DESERT BREEZE SOLAR PROJECT

FINAL ENVIRONMENTAL IMPACT REPORT

SCH# 2022090646

Lead Agency:

San Bernardino County Land Use Services Department
385 N. Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0187

JANUARY 5, 2024

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Lead Agency:

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JANUARY 5, 2024

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1.0 INTRODUCTION TO THE ENVIRONMENTAL ANALYSIS

1.1 Purpose of the Final Environmental Impact Report

San Bernardino County (County), as the Lead Agency under the California Environmental Quality Act (CEQA), has prepared this Final Environmental Impact Report (Final EIR) for the Desert Breeze Solar Project (Project) (State Clearinghouse [SCH] No. 2022090646). This document, in conjunction with the Draft Environmental Impact Report (Draft EIR), comprise the Final EIR for the Project.

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

1.2 Project Summary

Desert Breeze Solar, LLC (Applicant) proposes to develop the Desert Breeze Solar Project (Project), a utility-scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 130 megawatts (MW) of solar power and include up to 2 gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS). Key entitlements to construct and operate the Project include two (2) Conditional Use Permits (CUPs). The Project would be developed within an approximately 923-acre Project Site comprised of an 813-acre solar array area (CUP 1) and a 110-acre Shared Facilities Area (SFA) (CUP 2). The solar array area of the Project Site is bordered on the south by the approved Lockhart Solar PV II Project (Lockhart II; PROJ-2021-00029), approved by the County Board of Supervisors on June 28, 2022, and the Lockhart Solar PV Facility (Lockhart I; PROJ-2019-00125), approved by the County Board of Supervisors on January 7, 2020, currently under construction. The Lockhart I project area is comprised of the former Solar Energy Generating System (SEGS) VIII Solar Thermal Plant site (now decommissioned) and the existing SEGS IX Solar Thermal Plant. The remainder of the solar development portion of the Project Site is bordered by vacant land. Project operations staff would share the existing operations and maintenance (O&M) buildings, warehouse, employee building, and water and septic systems located within the SFA that currently support the Lockhart I and II Facilities. In addition, the Project would upgrade, as necessary, the Lockhart I collector substation (currently under construction) and the existing switchyard located within the SFA to connect the Project to the existing 13.8-mile transmission line which runs from the SFA to the Southern California Edison (SCE)-owned Kramer Junction substation located approximately 11.36 miles to the southwest. The Project's BESS would be constructed within the SFA, which also includes the County-approved, but not yet fully constructed, BESS for Lockhart Solar I and II Facilities.

Additionally, the Project proposes improvement of a portion of Harper Lake Road, which is an existing dirt road. Construction activities associated with the road improvement will include grading to widen or level the existing road; importing and compacting materials, such as soil and gravel; and may include paving. The road improvement may extend up to approximately 60 feet wide and approximately 1 mile long from the southeastern corner of Hoffman Road and Harper Lake Road (adjacent to the east of SEGS IX) to the existing secondary access gate.

1.3 Overview of the CEQA Public Review Process for the Draft EIR

In compliance with the CEQA Guidelines, the County, as the Lead Agency for the Project, has provided opportunities for the public to participate in the environmental review process. As described below, throughout the environmental review process, an effort was made to inform, contact and solicit input from the public and various State, regional, and local government agencies and other interested parties on the Project.

Notice of Preparation

In accordance with CEQA Guidelines Section 15082, a Notice of Preparation (NOP) was distributed to initiate the County's CEQA review process for the Project, identify and seek public input for the Project's potential environmental effects, and identify a date for the Project's public scoping meeting. The NOP was distributed on September 30, 2022 with a public review period ending on October 31, 2022 in compliance with the State's mandatory 30-day public review period.

Scoping Meeting

A virtual scoping meeting was held to discuss the Project on October 18, 2022, from 5:00 p.m. to 7:00 p.m. via Zoom. A presentation was provided, including an overview of the Project and the CEQA process. Following the presentation, participants were encouraged to provide oral or written comments to aid the County in refining the scope of issues to be addressed in the Draft EIR.

No individuals from the public attended the scoping meeting. A total of four (4) written comment letters were received in response to the NOP and scoping meeting. Letters were submitted by the Native American Heritage Commission, Voltility, the Desert Tortoise Council, and the Defenders of Wildlife. The NOP and the comment letters received in response to the NOP and scoping meeting are provided in Appendix A of the Draft EIR.

Draft EIR

In accordance with the provision of CEQA Guidelines Sections 15085(a) and 15087(a), the County, serving as the Lead Agency: (1) prepared and transmitted a Notice of Completion (NOC) to the State Clearinghouse; (2) published a Notice of Availability (NOA) of a Draft EIR which indicated that the Draft EIR was available for public review at the County's Planning Division Counter; (3) provided copies of the NOA and Draft EIR to the High Desert Government Center, San Bernardino Government Center, and San Bernardino County Library; (4) posted the NOA and the Draft EIR on the County's Planning Division website: https://lus.sbcounty.gov/planning-home/environmental/desert-region/; (5) sent a NOA to all

property owners within 1,300 feet of the Project Site boundary; (6) sent a NOA to the last known name and address of all organizations and individuals who previously requested such notice in writing or attended public meetings about the Project; (7) posted a copy of the NOA with the San Bernardino Sun; and (8) filed the NOA with the County Clerk. The Draft EIR public review period commenced on September 25, 2023. On October 27, 2023, the close of the comment period was extended to December 15, 2023.

During the Draft EIR public review period, the County received five (5) comment letters on the Draft EIR from Voltility, the Desert Tortoise Council, Mohave Ground Squirrel Conservation Council, Defenders of Wildlife, and the California Department of Fish and Wildlife. All written comments received during the public review period are presented, and responses are provided in **Chapter 2.0: Comment Letters and Responses to Comments** of this Final EIR.

1.4 Organization of the Final EIR

The Final EIR is organized as follows:

- **Chapter 1.0: Introduction to the Environmental Analysis**. Describes the process and purpose of the Final EIR, provides a summary of the Project, summarizes the Final EIR public review process, and presents the contents of the Final EIR.
- **Chapter 2.0: Comment Letters and Responses to Comments.** Presents all comments received by the County during the 46-day public review period of the Draft EIR (September 25, 2023 to November 10, 2023). Also provides responses to all comments received that are related to the contents of the Draft EIR.
- **Chapter 3.0: Corrections and Additions to the Draft EIR.** Includes revisions to the Draft EIR that represent minor changes to the Project Description, changes or additions in response to comments received on the Draft EIR, and additional edits to provide clarification to the Draft EIR text. Changes to the Draft EIR are shown with ~~strikethrough~~ text for deletions and double underline text for additions. The changes do not add significant new information that would affect the analysis or conclusions presented in the Draft EIR.
- **Appendices.** Contains appendices as referenced throughout the Final EIR.

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2.0 COMMENT LETTERS AND RESPONSES TO COMMENTS

CEQA Guidelines Section 15088(a) states that: "The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The Lead Agency shall respond to comments that were received during the noticed comment period and any extensions and may respond to late comments." In accordance with these requirements, this chapter of the Final EIR provides responses to each of the comments on the Draft EIR received during the public comment period. **Table 2-1**, *Summary of Comments on the Desert Breeze Solar Project Draft EIR*, provides a list of the comment letters received and the corresponding issues that were raised in response to the Draft EIR.

The individual letters received during the public comment period, and as listed in Table 2-1, are each assigned a number in chronological order, as indicated in Table 2-1. Each comment that requires a response is also assigned a number. For example, the first comment letter received was from Voltility; therefore, this is Letter 1. The first comment in the letter is therefore labeled Comment 1-1 and the responses to each comment are correspondingly numbered, (i.e., Response to Comment 1-1). A copy of each comment letter is provided in **Appendix A: Original Comment Letters** of this Final EIR. As required by the CEQA Guidelines Section 15088(c), the focus of the responses to comments is on "the disposition of significant environmental issues raised." Therefore, detailed responses are not provided for comments that do not relate to environmental issues.

