to keep terrestrial wildlife species from entering the project site during construction, but will provide openings post-construction to enable wildlife to move freely through the project site during operation (e.g., create 4- to 7-inch portals or openings in the fence raising the fence 7 inches above the ground and knuckling the bottom of the fence [i.e., wrapping the fencing material back to form a smooth edge] to protect wildlife passing underneath)." CDFW concurs with raising perimeter fencing to allow for wildlife movement through the Project site after construction but recommends that the style of fencing selected is the type that is raised four to six inches above ground level and knuckled back to form a smooth edge and permeability for wildlife. CDFW does not recommend the use of openings or portals as they are inadequate to create the permeability necessary to avoid the Project site becoming a barrier to wildlife movement.

### **Burrowing Owl**

Mitigation Measure MM 4.4-9 states that, "A qualified wildlife biologist (i.e., a wildlife biologist with previous burrowing owl survey experience) shall conduct preconstruction surveys of the permanent and temporary impact areas to locate active breeding or wintering burrowing owl burrows within 14 days prior to ground-disturbing activities (i.e., vegetation clearance, grading, tilling). The survey methodology shall be consistent with the methods outlined in the 2012 California Department of Fish and Wildlife Staff Report on Burrowing Owl Mitigation and shall consist of walking parallel transects 7 to 20 meters apart, adjusting for vegetation height and density as needed, and noting any potential burrows with fresh burrowing owl sign or presence of burrowing owls. Surveys may be conducted concurrently with desert tortoise preconstruction surveys. As each burrow is investigated, surveying biologists shall also look for signs of American badger and desert kit fox. Copies of the survey results shall be submitted to California Department of Fish and Wildlife and the Kern County Planning and Natural Resources Department." CDFW would like to note that it does not appear the biological surveys conducted in support of the DEIR followed the methodology outlined in CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012), and only one round of incidental burrowing owl (BUOW) surveys were conducted concurrently with DT surveys in a given year (i.e. only one BUOW surveillance survey occurred within a given portion of the Project site in a given year). Additionally, it appears certain portions of the Project site were only surveyed within the early April timeframe and outside of the recommended timeframe for BUOW breeding surveys.

As Mitigation Measure MM 4.4-9 would only require a preconstruction survey 14 days prior to construction and preconstruction surveys may not coincide with the BUOW

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breeding season, and previous incidental BUOW surveys conducted in support of the DEIR may not have adequately documented BUOW occurrence on the Project site, CDFW recommends the following:

**Recommended Mitigation Measure 9: BUOW Surveys Prior to Construction**

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following CDFW's Staff Report on Burrowing Owl Mitigation (CDFW Staff Report) (CDFG 2012) the survey season immediately prior to construction. Specifically, CDFW's Staff Report suggests three or more surveillance surveys conducted during daylight hours, with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15).

**Northern California Legless Lizard**

The Project DEIR did not have a discussion on the potential for northern California legless lizard (NCLL) to occur on the Project site, even though CDFW recommended the Project consider this species in the survey recommendations provided in CDFW's June 5, 2023, Notice of Preparation (NOP) comment letter to this Project. The Wildlife Report, prepared in support of the DEIR, notes that the potential for NCLL is low as there is no suitable habitat present within the Project site. CDFW does not agree with the conclusion that no suitable habitat is present as NCLL are known to inhabit a variety of habitats, including desert scrub and sandy washes (Nafis 2023), which are present in various locations throughout the Project site. In addition, there are several recent occurrences of NCLL within a close vicinity of the Project site, particularly within the western portion of the Project site, by the Windhub Substation (CDFW 2023a). As such, CDFW recommends the following:

**Recommended Mitigation Measure 10: NCLL Surveys Prior to Construction**

CDFW recommends that a qualified biologist conduct focused surveys for NCLL, and their requisite habitat features within areas of suitable habitat, immediately prior to construction to evaluate potential impacts resulting from ground-disturbance.

**Recommended Mitigation Measure 11: NCLL Avoidance Buffer**

If NCLL are documented during surveys, avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer; however, a qualified biologist with the appropriate permit may relocate NCLL out of the project area into a nearby area with suitable habitat.

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### **Other Special Status Plant Species**

Mitigation Measure MM 4.4-5 states that, “Prior to the issuance of grading or building permits, the project proponent will conduct preconstruction botanical surveys to verify the location of alkali mariposa lily in the vicinity of the location where the species was potentially identified during botanical surveys and in potentially affected areas within 200 feet of that location.

