



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



July 18, 2024  
*Sent via email*

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Dear Linda Mawby and Luis Rodriguez:

**BMT Corral, LLC Corral Solar Farm (Project)  
 MITIGATED NEGATIVE DECLARATION (MND)  
 SCH# 2024060805**

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND 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 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**

The Project proposes to develop and operate a 3-megawatt photovoltaic solar facility on a 23-acre portion of a 58.81-acre parcel. The Project originally encompassed portions of two separate parcels, Assessor's Parcel Numbers (APN) 0466-111-09 (58.51 acres) and APN

<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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0466-131-01 (15.3 acres), totaling 73.81 acres. The solar facility has been reconfigured to encompass 23 acres located on one existing parcel (0466-111-09). A lot line adjustment is proposed to leave the balance of the 50.78 acres as undeveloped. The Project would utilize approximately 7,000 photovoltaic solar module panels mounted to single-axis trackers utilizing 12, 250-kilowatt (kW) inverters. The Project will be interconnected with a 33-kW distribution circuit that serves the local area. The project was designed as a Community Oriented Renewable Energy (CORE) project. It meets the general requirements of the San Bernardino County CORE criteria, in that the project size is under 10 MW-ac, project area is less than 60 acres, and nearly 100% of production will serve local off-site use.

**Proponent:** BMT Corral, LLC

**Objective:** The objective of the Project is to construct and operate a 3-megawatt community photovoltaic solar facility on an approximately 23-acre portion of a 58.51-acre parcel.

**Location:** The Project is located north of National Trails Highway, south of Atchinson Topeka & Santa Fe Railroad, and west of Corral Road, near the community of Helendale, California, San Bernardino County, 34.785715° latitude, -117.252550° longitude.

**Timeframe:** No construction initiation dates, construction windows, operation periods, or decommissioning dates were specified in the Mitigated Negative Declaration.

## 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.

### I. Environmental Setting and Related Impact Shortcoming

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?**

#### COMMENT #1:

**Section:** MND IV, Pages 19-21

**Issue:** CDFW is concerned that the MND has not accurately described or fully established the biological resources present onsite, limiting the CEQA Lead Agency's and CDFW's ability to analyze the project's potential impacts, avoidance, and/or mitigation measures on candidate, sensitive, or special status species. The MND relies on incomplete and possibly inaccurate biological resource surveys when concluding that the Project does not contain suitable habitat, and therefore, significant impacts to candidate, sensitive, or special status species including desert tortoise (*Gopherus agassizii*), Mohave ground squirrel (*Xerospermophilus mohavensis*), Barstow woolly sunflower (*Eriophyllum mohavense*), Beaver Dam breadroot (*Pediomelum castoreum*), Desert cymopterus (*Cymopterus deserticola*), Mojave monkeyflower (*Diplacus mohavensis*), and Mojave spineflower (*Chorizanthe spinose*).

**Specific impact:** Potential project impacts to candidate, sensitive, or special status species may be mischaracterized, resulting in avoidable, unminimized, or unmitigated impacts not analyzed by the MND.

**Why impact would occur:** The MND and accompanying Biological Assessment for Corral Solar Project (Elevated Entitlements) concludes that the Project site does not support suitable habitat for desert tortoise, Mohave ground squirrel, Barstow woolly sunflower, beaver dam breadroot, desert cymopterus, Mojave monkeyflower, and Mojave spineflower.

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**Evidence impact would be significant:** On June 24, 2024 CDFW staff observed the project site from public right of ways to confirm the MND's findings that Mojave creosote scrub and/or chenopod scrub constituencies were absent from the site. Both Mojave creosote scrub and chenopod species were readily observed from the public right of way. Suitable habitat and habitat elements for the above-mentioned sensitive species are present within the Project site. Given the presence of potentially suitable habitat, Project impacts to the species identified above are possible and the MND should incorporate avoidance, minimization, and mitigation measures for each species based on an assumption of presence or based on focused surveys, following professionally accepted methods (protocol level surveys), and incorporated in the MND. The species above include federal Endangered Species Act (ESA) and California Endangered Species Act (CESA)-listed species, and rare plants that have professionally accepted survey methodologies, and reporting practices. Following the MND's analysis of protocol level surveys, the MND should require ESA and CESA permits in the event the MND anticipates take of those species.

**Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)**

**To reduce impacts to less than significant:** The MND should include a Project impact analysis on sensitive species based on professionally accepted survey methodologies, including but not limited to, desert tortoise<sup>2</sup>, MGS<sup>3</sup>, and rare plants<sup>4</sup> (see comments 3-6 below). A complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish & G. Code, § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required.

Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

**Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?**

**COMMENT #2:**

**Section:** MND section X, Page 37

**Issue:** The MND does not include, but should include, a jurisdictional delineation of all ephemeral stream features potentially subject to notification for Lake and Streambed Agreement pursuant Fish and Game Code section 1602. Development facilitated by

<sup>2</sup> US Fish and Wildlife Service. October 8, 2019. Preparing For Any Action That May Occur Within The Range Of The Mojave Desert tortoise (*Gopherus agassizii*).

[https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise%20Pre-project%20Survey%20Protocol\\_2019\\_v2.pdf](https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise%20Pre-project%20Survey%20Protocol_2019_v2.pdf)

<sup>3</sup> California Department of Fish and Wildlife. October, 2023. California Department of Fish and Wildlife Mohave Ground Squirrel Survey Guidelines (January 2003, revised July 2010, October 2023).

[https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise%20Pre-project%20Survey%20Protocol\\_2019\\_v2.pdf](https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise%20Pre-project%20Survey%20Protocol_2019_v2.pdf)

<sup>4</sup> California Department of Fish and Wildlife. March 20, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

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the Project could impact stream resources subject to notification pursuant to Fish and Game Code section 1602.

**Specific impact:** Project activities, including grading, solar panel installation, vehicle and equipment staging, and site access could divert or obstruct stream flows, substantially alter the bed, bank, or channel of a stream, use or deposit materials subject to notification pursuant to Fish and Game Code section 1602. Absent notification, the Project could result in impacts to stream resources that should otherwise be avoided, minimized, or addressed in an agreement with CDFW.

**Why impact would occur:** Project implementation will result in physical changes to the landscape (e.g., grading) and could physically alter lake or streambed resources.

**Evidence impact would be significant:** California places great value on streams and the resources they provide. CDFW has authority over activities in rivers, streams and lakes that may substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake (Fish and Game Code section 1602). For any such activities, the Project Applicant should provide written notification of Lake and Streambed Alteration to CDFW and obtain a Lake and Streambed Alteration Agreement pursuant to Fish and Game Code section 1602.

The MND mentions that a Preliminary Drainage Study was prepared utilizing Geographical Information System (GIS) to identify one United States Geological Survey (USGS) mapped blue line stream, that would be avoided in the site design. However, a number of ephemeral streams were observed on June 24, 2024 by CDFW staff from public rights of way, and pictured in Figures 9, 10, 11, 12, 13, 16, 22, 23, 24, 25, 26, 27, 28, and 29 of the Biological Assessment (Elevated Expectations) that are not fully represented by the MND. CDFW considers the fill and permanent conversion of natural ephemeral streams to impervious surfaces a significant impact to stream resources. The conversion of a natural ephemeral stream systems to impervious managed systems results in direct, permanent impacts to the physical form and function of natural stream systems and the habitats they support, increases water flow velocity, increases erosive processes downstream, removes habitat and wildlife corridors, and prohibits groundwater infiltration. Indirect effects associated with streambed conversion include increased habitat fragmentation, increased developmental encroachment on natural stream systems, and increased maintenance activities.

**Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant:**

CDFW recommends the MND include a jurisdictional delineation to identify stream resources subject to Fish and Game Code section 1602. Should the Project be unable to avoid impacts to stream resources, the Project applicant will need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires any entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream, or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream, or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow similar to those referenced above.

**II. Mitigation Measure or Alternative and Related Impact Shortcoming**

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?**

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**COMMENT #3:**

**Section:** MND Section IV, Pages 19-21

**Issue:** The Project may impact Desert Tortoise, a California Endangered Species Act threatened species and its habitat.