Table 2-1: Summary of Comments on the Desert Breeze Solar Project Draft EIR

Letter No.	Name	Date Received	Environmental Category	
			Biological Resources	Other
1	Tom Adamson Voltility tadamson@voltility.net	9/26/2023		X
2	Edward L. LaRue, Jr., M.S. Ecosystems Advisory Committee, Chairperson Desert Tortoise Council 3807 Sierra Highway, #6-4514 Acton, CA 93510	12/12/2023	X	
3	Edward L. LaRue, Jr., M.S. Ecosystems Advisory Committee, Chairperson Mohave Ground Squirrel Conservation Council P.O. Box 1660 Wrightwood, CA 92397	12/12/2023	X	
4	Sophia Markowska Senior California Representative Defenders of Wildlife P.O. Box 401 Folsom, CA 95763	12/13/2023	X	

Letter No.	Name	Date Received	Environmental Category	
			Biological Resources	Other
5	Alisa Ellsworth Environmental Program Manager State of California – Natural Resources Agency Department of Fish and Wildlife Inland Deserts Region 3602 Inland Empire Boulevard, Suite C-220 Ontario, CA 91765	12/13/2023	X	

Letter 1

Tom Adamson
Voltility
Received on September 26, 2023

Comment 1-1

Thanks for informing me of the EIR.

Desert Breeze Solar looks to be 130MW of solar with up to 2GWh of battery storage, and I've read the battery will be charged from the solar farm and the grid.

Do you know the megawatt capacity of the battery? How many hours can the battery operate for?

Response to Comment 1-1

The commenter is requesting additional technical information related to the batteries. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Letter 2

Edward L. LaRue, Jr., M.S.
Ecosystems Advisory Committee, Chairperson
Desert Tortoise Council
3807 Sierra Highway, #6-4514
Acton, CA 93510
Received on December 12, 2023

Comment 2-1

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

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

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats known to be occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments include recommendations intended to enhance protection of this species and its habitat during activities authorized by San Bernardino County (County), which we recommend be added to project terms and conditions in the authorizing document (e.g., right of way grant, etc.) as appropriate. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

Response to Comment 2-1

This comment introduces the organization and acknowledges the Council's opportunity to provide comment. This comment serves as an introduction to the remainder of the letter. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 2-2

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), "… based on population reduction (decreasing density), habitat loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract

disease/mycoplasmosis). *Gopherus agassizii* (sensu stricto) comprises tortoises in the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses have been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (sensu stricto) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units."

This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from threatened to endangered in California. The decision is still pending at the time of this writing.

Response to Comment 2-2

The commenter provides background on the special status history of the Mojave Desert tortoise. This comment serves as an introduction to the remainder of the letter. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 2-3

Please note that we received an email from you on October 27, 2023 that indicated the deadline for comments had been extended to December 15, 2023.

> *"Good Morning Ed,*
>
> *"This is to inform [you] that the attached NOA/NOI for this Project has been updated in regard to a revised 45-day public review period (10/27/23-**12/15/23**). This is a result of the NOA/NOI originally not being sent out to surrounding property owners within 1,300 feet of the proposed project, which is a requirement by the County when issuing a NOA/NOI for Public Review. Please let me know if you have any questions.*
>
> *"Thank You,*
>
> *"Jon [Braginton]"*

But I see in the Notice of Availability (NOA)/Notice of Intent (NOI) that the due date is shown as December 10, 2023. So, we trust that the County will work in good faith and consider our comments even if they are several days late. Unless otherwise noted, page numbers given below refer to the Draft Environmental Impact Report (DEIR), prepared Kimley-Horn and Associates, dated September 25, 2023. The Council provided scoping comments on the Desert Breeze Solar Project (Project) on October 27, 2023, which are incorporated by reference and attached.

We find that the DEIR is deficient in its failure to consider most of the recommendations we made in our attached scoping comments, with page numbers referenced in the following bullets.

Response to Comment 2-3

The commenter requests that their comment letter be accepted by the County even if received several days late. The NOA/NOI initially set a comment period to close on November 10, 2023 (not December 10, 2023 as noted by commenter*)*. However, as noted, the comment period was extended to conclude on December 15, 2023. Therefore, the comment letter, received December 12, 2023, was submitted within the public review period and is accepted as a comment on the Draft EIR. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 2-4

• On page 3, we specifically asked that the County confer with CDFW and USFWS in preparation of the DEIR, which as given herein, did not apparently occur. We also suggested that Tribal governments/agencies be consulted, which is not apparent in the DEIR.

Response to Comment 2-4

The comment asserts that the County did not confer with the California Department of Fish and Wildlife (CDFW), United States Fish and Wildlife Service (USFWS) and Tribal governments/agencies as part of the Draft EIR. As described on page 4.3-50 of **Section 4.3: Biological Resources** of the Draft EIR, formal consultation with the USFWS and CDFW would be required for the desert tortoise, and a federal incidental take permit (ITP) under Section 10 of the Federal Endangered Species Act and State ITP under California Fish and Game Code Section 2081 would be required. As noted in **Appendix B** of this Final EIR, this consultation has been underway since August 2022. The Habitat Conservation Plan (HCP) and ITP Applications were deemed complete by the USFWS and CDFW in August 2023.

Regarding tribal consultation, as noted on page 4.12-2 of **Section 4.12: Tribal Cultural Resources** of the Draft EIR, the County began Assembly Bill (AB) 52 Native American consultation on October 14, 2022. The County initiated tribal consultation with the members of the Yuhaaviatam of San Manuel Nation and the Morongo Band of Mission Indians. Additional details regarding the consultation process are provided in **Section 4.12: Tribal Cultural Resources**.

Comment 2-5

• On pages 4 and 5, we asked that the DEIR analyze roof-top solar, urban solar, and brownfield area alternatives, any one of which could have been mentioned as the Environmentally Superior Alternative, but not one of them is mentioned.

Response to Comment 2-5

The comment requests that the Draft EIR analyze roof-top solar, urban solar, and brownfield area alternatives. As stated on page 6-1 of **Chapter 6.0: Alternatives** of the Draft EIR, pursuant to CEQA

Guidelines Section 15126.6, the range of alternatives required in an EIR is governed by a "rule of reason." Therefore, an EIR must evaluate only those alternatives necessary to permit a reasoned choice. Additionally, an EIR need not consider an alternative whose effects cannot be reasonably ascertained and whose implementation is remote and speculative. As described in CEQA Guidelines Section 15126.6(f)(1), among the factors that may be taken into account when addressing the feasibility of alternatives are environmental impacts, site suitability, economic viability, social and political acceptability, technological capacity, availability of infrastructure, Countywide Plan consistency, specific plan consistency, regulatory limitations, jurisdictional boundaries, and whether the project proponent could reasonably acquire, control, or otherwise have access to an alternative site. If an alternative has effects that cannot be reasonably identified, if its implementation is remote or speculative, or if it would not achieve the basic project objectives, it need not be considered in the EIR.

A roof-top or urban solar project would not achieve the basic objectives of the Project, including locating PV solar power-generating facilities and energy storage systems near existing utility infrastructure, thereby achieving economies of scale to maximize shared operation and maintenance facilities with existing solar operations. These alternatives would not likely be built out within a timeframe that would be similar to that of the Project and, given the distributed nature of such a network of facilities, construction, management, and maintenance would not be as efficient, and total capital costs would likely be higher. The Project Proponent does not have immediate control or access to potential urban sites that could accommodate facilities to generate the solar power, and a distributed system on the scale of the project would be cost-prohibitive to implement due to reduced cost efficiency of distributed solar. The electricity generated by these alternatives would be used on the sites generating the power and would not achieve the Project objective of assisting California load-serving entities in meeting their obligations under California's Renewables Portfolio Standard (RPS) Program.

The commenter also has not identified a brownfield site available for development. A brownfield site alternative would not meet the basic objectives of the Project. A brownfield alternative may also result in greater environmental impacts than the Project or could substantially increase the cost and length of time required for permitting. The Draft EIR already analyzed an alternative site, and the commenter does not indicate why a brownfield site would provide additional information necessary to permit a reasoned choice. Therefore, as a roof-top, urban, or brownfield area solar alternative would not meet basic Project objectives, would be speculative, may increase environmental impacts, and would not be meaningful alternatives to the proposed Project, they were not considered in the EIR. No further response is warranted.