- a. If no alkali mariposa lilies are observed during the survey, project activities may begin, and no further mitigation shall be required.
- b. If alkali mariposa lilies are observed during the survey, the areas shall be mapped and photographed, and appropriate measures shall be implemented to avoid impacts on the species to the extent feasible. The areas shall be clearly marked in the field with temporary high visibility ESA fencing or other appropriate markers. ESA fencing/markers shall remain in place throughout the duration of project construction and will be regularly inspected and maintained.”

CDFW does not concur that this measure is sufficient to mitigate for impacts to special status plant species that may be present within the Project site. Based on the botanical Inventory Report for the Enterprise Solar Storage Project, Kern County, California (Botanical Report), prepared to support the conclusions reached in the DEIR, the majority of the Project site was surveyed for special-status plants (excluding WJT) during April and May of 2022 and April 2023. CDFW is concerned about the conclusions reached in the DEIR, as the 2022 botanical surveys, which surveyed the majority of the Project site, were conducted within a historic drought year and the Botanical Report notes that a lack of precipitation may have affected the survey results. Additionally, it appears from the Botanical Report that only one botanical survey visit was conducted within the survey area during the 2022 and 2023 surveys. The 2022 botanical surveys identified an unknown *Calochortus* species that only contained basal leaves and, based on the information provided in the Botanical Report, CDFW is unable to determine whether surveys were conducted prior to the actual flowering of these *Calochortus* individuals. As such, CDFW is concerned that surveys were not conducted during the appropriate bloom periods for special-status species such as alkali mariposa-lily. It is important to note that the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities” (CDFW Botanical Survey Protocol) (CDFW 2018) recommends that multiple site visits occur within a year to ensure surveyors are conducting site visits during the appropriate bloom period for all special status plant species that may be present.

As the Project site contains suitable habitat for special-status plants, 2022 surveys were conducted during a historic drought year, and botanical surveys may not have been

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conducted during the appropriate survey period to identify all of the special-status species that may be present on the Project site, CDFW recommends the following:

**Recommended Mitigation Measure 12: Other Special Status Plant Surveys Prior to Construction**

CDFW recommends the Project area be surveyed for special status plants by a qualified botanist following the CDFW Botanical Protocol (CDFW 2018) the survey season immediately prior to construction. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

**Recommended Mitigation Measure 13: Other Special Status Plant Species Avoidance Buffer**

CDFW recommends special status plant species be avoided whenever possible by delineation and observation of a 50-foot no-disturbance buffer from the outer edge of the special status plant population(s) or specific habitat type(s) required by special status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special status plant species.

**Nesting Birds**

Mitigation Measure MM 4.4-8 states that: “To mitigate for potential impacts on nesting birds, special-status birds, and birds protected under the MBTA and California Fish and Game Code during construction and decommissioning activities, the following measures shall be implemented:

- a. During the avian nesting season (February 1–August 31), a qualified biologist shall conduct a preconstruction avian nesting survey no more than 14 days prior to initial vegetation clearing. Surveys need not be conducted for the entire Project site at one time; they may be phased so that surveys occur within 14 days prior to clearing or disturbance in specific areas of the site. The surveying biologist must be qualified to determine the species, status, and nesting stage without causing intrusive disturbance. At no time shall the qualified biologist be allowed to handle the nest or its eggs. The survey shall cover all reasonably potential nesting locations on and within 500 feet (152 meters) of the Project site, including ground nesting species, such as horned lark, nests in shrubs that could support nests, and suitable raptor nest sites such as nearby trees, windrows, and power poles. Access shall be granted on private offsite properties prior to conducting surveys on private land. If access is not obtainable, the biologist shall survey these areas from the nearest vantage point with use of spotting scopes or binoculars.

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- b. If construction is scheduled to occur during the non-nesting season (September 1– February 1), no preconstruction surveys or additional measures are required for non-listed avian species. If active nests are found, a 100-foot (30-meter) no-disturbance buffer shall be created around non-listed avian species' nests unless adjusted by the qualified biologist based on the needs and sensitivities of individual species, and a 300-foot (91-meter) no disturbance buffer shall be created around non-listed raptor species' nests (or a suitable distance otherwise determined in consultation with a qualified biologist). Any nest of a federally or state listed bird species shall require consultation with the appropriate agency (USFWS or the CDFW) to determine the appropriate buffer distance surrounding the nest to provide adequate nest protection. These buffers shall remain in effect until a qualified biologist has determined that the birds have fledged or the Project component(s) have been redesigned to avoid the area. All no-disturbance buffers shall be delineated in the field with visible flagging or fencing material.”