**Specific impact:** Desert tortoise is a State and federally listed 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 direct mortality and/or injury to desert tortoise. Project construction and operation 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:** The Project site is located within suitable desert tortoise habitat. The CNDDDB notes desert tortoise sightings on properties within 1,500 feet of the Project site. The Biological Resources Assessment survey was conducted on June 3, 2023, which is outside of the typical active seasons identified as the preferred timeframe in the US Fish and Wildlife Service’s protocols for surveying for desert tortoise and their sign. CDFW is concerned regarding the MND’s assertion that desert tortoise habitat is not present without providing the protocol desert tortoise survey field notes substantiating the MND’s lack of desert tortoise compensatory mitigation measures and incidental take permitting requirements. CDFW strongly encourages the Project proponent to apply for a CESA incidental take permit (ITP) for take of desert tortoise if full avoidance is not feasible.

**Evidence impact would be significant:** Desert tortoise is a California Endangered Species Act (CESA)-listed species. Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a Project, including Project construction or any Project-related activity during the life of the Project results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization *prior* to Project implementation. This may include an incidental take permit or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081).

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 plant species (USFWS 2011). The desert tortoise population in the western Mojave Desert has declined by 90% since the 1980s. Desert tortoises can take up to 20 years to reach sexual maturity, which limits their ability to recover from even small losses in population numbers (USFWS 2011).

**Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:** CDFW recommends inclusion of the following changes to the mitigation measure BIO-8 for desert tortoise (edits are in strikethrough and additions are in bold):

***Biological Resources Mitigation Measure 8 (BIO-8)***

**BIO-8**

**A CDFW-approved biologist (Authorized Biologist) shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with U.S. Fish and Wildlife Service 2009 desert tortoise survey methodology. The**

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**survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Preconstruction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist (Authorized Biologist) shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] is obtained.**

To ~~avoid~~ **minimize** construction impacts to desert tortoise not more than ~~45~~ **15** days before construction a pre-construction clearance survey must be conducted **by a Authorized Biologist (USFWS)**. If ~~species~~ **desert tortoise** is present, individuals will be allowed to leave on their own. In addition, in observation with USFW and CDFW the project proponent will install exclusionary fencing **following the specifications found in Chapter 8 *Desert Tortoise Exclusion Fence of the Desert Tortoise (Mojave Population) Field Manual (USFWS)***.

**COMMENT #4:**

**Section:** MND section VI, Page 21

**Issue:** Mitigation measure BIO-7 is infeasible as written.

**Specific impact:** Desert tortoise is a State and federally listed threatened species. Any activities, including mitigation measures involving take (See Fish and Game Code, §§ 2080 & 2085) necessary to reduce a CEQA project’s potential impacts to below a level of significance, requires an incidental take permit or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081). Mitigation measure BIO-7 includes handling of desert tortoise, a CESA-listed species, without specifying that the appropriate incidental take authorization be in place *prior to* the need for take/handling.

**Why impact would occur:** The Project site is located within desert tortoise habitat. The CNDDDB notes desert tortoise sightings on adjacent properties to the Project site. As currently written, the MND instructs a “certified biologist” to remove desert tortoise from the Project. CDFW also strongly encourages the Project proponent to apply for a CESA incidental take permit (ITP) for take of desert tortoise to facilitate handling if full avoidance is not feasible.

**Evidence impact would be significant:** Desert tortoise is a California Endangered Species Act (CESA)-listed species. Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a Project, including Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation. This may include an incidental take permit or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081).

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 plant species (USFWS 2011). The desert tortoise population in the western Mojave Desert has declined by 90% since the 1980s. Desert tortoises can take up to

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20 years to reach sexual maturity, which limits their ability to recover from even small losses in population numbers (USFWS 2011).

**Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:** CDFW recommends inclusion of the following changes to the mitigation measures for desert tortoise (edits are in strikethrough and additions are in bold):

***Biological Resources Mitigation Measure 7 (BIO-7)***

**BIO-7: Permittee will obtain California Endangered Species Act (CESA) authorization prior to initiating ground-disturbing activities.** If a desert tortoise is present within the construction area, all work and any activities that could harm the tortoise shall stop. The project manager shall notify a ~~certified~~ **CDFW Authorized bBiologist** to safely remove the desert tortoise prior to commencing construction.

**COMMENT #5: Mohave ground squirrel (*Xerospermophilus mohavensis*)**

**Section:** MND section IV, Page 19-21

**Issue:** The Project site contains potentially suitable habitat for the California Endangered Species Act (CESA)-threatened Mohave ground squirrel (MGS).

**Specific Impact:** The MND does not provide any avoidance/minimization or mitigation measures specific to MGS. The Project and Project related activities have the potential to take MGS.