Comment 2-6

• On page 5, we asked that the DEIR review available monitoring reports to analyze the efficacy of crushing rather than blading the vegetation within the Project footprint. Not only is this analysis lacking, but we also cannot tell from the project description what the proponent plans to do: crush or blade the vegetation?

Response to Comment 2-6

The commenter asks that the Draft EIR analyze the efficacy of crushing rather than blading the vegetation within the Project footprint. Project construction would minimize ground disturbance through implementation of a mow-and-roll vegetation clearance process. Specifically, vegetation will be cleared via mowing (either with vehicle-based mowers or hand-held tools [e.g., stringline trimmers]). Following this, piled vegetation would be rolled/crimped into the soil. This process would result in less ground disturbance than blading vegetation at or below the soil surface. Project construction activities would include blading of the ground in select areas to allow for construction, including, but not limited to, roads, retention basins, and grading to minimize pooling of water. Grading would be minimized to the extent feasible, but would be performed as needed to allow the site to meet technical requirements for the site and associated equipment, as well as specific County hydrology requirements.

Comment 2-7

• On pages 5 through 9, we provided extensive data on the downward tortoise population trends throughout the listed range and particularly in the West Mojave "…so that these or similar data may be included in the DEIR." We note that nothing like this appears in the DEIR, leaving an uninformed public unknowing what the plight of the tortoise is within the affected region surrounding the Project.

Response to Comment 2-7

The commenter provides information summarizing the population declines in desert tortoise and the commenter's assertion that the desert tortoise meets the definition of an endangered species. As stated on page 2 of the Biological Resources Assessment (provided in Appendix D of the Draft EIR), LSA conducted a literature review to assist in determining the existence or potential occurrence of special-status animal species within the Lockhart 7.5-minute quadrangle, where the Project is located, and surrounding 7.5-minute quadrangles. Database records for the *Fremont Peak, Bird Spring, Opal Mountain, The Buttes, Lockhart, Water Valley, Kramer Hills, Twelve Gauge Lake and Hinkley*, USGS 7.5-minute quadrangles were searched prior to field surveys on March 28, 2022, and revalidated on August 24, 2022, using the CDFW California Natural Diversity Database (CNDDB) application Rarefind 5 online edition (version 5.2.14). The USFWS listed species and designated critical habitat information were searched using the USFWS Information for Planning and Consultation system (accessed on August 24, 2022). The final rule for the determination of critical habitat for desert tortoise, as described in the Federal Register, was also reviewed (USFWS 1994). Aerial photographs (Google Earth 2022) were also reviewed. Soil types were determined using the WebSoil Survey (United States Department of Agriculture [USDA] Natural Resources Conservation Service [NRCS] Web Soil Survey, version 3.4.0).

The data provided within the comment letter's appendix utilizes data from 2004 to 2014. The literature review that informed the Biological Resources Assessment and Draft EIR took into consideration the current (at the time the surveys and literature review were conducted) population status of the desert tortoise and is reflected in the analysis provided in the Draft EIR. The desert tortoise focused surveys were conducted during the tortoise's most active spring period (April through May) with 13 visits throughout April 2022. The Draft EIR provides a detailed discussion of desert tortoise based on currently available

data, including potential impacts of the Project and robust mitigation measures to avoid, minimize and mitigate impacts to the species. As described in **Section 4.3: Biological Resources** of the Draft EIR, **Mitigation Measures BIO-3, BIO-4, BIO-5, BIO-6, BIO-6, BIO-7, BIO-8,** and **BIO-14** would be implemented to reduce impacts to the desert tortoise population to a less than significant level. Additionally, as stated in Response to Comment 5-4 below, **Mitigation Measure BIO-19** would also be implemented assign a Lead Biologist to implement all biological construction monitoring duties. Implementation of **Mitigation Measure BIO-19** would further reduce impacts to the desert tortoise.

Comment 2-8

• On pages 11 and 12, we asked for an "…economic analysis that provides the total cost of constructing the proposed project versus other alternatives," including "…habitat replacement or restoration costs including the time needed to achieve full replacement, not just acquisition, management, monitoring, and adaptive management costs;" "…a thorough analysis of the status and trend of the tortoise in the action area, tortoise conservation area(s), recovery unit(s), and rangewide," "…a discussion of all likely sources of mortality for the tortoise and degradation and loss of habitat from implementation of solar development including construction, operation and maintenance, decommissioning, and restoration;" and "We also request that separate calculations document how many acres of desert tortoise habitats would be temporarily and permanently impacted both directly and indirectly (e.g., "road effect zone," etc.) by the proposed Project," none of which appears in the DEIR.

Response to Comment 2-8

The commenter also notes that the alternatives analysis should include an economic analysis that provides the cost of constructing the Project versus the alternatives. The Draft EIR includes a detailed analysis of the environmental effects and comparative merits of each alternative, including effects to biological resources and desert tortoise. The alternatives analysis further considers the feasibility of each alternative compared to the proposed project, as well as the ability of each alternative to meet the basic Project objectives. CEQA does not require a detailed economic analysis comparing the costs to construct the Project and each alternative, including habitat restoration and management costs. Please see S**ection 4.3: Biological Resources** of the Draft EIR and Response to Comments 2-7 and 2-17 regarding the Draft EIR's analysis of the status of desert tortoise in the area and the Project's potential direct, indirect, and cumulative impacts to desert tortoise.

Comment 2-9

• On page 12, we specifically asked that "The DEIR should include effective mitigation for all direct, indirect, and cumulative effects to the tortoise and its habitats," and on pages 13 through 15 provided requests for the following specific management and monitoring plans to be included in the DEIR: Translocation Plan - Translocated Tortoises & Translocation Sites, Tortoise Predators and a Predator Management Plan, Fire Prevention/Management Plans, Habitat Compensation Plan, and Impacts from Proliferation of Nonnative Plant Species and Management Plan, stating on page 13 that "Too often, such plans are alluded to in the draft environmental document and promised later, which does not allow the reviewers to assess their adequacy, which is unacceptable," which accurately characterizes this DEIR.

Response to Comment 2-9

The commenter requests that various plans related to the desert tortoise and its habitats be provided in the Draft EIR. **Chapter 2: Project Description** of the Draft EIR provides a detailed analysis of the Project, including the Project's location, site characteristics, and Project facilities. The figures and information provided in the Draft EIR, particularly the maps and details provided in the Biological Resources Assessment (Appendix D of the Draft EIR), include the information necessary to analyze the Project's direct, indirect, and cumulative impacts on desert tortoise. As determined in the Biological Resources Assessment and the Draft EIR, implementation of the recommended mitigation measures would reduce the Project's potentially significant impacts on biological resources to a less than significant level. Therefore, the Project would not result in significant and unavoidable impacts.

As described in **Appendix B** of this Final EIR, the Applicant has been in regular contact with the USFWS and CDFW as part of the HCP application process under Section 10 of the federal Endangered Species Act and ITP application process under Section 2081 of the California Fish and Game Code (CFGC), respectively. The applications have been deemed complete. As part of the final two permits, to be issued, the Applicant will prepare a desert tortoise translocation plan that will be reviewed and approved by the USFWS and CDFW prior to Project implementation. The two permits will also include measures meant to address desert tortoise predator management, invasive plant species management and prevention, and habitat mitigation/compensation requirements. In addition, the Applicant will participate in the USFWS' raven management program through the payment of a one-time fixed fee, as well as undertake measures to reduce raven attraction, including removing trash daily, limiting available food and water subsidies, and inadvertently creating habitat (for example, creation of perch/roost sites and nest or denning sites) within the Project Site, see Draft EIR **Mitigation Measure BIO-4**. Additionally, as detailed in **Mitigation Measure BIO-14,** all food-related trash items shall be disposed of in solid, closed containers (trash cans) on a daily basis, and onsite trash receptacles shall be emptied as necessary to prevent overflow of trash.

Comment 2-10

The FEIR must address the above requests and provide supplemental information or it too, like the DEIR, will continue to be deemed deficient.

Response to Comment 2-10

The commenter states that the Final EIR must address the requests made and provide supplemental information. See Response to Comments 2-4 through 2-9 above.

