



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
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[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



November 15<sup>th</sup>, 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.<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, 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

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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.

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:**

**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:**

### **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 or 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 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** ~~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:**

#### **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~~ Prior 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:**

**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.

**Comment 2:** On October 25<sup>th</sup>, 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.

**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.

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## ENVIRONMENTAL DOCUMENT FILING FEES

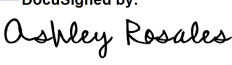
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental 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](mailto: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)

cc: 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.

<b>Biological (BIO) Mitigation Measure</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
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

<p>to avoid direct impacts to tortoises, and further consultations with the USFWS and CDFW shall take place prior to relocating the desert tortoises.</p> <p>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).</p> <p>Employees shall not bring pets to the construction site.</p>		
<p>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.</p> <p>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.</p> <p>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</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

<p>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.</p>		
<p>BIO-7: Prior to project disturbance activities, a qualified biologist(s) familiar and experienced with western burrowing owl shall perform a take</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>



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 requirements 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

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<p>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.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Compensatory Mitigation to offset impacts by purchasing and managing off-site habitat or by purchasing mitigation credit, as approved by CDFW. (see BIO-5)</li> </ul>		
<p>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 <del>30</del>-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</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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

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