**Why impact would occur:** MGS is a State and federally listed threatened species. Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to Mohave ground squirrel. Grading, ground disturbance, and vegetation clearing may result in the permanent loss of up to 23 acres of MGS habitat.

**Evidence impact would be significant:** The MND concludes that MGS is not present stating that “[b]ased upon the completion of a Biological Survey of the property, which include a visual survey performed by Elevated Entitlements, no species or habitat were found for Mojave Ground Squirrel (MGS) and thus, the Project would not have a significant impact upon this species.” While the biological Assessment (Elevated Entitlement) notes that the nearest MGS occurrence is 1.35 miles from the Project. Although the California Natural Diversity Database (CNDDDB) is a positive-detection database only and is not exhaustive in terms of the data it houses, nor is it an absence database. The fact that a CNDDDB species occurrence occurs within 1.35 miles southeast of the Project (Elevated Entitlements), the habitat and vegetative communities are consistent to the Project’s northeast and southeast are a good indication of suitable MGS habitat. A lack of recorded CNDDDB observations at a Project site does not provide sufficient merit to make the definitive statement that no impacts would occur without conducting protocol-level focused surveys. Mohave ground squirrels are challenging to detect, and a general survey may not provide an accurate assessment of presence/absence. The CNDDDB data should not be substituted for onsite surveys. Additionally, desert shrub vegetation such as creosote bush scrub (*Larrea tridentata*, present at the Project) are known to provide habitat for Mohave ground squirrel. According to CDFW’s [Mohave Ground Squirrel Predicted Habitat - CWHR M073 \[ds2531\] GIS Dataset \(ca.gov\)](#) database, the Project site provides moderately suitable habitat for Mohave ground squirrel (CDFW 2016). Without focused protocol surveys during the appropriate survey period, Project activities may adversely impact Mohave ground squirrel.

**Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:** CDFW offers the following measures for inclusion in the final MND to avoid impacts to Mojave ground squirrel:

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### **Biological Resources Mitigation Measure 11 (BIO-11)**

**BIO-11: Prior to Project approvals or Entitlements, a** A qualified biologist familiar with the species' behavior and life history shall conduct focused surveys for Mohave ground squirrel throughout the Project site. Focused Mohave ground squirrel surveys shall adhere to California Department of Fish and Wildlife Mohave Ground Squirrel Survey Guidelines (CDFW 2023). If Mohave ground squirrel is observed on site or captured during any of the trapping sessions, the Project proponent shall secure a CESA Incidental Take Permit (ITP) for Mohave ground squirrel before the issuance of ~~City~~ **County entitlement** permits **or** approvals. The ITP shall specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel including habitat acquisition at a CDFW-approved location and mitigation ratio

### **COMMENT #6: Special-Status Plant Species**

**Section:** MND section IV, Page 20-21

**Issue:** Page 20 of the MND notes that “[s]pecial status plant species were not observed during the site visit on June 3 2023, but the current vegetation type does not contain suitable habitat for sensitive biological resources...” CDFW is concerned that the Biological Resources Assessment incorrectly concludes that suitable habitat for several sensitive plant species including Barstow wooly sunflower (*Eriophyllum mohavense*), Beaver Dam breadroot (*Pediomelum castoreum*), desert cymopterus (*Cymopterus deserticola*), Mojave spineflower (*Chorizanthe spinosa*), Mojave monkeyflower (*Diplacus mohavensis*), Mojave spineflower (*Chorizanthe spinose*), white pygmy-poppy (*Canbya candida*), and crowned muilla (*Mullia coronata*) is absent from the Project site. CDFW is concerned with these inconsistencies in the Biological Assessment and MND's subsequent conclusions. Several of these species have a California Rare Plant Rank of 1B or 2B and any potential impacts require public disclosure of such impacts. The determinations of special-status plants potential to occur were made based on habitat assessments that were conducted on June 3, 2023, and information supporting a protocol-level botanical survey is not provided in the MND or attached biological report. For several of the species, this time was outside of the flowering season, and it appears that surveys were not conducted according to CDFW 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018).

If sensitive species and/or their habitat may be impacted from the Project, CDFW recommends the inclusion of specific mitigation in the MND. CEQA Guidelines section 15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777).

**Specific impact:** The Project has the likelihood for Project-related impacts to special status plant species due to ground disturbing activities associated with the development of the Project site.