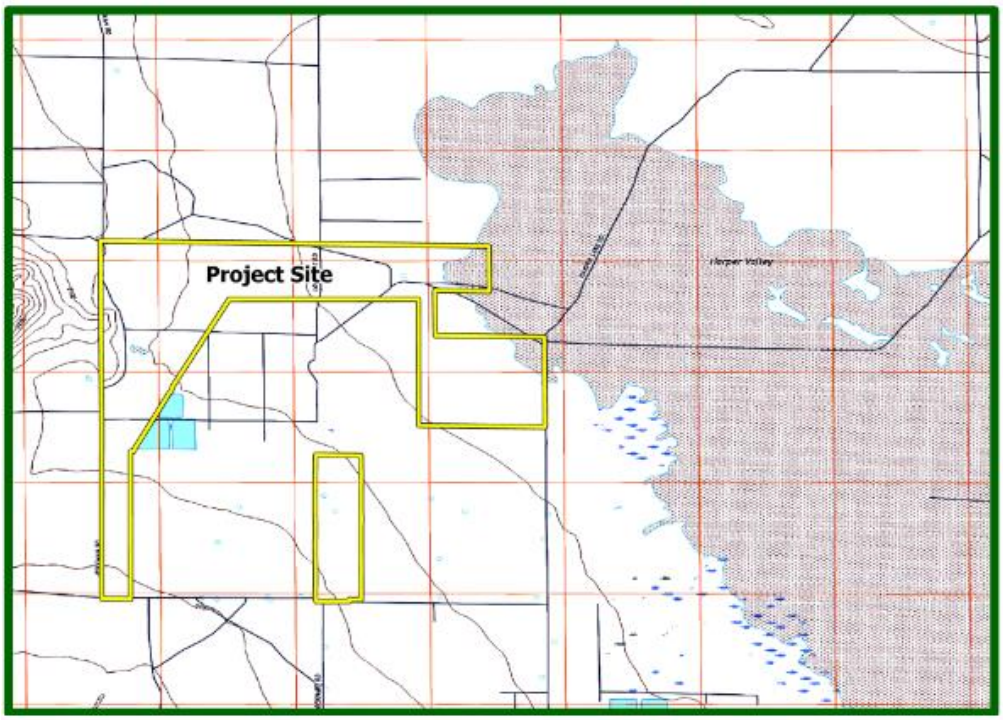
Comment 2-11

The following Project description is given on page 2-2: "Desert Breeze Solar, LLC (Applicant) proposes to develop the Desert Breeze Solar Project (Project), a utility-scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 130 megawatts (MW) of solar power and include up to 2 gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS). Key entitlements to construct and operate the Project include a zoning amendment to change the current zoning designation from Rural Living (RL) to Resource Conservation (RC), as well as two (2)

Conditional Use Permits (CUPs). The Project would be developed within an approximately 923-acre Project Site comprised of an 813-acre solar array area (CUP1) and a 110-acre Shared Facilities Area (SFA) (CUP 2)."

On page 2-1, we also read the following statements: "Additionally, the Project proposes improvement of a portion of Harper Lake Road, which is an existing dirt road. Construction activities associated with the road improvement will include grading to widen or level the existing road; importing and compacting materials, such as soil and gravel; and may include paving. The road improvement may extend up to approximately 60 feet wide and approximately 1 mile long from the southeastern corner of Hoffman Road and Harper Lake Road (adjacent to the east of SEGS IX) to the existing secondary access gate."

We interpret the above information to mean that Harper Lake Road will be used as the primary access to the site. There is an existing tortoise-proof fence along both sides of the road between Highway 58 and the existing solar arrays that is intended to preclude tortoises from the roadway. Please be sure that the integrity of this fence is intact. We read on page 3-19 that as many as 250 construction workers may visit the site, which is a substantial increase in use of Harker *[sic]* Lake Road. Although a previous project proponent was responsible for installing the fence, in order to ensure that take of tortoises inside this fence resulting from this project is avoided, please be sure that the proponent maintains the integrity of this fence. It may also be appropriate for the east side of Harper Lake Road located north of Hoffman Road to be fenced to avoid the take of tortoises associated with this project.



Response to Comment 2-11

The commenter provides the project description from **Chapter 2.0: Executive Summary** of the Draft EIR.

The commenter asserts that Harper Lake Road will be used as primary access to the site. As stated on page 3-18 of **Chapter 3.0: Project Description** of the Draft EIR, access to the Project Site would be provided in multiple existing and new access points through Hoffman Road and Harper Lake Road.

The comments regarding the existing tortoise-proof fencing are noted. As stated on page 4.3-57 of **Section 4.3: Biological Resources** of the Draft EIR, the Project would install a new 7-foot-tall chain link fence, with incorporated desert tortoise exclusionary fencing, on the north, west, and eastern boundary of the solar array area. The existing fencing along the shared boundary between the Project Site and the adjacent solar facilities to the south would remain. The perimeter fence would be maintained over the life of the Project. The Applicant will also voluntarily install desert tortoise exclusionary fencing on the east side of Harper Lake Road north of Hoffman Road to minimize and avoid the take of desert tortoises. A sample of the desert tortoise exclusionary fencing is provided in the below image:

Comment 2-12

On page 2-4 and 2-5, we appreciate that Alternative 3 was dropped, as it occurs in an area that has been determined to be important to the conservation of the Mohave ground squirrel (*Xerospermophilus mohavensis*) (CDFW 2019, LaRue 2016). As stated on page 2-4, "…however, further evaluation is required on the MGS conservation requirements for the area before it can be opened to renewable energy applications for individual projects" is absolutely true.

Response to Comment 2-12

This comment is noted. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 2-13

Page 4.3-6 states, "The Survey Area is not located within USFWS-designated Critical Habitat or any of the sections noted as critical habitat in the Federal Register for desert tortoise (*Gopherus agassizii*). The Project Site is also located outside of Bureau of Land Management (BLM) Area of Critical Concern (ACEC) with the Superior-Cronese ACEC **located adjacent to the north** and the Fremont-Kramer ACEC located to the west. The Project Site is within the current range of the desert tortoise" (bold emphasis added). For full disclosure the Final EIR (FEIR) should document the distances from the proposed Project to tortoise Critical Habitat, the Superior-Cronese ACEC, which we assume occurs at the boundary of the Project footprint (e.g., "adjacent to"), and the Fremont-Kramer ACEC. Although not within any of the Tortoise Conservation Areas (TCAs), the proximity is important when considering indirect impacts.

Response to Comment 2-13

The commenter requests that the Final EIR document the distances between the Project to tortoise Critical Habitat, the Superior-Cronese ACEC, and the Fremont-Kramer ACEC. As seen in Figure 4 of the Biological Resources Assessment, provided in Appendix D of the Draft EIR, the Desert Tortoise Critical Habitat is located directly north of the Project Site. As seen in Figure 11 of the Biological Resources Assessment, the Superior-Cronese ACEC and Fremont-Kramer ACEC is located adjacent to the north and the west of the Project Site, respectively. The information included within the Draft EIR, particularly the maps and details and focused pedestrian surveys, provide the information necessary to analyze the Project's potential indirect impacts on desert tortoise.

Comment 2-14

We note in Table 4.3-2: Special Status Species on page 4.3-11 that "Ten live desert tortoises were found within the Survey Area along with fresh scat, tracks, burrows, and skeletal remains." However, there is no indication that the consulting biologist used the USFWS formula (2019) to estimate densities of tortoises with confidence intervals. Tortoises are notoriously difficult to see, so it is appropriate that density estimates are included in the FEIR.

Response to Comment 2-14

The comment asserts that the biologists did not use the USFWS formula to estimate densities of tortoises with confidence intervals. As stated in the Biological Resources Assessment, the biologists conducted surveys according to the USFWS *Field Survey Protocol for Any Federal Action That May Occur Within the Range of the Desert Tortoise* (2019) during the tortoise's most active spring period (April through May) with 13 visits through April 2022. The burrows, carcasses, scat, and other tortoise sign/activities were also taken into account to inform the results of the survey. Due to the presence of the live desert tortoises, impacts on desert tortoises were determined to be potentially significant, and formal consultation with the USFWS and CDFW would be required. The Draft EIR recommended implementation of **Mitigation Measures BIO-3, BIO-4, BIO-5, BIO-6, BIO-7, BIO-8, and BIO-14** to reduce impacts on desert tortoise to less than significant levels. Additionally, as stated in Response to Comment 5-4 below, **Mitigation Measure BIO-19** would also be implemented assign a Lead Biologist to implement all biological

construction monitoring duties. Implementation of **Mitigation Measure BIO-19** would further reduce impacts to the desert tortoise.