CDFW does not concur that Mitigation Measure MM 4.4-8 is sufficient to mitigate impacts to nests during the bird breeding season, particularly for the portions of the measure which directs surveys no more than 14 days prior to the start of construction, defines the breeding season as ending on August 31, and allows for the placement of a 100-foot buffer for non-listed avian species and 300-foot buffer for non-listed raptors. As such, CDFW recommends the following:

**Recommended Mitigation Measure 14: Nesting Bird Surveys Prior to Construction**

If ground-disturbing activities occur during the nesting bird season (February 1 – September 15), CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than one week prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests.

**Recommended Mitigation Measure 15: Nesting Bird Monitoring and/or Avoidance Buffer**

Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral

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changes occur, CDFW recommends the work causing that change to cease and that CDFW be consulted for additional avoidance and minimization measures. If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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

**Federally Listed Species:** CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to desert tortoise. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any Project activities.

**Lake and Streambed Alteration:** Based on the information provided in the DEIR, the Project area contains multiple streams. Project activities may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral, intermittent, or episodic, as well as those that are perennial.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement; therefore, if the DEIR approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593 or [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov).



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**Cumulative Impacts:** Currently, the DEIR has a very broad analysis of cumulative impacts to biological resources and does not adequately evaluate impacts to specific resources. As such, the conclusions reached in the cumulative impacts analysis are not supported by substantial evidence and the analysis lacks sufficient rigor and transparency to adequately develop reasonable and feasible measures to reduce harm. To address this lack of evidence, CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e., less than significant). CDFW recommends cumulative impacts be analyzed for the following species using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area should be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW recommends a scientifically sound cumulative impacts analysis be conducted for the following species: MGS, SWHA, DT, CBB, WJT, American badger (AMBA), DKF, BUOW, NCLL, and special status plant species, including, but not limited to, alkali mariposa-lily, Barstow woolly sunflower, desert cymopterus, Latimer's woodland-gilia, pale-yellow layia, recurved larkspur, sagebrush loeflingia, southern Sierra monardella. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link: [The completed form can be mailed electronically to CNDDDB at the following email address: \[CNDDDB@wildlife.ca.gov\]\(mailto:CNDDDB@wildlife.ca.gov\). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.](#)

## **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be

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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 Kern County Planning and Natural Resources Department in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Jeremy Pohlman, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (805) 503-2375 or by electronic mail at [Jeremy.Pohlman@wildlife.ca.gov](mailto:Jeremy.Pohlman@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
37BF80A1646F41C...

Gerald Hatler for Julie A. Vance  
Regional Manager

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

United States Fish and Wildlife Service  
Patricia Cole; [patricia\\_cole@fws.gov](mailto:patricia_cole@fws.gov)

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**Attachment 1**

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

**PROJECT: Enterprise Solar Storage Project**

**SCH No.: 2023050214**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
MGS	
Recommended Mitigation Measure 1: MGS surveys prior to construction	
Recommended Mitigation Measure 3: MGS take authorization	
SWHA	
Recommended Mitigation Measure 4: SWHA foraging habitat mitigation	
DT	
Recommended Mitigation Measure 5: DT take authorization	
Recommended Mitigation Measure 6: DT surveys prior to construction	
WJT	
Recommended Mitigation Measure 8: WJT take authorization	
BUOW	
Recommended Mitigation Measure 9: BUOW surveys prior to construction	
NCLL	
Recommended Mitigation Measure 10: NCLL surveys prior to construction	
Other Special Status Plant Species	
Recommended Mitigation Measure 12: Other special status plant surveys prior to construction	
Nesting Birds	
Recommended Mitigation Measure 14: Nesting bird surveys prior to construction	
<i>During Construction</i>	
MGS	
Recommended Mitigation Measure 2: MGS avoidance buffer	
WJT	
Recommended Mitigation Measure 7: WJT avoidance buffer	
NCLL	

Recommended Mitigation Measure11: NCLL avoidance buffer	
Other Special Status Plant Species	
Recommended Mitigation Measure13: Other special status plant species avoidance buffer	
Nesting Birds	
Recommended Mitigation Measure 15: Nesting bird monitoring and avoidance buffer	