**Why impact would occur:** The Project has the potential to impact several special status plants and it is unclear why protocol surveys were not completed to determine and support the analysis within the MND. The MND and Biological Assessment for Corral Solar project (Elevated Entitlements) indicate that special-status plant species are Presumed Absent, and for the majority the supporting evidence is that there is no



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suitable habitat within or adjacent to the Project site. CDFW is concerned regarding this determination and provides specific justification below:

Barstow woolly sunflower – According to the Biological Assessment for Corral Solar project (Elevated Entitlements), “Found in chenopod scrub, Mojavean desert scrub, and playas. Found at elevations between 1,640 feet and 3,150 feet. Blooms between March and May.” CDFW disagrees with the MND’s determination and understands that the Project site does contain suitable habitat (Mojavean desert scrub, and chenopod) and is within the range of Barstow woolly sunflower. Additionally, the June 3, 2023 survey date cited by the Biological Assessment falls outside the species’ typical blooming period.

Beaver Dam breadroot– According to the Biological Assessment for Corral Solar project (Elevated Entitlements), “Found in Joshua tree woodland and Mojavean desert scrub. Found at elevations between 2,000 feet and 5,005 feet. Blooms between April and May. CDFW disagrees with the MND’s determination and understands that the Project site does contain suitable habitat (Mojavean desert scrub) and is within the range of Beaver Dam breadroot. Additionally, the June 3, 2023 survey date cited by the Biological Assessment falls outside the species’ typical blooming period.

Crowned muilla– According to the Biological Assessment for Corral Solar project (Elevated Entitlements), “ Found in chenopod scrub, Joshua tree woodland, Mojavean desert scrub and pinyon and juniper woodland. Found at elevations between 2,200 feet and 6,430 feet. Blooms between March and April, but as late as May.” Based on the habitat characteristics observed by CDFW staff and documented in the Biological Assessment, the Project site includes suitable habitat (chenopod scrub), CDFW disagrees with the MND’s determination and understands that the Project site does contain suitable habitat and is within the range of crowned muilla. Additionally, the June 3, 2023 survey date cited by the Biological Assessment falls outside the species’ typical blooming period.

Mojave monkeyflower – According to the Biological Assessment for Corral Solar project (Elevated Entitlements), “Found in Joshua tree woodland and Mojavean desert scrub. Found at elevations between 1,970 feet and 3,935 feet. Blooms between April and June. CDFW disagrees with the MND’s determination and understands that the Project site does contain suitable habitat (Mojavean desert scrub) and is within the range of Mojave monkeyflower.

Mojave spineflower – According to the Biological Assessment for Corral Solar project (Elevated Entitlements), “Found in chenopod scrub, Joshua tree woodland, Mojavean desert scrub, playas. Found at elevations between 20 feet and 4,265 feet. Blooms between March and July.” Based on the habitat characteristics observed by CDFW staff and documented in the Biological Assessment, the Project site includes suitable habitat (chenopod scrub), CDFW disagrees with the MND’s determination and understands that the Project site does contain suitable habitat and is within the range of Mojave spineflower.

White pygmy-poppy – According to the Biological Assessment for Corral Solar project (Elevated Entitlements), “ Found in Joshua tree woodland, Mojavean desert scrub, pinyon and juniper woodland. Found at elevations between 1,970 feet and 4,790 feet. Blooms between March and June.” CDFW disagrees with the MND’s determination and understands that the Project site does contain suitable habitat (Mojavean desert scrub) and is within the range of white pygmy poppy.

**Evidence impact would be significant:**

Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Likewise, CDFW considers State listed communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S1, S2, and S3 should be considered sensitive and declining at the local and regional

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level. These ranks can be obtained by querying the CNDDDB and are included in the Manual of California Vegetation and California Native Plant Society (cnps.org) (CNPS 2023).

**Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant:** CDFW offers the following Mitigation Measures for Sensitive Plant Species (additions are in bold):

***Add Biological Resources Mitigation Measure 18 (BIO-18)***

**BIO-18**

**Pre-construction rare plant clearance survey:** Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the Project Applicant shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging).

If complete avoidance of a special status plant is not feasible, the Project Applicant shall mitigate the loss of the plant(s) through off-site compensation including: 1) permanent protection of an existing off-site native population; 2) permanent protection of an off-site introduced population; 3) a combination of 1) and 2); or 4) mitigation banking. The ratio of acquisition to loss must in most cases exceed 1:1 for any species. The ratio should be higher for rarer species, particularly for those that occupy irreplaceable habitats.