Comment 2-15

In the same table on page 4.3-15, we note that "No MGS were observed during the MGS habitat assessment or other biological resources surveys conducted," which is reiterated on page 4.3-22. We note that MGS are rarely ever observed; that protocol trapping surveys are required to ascertain presence of absence (CDFW 2023). Alternatively, the proponent may forego trapping surveys, assume presence, and acquire a 2081 Incidental Take Permit from the California Department of Fish and Wildlife. We ask that the proponent actually confer with the CDFW and that the FEIR report actual determinations rather than a range of alternatives.

Response to Comment 2-15

The comment notes that Mohave Ground Squirrel (MGS) are rarely observed and that protocol trapping surveys are required to ascertain presence of absence, or that the proponent may acquire a Section 2081 ITP from the CDFW. As described in **Appendix B** of this Final EIR, for the Project's Section 2081 ITP, the Applicant is assuming MGS presence in all potentially suitable habitat (418 acres) and is proposing compensatory mitigation (equivalent to at least a 1:1 replacement for impacted habitat) to offset impacts to the species. CDFW has been consulted regarding this permitting approach. As part of ITP issuance, CDFW will include a determination on the extent of potential impacts to MGS habitat and the required amount of compensatory mitigation.

Comment 2-16

On page 4.3-51, we read "**Mitigation Measure BIO-14** includes best management practices to be implemented during Project grading and construction and decommissioning activities to prevent inadvertent entrapment of species and attraction of predators to the Project Site. Further, it is not anticipated that many individual animals would be taken due to the avoidance measures detailed in **Mitigation Measure BIO-14** and similar measures anticipated to be imposed by USFWS and CDFW." The document author seems to synonymize "take" with "death." We note that "take" refers to "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Therefore, ALL tortoises found on the site will be subject to take. This conclusion should be changed to reflect the definition of take in the FEIR.

Response to Comment 2-16

The comment asserts that the Draft EIR synonymizes "take" with "death" in **Mitigation Measure BIO-14.** Page 4.3-40 of **Section 4.3: Biological Resources** of the Draft EIR utilizes Section 9 of the Federal Endangered Species Act and defines take as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct." The Draft EIR further clarifies "harm" to include "any act which actually kills or injures fish or wildlife, and emphasizes that such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife." No further response is warranted.

Comment 2-17

As given above, the DEIR fails to divulge the proximities of tortoise Critical Habitat and ACECs are to the subject property. We note that Section 4.3.5 Impacts and Mitigation Measures fails to mention or analyze indirect, cumulative, and synergistic impacts to tortoises in adjacent areas. Nor does a baseline inventory and survey that extends to only a 50-foot buffer around the project allow the County and resource agencies to know how many tortoises in adjacent areas may be subject to take associated with indirect impacts. The FEIR needs to be substantially revised to fully document likely indirect, cumulative, and synergistic impacts resulting from project development.

Response to Comment 2-17

The comment asserts that the Draft EIR fails to mention or analyze indirect, cumulative, and synergistic impacts to tortoises in adjacent areas, and that the Final EIR needs to be revised to document the likely indirect, cumulative, and synergistic impacts resulting from project development. The comment does not provide substantial evidence as to how the Draft EIR does not document these potential impacts. **Section 4.3: Biological Resources** of the Draft EIR analyzes the potential direct and indirect impacts to desert tortoise and concludes that impacts to desert tortoise would be potentially significant. Therefore, the Draft EIR recommended implementation of **Mitigation Measures BIO-3, BIO-4, BIO-5, BIO-6, BIO-7, BIO-8, and BIO-14** to reduce impacts on desert tortoise to less than significant levels. Additionally, as stated in Response to Comment 5-4 below, **Mitigation Measure BIO-19** would also be implemented assign a Lead Biologist to implement all biological construction monitoring duties. Implementation of **Mitigation Measure BIO-19** would further reduce impacts to the desert tortoise.

Regarding cumulative impacts, page 4.3-70 of the Draft EIR states implementation of the Project, along with related projects, have the potential to impact wildlife species, including the desert tortoise. While most of the cumulative projects would convert undeveloped land into renewable energy facilities, over time, vegetation communities would re-establish between the panels, fencing, and utility structures, allowing wildlife (e.g., rodents, raptors, small birds, and reptiles) to continue inhabiting and foraging on the sites over the lifetime of the projects (approximately 30 years). Decommissioning plans, required for solar projects, also outline revegetation requirements for potential habitat restoration. Therefore, while habitat would be temporarily disturbed or removed during the construction and decommissioning phases, operation and post-operation of such renewable energy facilities would not result in substantial permanent impacts to special-status species and habitats, and the affected lands could return to existing conditions for the foreseeable future after decommissioning. Further, as with the Project, these cumulative projects would also be required to avoid and/or mitigate impacts to special-status species and habitats in accordance with County, CDFW, and USFWS requirements. Thus, cumulative impacts would not be cumulatively considerable and would be less than significant. Although a new chain link fence, which would incorporate desert tortoise exclusionary fencing, would be placed on the north, west, and eastern boundary of the solar array area to the south, the surrounding area consists of flat, undeveloped lands that would remain available to facilitate wildlife movement. Therefore, impacts concerning wildlife movement, including for desert tortoise, would not be cumulatively considerable and would be less than significant.

Comment 2-18

The mitigation measures referenced at the bottom of page 4.3-50 and top of page 4.3-51 must be supplemented in the FEIR to include tortoise translocation procedures, fire management and fire prevention plans, weed abatement plan, minimization of impacts to water quality and use from the local aquifer, a predator management plan (not only common ravens, but also coyotes and American badgers), and how and for how long residual impacts, particularly of displaced tortoises, will be monitored.

To focus on only one of these issues, that of tortoise translocation, the County and proponent need to address the following questions in the FEIR: How many tortoises will be displaced by the proposed project? How long will translocated tortoises be monitored? Will the monitoring report show how many of those tortoises lived and died after translocation and over time? Are there any degraded habitats or barren areas that may impair success of the translocation? Are there incompatible human uses in the new translocation area that need to be eliminated or managed to protect newly-translocated tortoises? Were those translocation areas sufficiently isolated that displaced tortoises were protected by existing or enhanced land management? How will the proponent minimize predation of translocated tortoises and avoid adverse climatic conditions, such as low winter rainfall conditions that may exacerbate translocation success? Were tortoises translocated to a site where they would be protected from threats (e.g., off-highway vehicles, future development, etc.)?

Response to Comment 2-18

The comment requests that the mitigation measures referenced at the bottom of page 4.3-50 and top of page 4.3-51 be supplemented. The Project's HCP and ITP will include mitigation measures that address translocation procedures for wildlife, fire management and prevention, weed abatement, and general best management practices for construction (see **Mitigation Measure BIO-14**). Measures to protect water quality will be part of the Project's Stormwater Pollution Prevention Plan. Specific to desert tortoise translocation, prior to Project implementation, the draft desert tortoise translocation plan, which is based on agency guidance, will be submitted to both the USFWS and CDFW for review. The plan will include population estimates/densities for the Project and translocation sites to ensure that translocated individuals do not negatively impact recipient populations. As part of this work, the plan will include procedures to assess the health and disposition of individuals prior to translocation and handling/processing procedures to ensure individuals do not transmit disease to recipient populations. The plan will also include a description of the translocation site(s) and verify that the recipient sites support the long-term persistence of translocated individuals and the recipient populations. This plan will be reviewed and approved by USFWS and CDFW prior to Project implementation.

Comment 2-19

The impacts to adjacent areas were not considered especially with respect to wildlife linkages/movement corridors/wildlife population connectivity with a focus on the tortoise and MGS. To assist the County with this resource issue, we provide the following information for use in the analysis in the FEIR.

Mojave desert tortoise linkage habitat: In 2021, Averill-Murray et al. published a paper on connectivity of Mojave desert tortoise populations and linkage habitat. The authors emphasized that "[m]aintaining an ecological network for the Mojave desert tortoise, with a system of core habitats (TCAs = Tortoise Conservation Areas) connected by linkages, is necessary to support demographically viable populations and long-term gene flow within and between TCAs."

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

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

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

We add that the fundamentals of conservation biology include the need for gene flow between populations to maintain genetic diversity; this enables a species to more likely survive, especially during climate change, which enables biodiversity. Thus, linkage habitats are important as they provide connectivity among wildlife populations to maintain viability and biodiversity. Governor Newsome *[sic]* issued Executive Order N-82-20 to combat biodiversity and the climate crisis. The executive order seeks to restore and protect biodiversity in California.

The scientific literature, CDFW, and USFWS should be consulted to determine whether there are linkages that have been identified as important to any special status species including the tortoise and MGS. Once identified, if any linkage occurs in the project area, the County should analyze whether the additional development would affect the effectiveness of the linkage habitat for that species. For example, CDFW (2019) has identified linkages for the Mohave ground squirrel in their Mohave Ground Squirrel Conservation Strategy. Without this information and analysis, it is not possible to make a conclusion about the impacts of the proposed project on the effectiveness of the linkage habitat with the addition of the proposed project.

Although we note on page 4.3-60 in BIO-3 that a "…CDFW- and USFWS-approved Desert Tortoise Relocation Plan shall be submitted to the County prior to initiating Project construction activities," we note that the proponent already knows that at least 10 tortoises occur on the site and question why that plan has not already been completed and does not appear in an appendix to the DEIR. Absent the draft plan, the concerned public, including the Council, is unable to review the plan and provide constructive feedback. We therefore expect to see the Desert Tortoise Relocation Plan as an appendix to the FEIR.

Response to Comment 2-19

The comment states that impacts to adjacent areas were not considered especially with respect to wildlife linkages/movement corridors/wildlife population connectivity. As discussed on page 4.3-68 of **Section 4.3: Biological Resources** of the Draft EIR, wildlife movement of small species such as reptiles and small mammals and larger species such as bobcats (*Lynx rufus*) and coyotes (*Canis latrans*) are expected to occur within the Project Site. There are no limits or obstructions to wildlife movement within most of the Project Site, especially along the northern, western, and eastern boundaries. As stated on page 4.3-50, the western and northwestern portions of the Survey Area also had more presence of desert dandelion and redstem stork's bill, which provides greater food availability for the desert tortoise. While existing chain-link and desert tortoise fencing along the shared southern border and perimeter of the Project and the perimeter of the adjacent solar projects prevent larger wildlife movement in the vicinity and significantly impede smaller wildlife (i.e., small mammals, reptiles) movement in the vicinity, and new chain link fence with incorporated desert tortoise exclusionary fencing would be placed on the north, west, and eastern boundary of the solar array area, the Project Site is surrounded by undeveloped land to the north, west, and east. Desert tortoise would have food availability outside of the Project Site and within the Survey Area, and there is available suitable habitat outside of the solar array area of the Project Site for the desert tortoise. Regarding the MGS, as stated on page 4.3-23, the Project Site is located east of the Harper Lake Core Population shown in the *A Conservation Strategy for the Mojave Ground Squirrel,* completed by the CDFW in 2019, and is not in a connecting corridor between MGS core populations. Therefore, the Project is not anticipated to substantially reduce the area of wildlife movement in the region as areas to the north, west, and east of the Project would continue to provide opportunities for wildlife movement. Impacts on wildlife movement are less than significant. No wildlife nursery sites have been identified on or in the vicinity of the Project Site. Additionally, the Project Site is not located within a potential riparian connection, or small or essential connectivity areas. As such, the Project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites. Impacts would be less than significant.

Because the translocation plan is part of the HCP and ITP approval processes, it may not be finalized prior to public release of the Final EIR. Nevertheless, the desert tortoise translocation plan will be reviewed and approved by the USFWS and CDFW prior to Project implementation. As provided in Response to Comment 2-18 above, the plan will include population estimates/densities for the Project and translocation sites to ensure that translocated individuals do not negatively impact recipient populations. The plan will include procedures to assess the health and disposition of individuals prior to translocation and handling/processing procedures to ensure individuals do not transmit disease to recipient

populations. The plan will also include a description of the translocation site(s) and verify that the recipient sites support the long-term persistence of translocated individuals and the recipient populations. Further, to approve an HCP and ITP, the agencies must find, among other things, that impacts are monitored, minimized, and mitigated, and take will not appreciably reduce the likelihood of the survival of or otherwise jeopardize the species.

Comment 2-20

With regards to MGS, we read the following statement on page 4.3-51: "Therefore, while no MGS were observed or detected during the surveys, development of the Project would potentially impact individuals and remove approximately 418.54 acres of suitable habitat for the MGS such that impacts to the MGS population and its habitat would be potentially significant." We disagree with this conclusion, knowing that MGS occupy all of the vegetation types within the Project footprint except for barren areas and playa surfaces (BLM 2005). We see in Table 4.3-1 that barren areas comprise 23 acres and playa surfaces comprise 12 acres. So, we conclude that 826 acres (861 minus 35 acres), not 418 acres, would be lost to full development of the Project, and that take of MGS is more than likely to occur. The above information also needs to be applied to BIO-9, which reiterates that compensation would be only for 418.54 acres rather than the full extent of suitable, potentially occupied habitat. The FEIR needs to rectify this erroneous conclusion wherever it occurs in the DEIR.

Response to Comment 2-20

The commenter disagrees with the conclusion that 418 acres of suitable habitat for the MGS would be impacted by the Project, and asserts that take of MGS is more than likely to occur. The commenter does not provide substantial evidence to support this conclusion that take of MGS is likely to occur. The Project Site has a history of ground disturbance resulting from prior agricultural activities and the landing strips and dike in the southeastern area of the solar array area of the Project Site. Areas subject to historic disturbance either from construction or agriculture are not considered suitable for the species due to the resultant soil compaction. Therefore, all vegetation communities outside of these disturbed areas are considered MGS habitat, and the 418 acres is the appropriate acreage to be used for compensation.

Comment 2-21

With regards to the following statement on page 4.3-51, "…purchase credits in a mitigation bank equivalent to at least a 1:1 replacement," the Project proponent can expect the CDFW to require a minimum of 3:1 habitat replacement. This observation also applies to compensation for tortoises impacts described for BIO-5 on page 4.3-60/61 and BIO-9 on page 4.3-61/62. It is not apparent from these naïve statements (e.g., that only 418 acres of the Project area comprise suitable MGS habitat) that the proponent or County have consulted with either the USFWS or CDFW prior to completing the DEIR. This conclusion is supported by the absence of these agencies from Section 8.1 of the DEIR. Whereas consultation may not be a requirement, we recommend that the proponent actually consults with these two agencies and report factual determinations in the FEIR, like what the actual compensation ratio will be for both tortoises and MGS, rather than speculate as is currently done in the DEIR.

Response to Comment 2-21

The comment asserts that the proponent or County have not consulted with the USFWS or CDFW prior to completing the Draft EIR. As noted in **Appendix B** of the Final EIR, this consultation with the USFWS and CDFW have been underway since August 2022. Specific compensatory mitigation obligations will be included in the permits issued by the respective agencies.

Comment 2-22

We disagree with the conclusion at the top of page 4.3-52, "Therefore, removal of the suitable habitat as a result of the Project would not result in a significant impact [to the MGS] related to the loss of vegetation communities." Absent a formal protocol trapping survey, the proponent must assume presence of the MGS, and impacts to a State-listed species constitute a significant impact. This erroneous conclusion needs to be retracted or revised in the FEIR.

Response to Comment 2-22

The commenter requests that the proponent assume presence of MGS and that impacts to a State-listed species constitute a significant impact. As noted in **Appendix B** of the Final EIR, the Applicant is applying for an ITP that includes take coverage for MGS. Species presence is assumed at the Project Site due to a lack protocol-level trapping surveys. The Draft EIR determines that impacts to MGS are potentially significant, and mitigation measures are proposed to reduce those impacts to less than significant levels. Further, the Applicant will be mitigating for the loss of MGS habitat under the ITP, and impacts to the species will be reduced to less than significant with mitigation.