**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.)

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## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the County of San Bernardino in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Eric Weiss, Senior Environmental Scientist Specialist at [eric.weiss@wildlife.ca.gov](mailto:eric.weiss@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
84FBB8273E4C480...  
Alisa Ellsworth  
Environmental Program Manager

ec: Office of Planning and Research, State Clearing House, Sacramento  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

## ATTACHMENTS

Attachment A: MMRP for CDFW-Proposed Mitigation Measures

## REFERENCES

California Department of Fish and Game (CDFG). 2010. Mohave Ground Squirrel Survey Guidelines. Available for download at:  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>

California Department of Fish and Wildlife. March 20, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities.  
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California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at:  
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California Natural Diversity Database (CNDDDB) Government [ds45]. 2023. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System.

County of San Bernardino. June 2024. Initial Study/Mitigated Negative Declaration Environmental Checklist Form BMT Corral, LLC.

Elevated Entitlements. May 29, 2024. Biological Assessment for Corral Solar Project.

Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A manual of California Vegetation, 2nd ed. California Native Plant Society Press, Sacramento, California. <http://vegetation.cnps.org/>

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

U.S. Fish and Wildlife Service. 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*). Region 8, Sacramento, California.



## Attachment A

### Draft Mitigation Monitoring and Reporting Program and Draft Recommendations

#### Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p><b>MM-BIO-8:</b> A CDFW-approved biologist (Authorized Biologist) shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with U.S. Fish and Wildlife Service 2009 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Preconstruction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist (Authorized Biologist) shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] is obtained.</p> <p>To minimize construction impacts to desert tortoise not more than 15 days before construction a pre-construction clearance survey must be conducted by a Authorized Biologist (USFWS). If species desert tortoise is present, individuals will be allowed to leave on their own. In addition, in observation with USFW and CDFW the project proponent will install exclusionary fencing following the specifications found in Chapter 8 Desert Tortoise Exclusion Fence of the Desert Tortoise (Mojave Population) Field Manual (USFWS).</p>	<p>Prior to commencing ground or vegetation disturbing activities</p> <p>&amp; During Construction</p>	<p>Project Proponent</p>

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<p><b>MM-BIO-7:</b> Permittee will obtain California Endangered Species Act (CESA) authorization prior to initiating ground-disturbing activities. If a desert tortoise is present within the construction area, all work and any activities that could harm the tortoise shall stop. The project manager shall notify a CDFW Authorized Biologist to safely remove the desert tortoise prior to commencing construction.</p>	<p>Prior to commencing ground or vegetation disturbing activities  &amp; During Construction</p>	<p>Project Proponent</p>
<p><b>MM-BIO-11:</b> Prior to Project approvals or Entitlements, a qualified biologist familiar with the species' behavior and life history shall conduct focused surveys for Mohave ground squirrel throughout the Project site. Focused Mohave ground squirrel surveys shall adhere to California Department of Fish and Wildlife Mohave Ground Squirrel Survey Guidelines (CDFW 2023). If Mohave ground squirrel is observed on site or captured during any of the trapping sessions, the Project proponent shall secure a CESA Incidental Take Permit (ITP) for Mohave ground squirrel before the issuance of County entitlement permits or approvals. The ITP shall specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel including habitat acquisition at a CDFW-approved location and mitigation ratio</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p><b>MM-BIO-18:</b> Pre-construction rare plant clearance survey: Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>are identified, the Project Applicant shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging).</p> <p>If complete avoidance of a special status plant is not feasible, the Project Applicant shall mitigate the loss of the plant(s) through off-site compensation including: 1) permanent protection of an existing off-site native population; 2) permanent protection of an off-site introduced population; 3) a combination of 1) and 2); or 4) mitigation banking. The ratio of acquisition to loss must in most cases exceed 1:1 for any species. The ratio should be higher for rarer species, particularly for those that occupy irreplaceable habitats.</p>		
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### Draft Recommendations

CDFW recommends the following language to be incorporated into the [enter document type] for the Project.

Biological Resources (BIO)		
Recommendation (REC) Description	Implementation Schedule	Responsible Party
REC-1:		
REC-2:		