Comment 2-23

With regards to BIO-4 on page 4.3-60, the FEIR should clarify that "…a onetime fee not to exceed $150 and no less than $105 per disturbed acre" should be applied to all 861 acres, for a total amount of between $129,150 and $90,405 to reflect the maximum and minimum per-acre costs. We also note that the USFWS has failed to revise its 2010 cost estimates to account for current financial conditions, so the maximum per-acre fee should be applied to the project, for ALL acres, not just a subset as was suggested for MGS compensation on page 4.3-51 described above.

Response to Comment 2-23

The comment states that the maximum per-acre fee should be applied for the Project for all acres, not just the subset as was suggested for MGS compensation on page 4.3-51 of the Draft EIR. As noted in **Appendix B** of the Final EIR, the Applicant has discussed participation in the USFWS' Raven Monitoring and Management Program and will pay a one-time fee based on the acreage of the Project based on discussions with the USFWS. Therefore, the Applicant has already coordinated with the USFWS on the one-time fee for the interagency Raven Monitoring and Management Program needed to offset potential effects on predator populations in the region resulting from the Project.

Comment 2-24

Further, with regards to BIO-4, we expect to see the Raven Management Plan attached to the FEIR. Like the tortoise translocation plan described above, the public does not have an opportunity to review and comment on plans that do not yet exist.

Response to Comment 2-24

The comment requests that the Raven Management Plan be included in the Final EIR. Because desert tortoise are known to be present on-site, the Applicant shall be required to participate in the interagency Raven Monitoring and Management Program and will be required to pay the one-time fee described above in Response to Comment 2-23 above. The Applicant also will undertake measures to reduce raven attraction, including removing trash daily, limiting available food and water subsidies, and inadvertently creating habitat (for example, creation of perch/roost sites and nest or denning sites) within the Project Site, see **Mitigation Measure BIO-4**.

Comment 2-25

Finally, we ask that the County reorganize the platform for providing documents associated with the FEIR. For example, the DEIR indicates that Appendix D includes a Biological Resources Assessment, indicating on page vi that it is "Provided under separate cover." However, the only available documents at the County's website (https://ceqanet.opr.ca.gov/2022090646/2) are the DEIR and NOP; no appendices are provided. Please be sure that the platform makes ALL related environmental documentation available to the concerned public.

Response to Comment 2-25

The comment requests that the County reorganize the platform for providing documents associated with the Final EIR and states that the documents were not provided at the County's website. However, the website cited in the comment is the State of California Governor's Office of Planning and Research CEQAnet Web Portal and not the County's website as listed in the NOA/NOI (https://lus.sbcounty.gov/planning-home/environmental/desert-region/). As seen therein, all appendices are provided for public review. No further response is warranted.

Comment 2-26

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

Response to Comment 2-26

The commenter concludes their comment letter. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

[The remainder of the comment letter includes citations that are referenced throughout the comment letter and the comment letter submitted on the Notice of Preparation from the same commenter.]

Letter 3

Edward L. LaRue, Jr., M.S.
Ecosystems Advisory Committee, Chairperson
Mohave Ground Squirrel Conservation Council
P.O. Box 1660
Wrightwood, CA 92397
Received on December 12, 2023

Comment 3-1

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

Response to Comment 3-1

This comment introduces the MGSCC and serves as an introduction to the remainder of the letter. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 3-2

Please note that we received an email from you on October 27, 2023 that indicated the deadline for comments had been extended to December 15, 2023.

> *Good Morning Ed,*
>
> *"This is to inform [you] that the attached NOA/NOI for this Project has been updated in regard to a revised 45-day public review period (10/27/23-12/15/23). This is a result of the NOA/NOI originally not being sent out to surrounding property owners within 1,300 feet of the proposed project, which is a requirement by the County when issuing a NOA/NOI for Public Review. Please let me know if you have any questions.*
>
> *"Thank You,*
>
> *"Jon [Braginton]"*

But I see in the Notice of Availability (NOA)/Notice of Intent (NOI) that the due date is shown as December 10, 2023. So, we trust that the County will work in good faith and consider our comments even if they are several days late. Unless otherwise noted, page numbers given below refer to the Draft Environmental Impact Report (DEIR), prepared by Kimley-Horn and Associates, dated September 25, 2023.

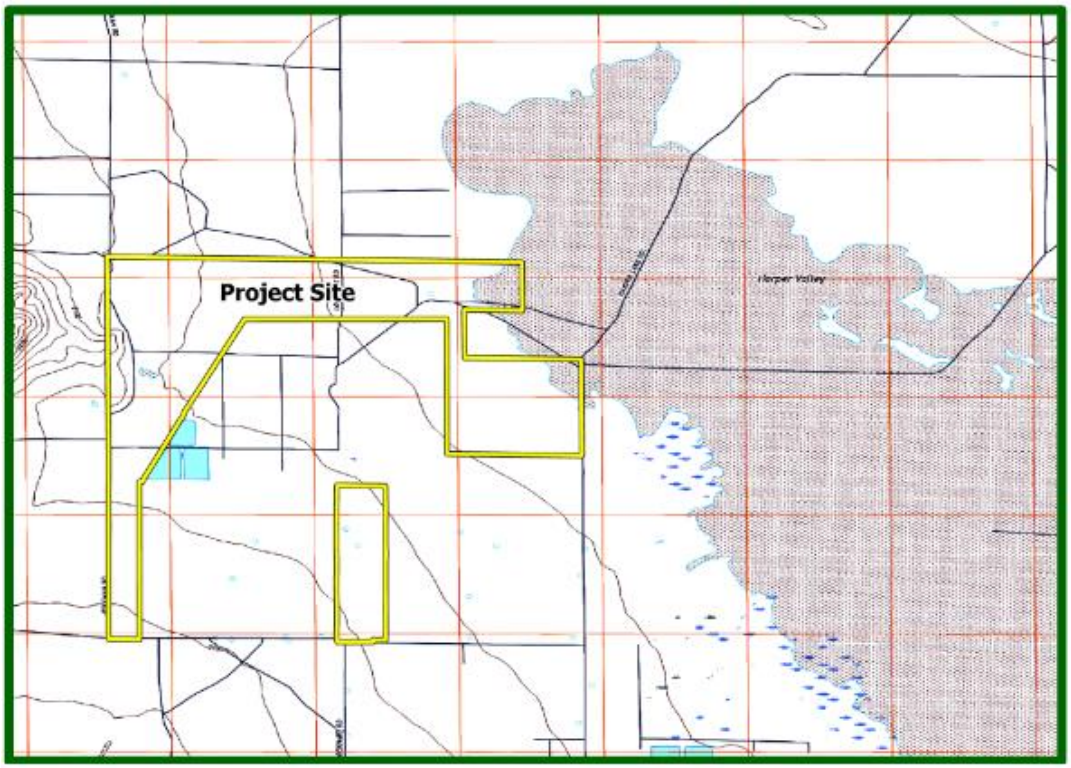
Response to Comment 3-2

The commenter requests that the comment be accepted by the County even though the comment was received several days late. See Response to Comment 2-3 above.

Comment 3-3

The following Project description is given on page 2-2: "Desert Breeze Solar, LLC (Applicant) proposes to develop the Desert Breeze Solar Project (Project), a utility-scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 130 megawatts (MW) of solar power and include up to 2 gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS). Key entitlements to construct and operate the Project include a zoning amendment to change the current zoning designation from Rural Living (RL) to Resource Conservation (RC), as well as two (2) Conditional Use Permits (CUPs). The Project would be developed within an approximately 923-acre Project Site comprised of an 813-acre solar array area (CUP1) and a 110-acre Shared Facilities Area (SFA) (CUP 2)."

On page 2-1, we also read the following statements: "Additionally, the Project proposes improvement of a portion of Harper Lake Road, which is an existing dirt road. Construction activities associated with the road improvement will include grading to widen or level the existing road; importing and compacting materials, such as soil and gravel; and may include paving. The road improvement may extend up to approximately 60 feet wide and approximately 1 mile long from the southeastern corner of Hoffman Road and Harper Lake Road (adjacent to the east of SEGS IX) to the existing secondary access gate."



Response to Comment 3-3

The commenter provides the project description from **Chapter 2: Executive Summary** of the Draft EIR. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 3-4

On page 2-4 and 2-5, we appreciate that Alternative 3 was dropped, as it occurs in an area that has been determined to be important to the conservation of the Mohave ground squirrel (*Xerospermophilus mohavensis*) (CDFW 2019, LaRue 2016). As stated on page 2-4, "...however, further evaluation is required on the MGS conservation requirements for the area before it can be opened to renewable energy applications for individual projects" is absolutely true.

Response to Comment 3-4

This comment is noted. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 3-5

In Table 4.3-2 on page 4.3-15, we note that "No MGS were observed during the MGS habitat assessment or other biological resources surveys conducted," which is reiterated on page 4.3-22. We note that MGS are rarely ever observed; that protocol trapping surveys are required to ascertain presence or absence (CDFW 2023). Alternatively, the proponent may forego trapping surveys, assume presence, and acquire a 2081 Incidental Take Permit from the California Department of Fish and Wildlife (CDFW). The DEIR currently lists a range of approaches, including performing protocol trapping or assuming presence and mitigating accordingly. We recommend that the Final EIR (FEIR) document the actual intent of the proponent rather than list a range of alternatives.

Response to Comment 3-5

The comment notes that MGS are rarely observed and that protocol trapping surveys are required to ascertain presence of absence, or that the proponent may acquire a Section 2081 ITP from the CDFW. See Response to Comment 2-15 above.

Comment 3-6

Furthermore, we recommend that trapping be performed by authorized trappers with a Memorandum of Understanding to collect tissue samples from any MGS that are caught, as the project area is at the known contact zone between MGS and round-tailed ground squirrels (*Xerospermophilus tereticaudis*) where a hybrid was captured in 2014 a quarter mile east of Harper Lake Road several miles south of the proposed Project.

Response to Comment 3-6

The commenter recommends trapping be performed by authorized trappers. The Applicant is assuming MGS presence in all potentially suitable habitat (418 acres) and is proposing compensatory mitigation (equivalent to at least a 1:1 replacement for impacted habitat) to offset impacts to the species. With CDFW approval of the mitigation, no trapping would be required. See Response to Comment 2-15 regarding the Project's Section 2081 ITP.

Comment 3-7

On page 4.3-51, we read "**Mitigation Measure BIO-14** includes best management practices to be implemented during Project grading and construction and decommissioning activities to prevent inadvertent entrapment of species and attraction of predators to the Project Site. Further, it is not anticipated that many individual animals would be taken due to the avoidance measures detailed in **Mitigation Measure BIO-14** and similar measures anticipated to be imposed by USFWS and CDFW." The document author seems to synonymize "take" with "death." We note that "take" refers to "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Therefore, although the above discussion applied to desert tortoises, ALL MGS found on the site will be subject to take. This conclusion should be changed to reflect an accurate definition of take in the FEIR.

Response to Comment 3-7

The comment asserts that the Draft EIR synonymizes "take" with "death" in **Mitigation Measure BIO-14.** See Response to Comment 2-16. Further, page 4.3-43 of **Section 4.3: Biological Resources** of the Draft EIR utilizes "take" of individuals as defined in the California Endangered Species Act (CESA) as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." Habitat degradation or modification is not included in the definition of "take" under CESA.

Comment 3-8

We note that Section 4.3.5 Impacts and Mitigation Measures fails to mention or analyze indirect, cumulative, and synergistic impacts to MGS in adjacent areas. Nor does a baseline inventory and survey that extends to only a 50-foot buffer around the project allow the County and resource agencies to know how many MGS in adjacent areas may be subject to take associated with indirect impacts. The FEIR needs to be substantially revised to fully document likely indirect, cumulative, and synergistic impacts resulting from project development.

Response to Comment 3-8

The comment asserts that the Draft EIR fails to mention or analyze indirect, cumulative, and synergistic impacts to MGS in adjacent areas, and that the Final EIR needs to be revised to document the likely indirect, cumulative, and synergistic impacts resulting from Project development. The comment does not provide substantial evidence as to how the Draft EIR does not document these potential impacts. **Section 4.3: Biological Resources** of the Draft EIR analyzes the potential direct and indirect impacts to MGS and

concludes that impacts to MGS would be potentially significant. Therefore, the Draft EIR recommended implementation of **Mitigation Measures BIO-6, BIO-7, BIO-8, BIO-9,** and **BIO-14** to reduce impacts on MGS to less than significant levels. In support of this determination, the Draft EIR references the Biological Resources Assessment (provided in Appendix D of the Draft EIR), which provides a detailed analysis of the potential for MGS in the surrounding area. Specifically, Appendix E within the Biological Resources Assessment provides the Mohave Ground Squirrel Habitat Assessment prepared for the Project by Phil Brylski, Ph.D. The field-based habitat assessment examined soil, vegetation, topographic, and disturbance features to assess habitat suitability for MGS on the Project Site. The assessment also surveyed plant communities, including species, communities, and soil/slope/disturbance factors that affect MGS suitability, using Google Earth aerial images to identify differences within plant communities for field examination. Mapping habitat disturbance was done by assessing the flatness of the ground and noting the abundance of small mammal burrows. The literature review completed for the assessment also included summaries of the MGS survey trends for the Project region for the periods between 2013-2020, 2008-2012, and 1997-2007; records in the California Natural Diversity Database and online database of museum mammal specimens, and the CDFW MGS Conservation Strategy, Pacific Gas & Electric's HCP for the Hinkley area. Lastly, a camera study was completed at 11 locations within the solar array area to document use by MGS known to occur in the region. Therefore, extensive methods were utilized to determine the likelihood of MGS in the area and the Project's potential direct and indirect impacts on the species.

Regarding cumulative impacts, page 4.3-70 of the Draft EIR states implementation of the Project, along with related projects, have the potential to impact wildlife species, including the MGS. While most of the cumulative projects would convert undeveloped land into renewable energy facilities, over time, vegetation communities would re-establish between the panels, fencing, and utility structures, allowing wildlife (e.g., rodents, raptors, small birds, and reptiles) to continue inhabiting and foraging on the sites over the lifetime of the projects (approximately 30 years). Decommissioning plans, required for solar projects, also outline revegetation requirements for potential habitat restoration. Therefore, while habitat would be temporarily disturbed or removed during the construction and decommissioning phases, operation and post-operation of such renewable energy facilities would not result in substantial permanent impacts to special-status species and habitats, and the affected lands could return to existing conditions for the foreseeable future after decommissioning. Further, as with the Project, these cumulative projects would also be required to avoid and/or mitigate impacts to special-status species and habitats in accordance with County, CDFW, and USFWS requirements. Thus, cumulative impacts would not be cumulatively considerable and would be less than significant.

Comment 3-9

Although they pertain to tortoises, analogous mitigation measures referenced at the bottom of page 4.3-50 and top of page 4.3-51 must be supplemented in the FEIR to include MGS translocation procedures, fire management and fire prevention plans, weed abatement plan, minimization of impacts to water quality and use from the local aquifer, a predator management plan, and how and for how long residual impacts, particularly of displaced MGS, will be monitored.

Whereas we note on page 4.3-60 in BIO-3 that a "…CDFW- and USFWS-approved Desert Tortoise Relocation Plan shall be submitted to the County prior to initiating Project construction activities," we note that the proponent also needs to develop an MGS translocation plan to be appended to the FEIR. Absent the draft plan, the concerned public, including the MGSCC, is unable to review the plan and provide constructive feedback. We therefore expect to see the MGS Relocation Plan as an appendix to the FEIR.

Response to Comment 3-9

The commenter states that the mitigation measures at the bottom of page 4.3-50 and top of page 4.3-51 be supplemented. As noted in **Mitigation Measure BIO-9,** as the Applicant is assuming that MGS are present, the Applicant shall relocate MGS out of harm's way in coordination with the CDFW, provide on-site monitoring during construction for presence of MGS, cease work if a MGS is encountered in a work area, and conduct worker environmental awareness training and education program training as it pertains to MGS protection and reporting requirements. General best management practices for construction are provided within **Mitigation Measure BIO-14**, and measures to protect water quality will be part of the Project's Stormwater Pollution Prevention Plan. Additionally, the language requested by the commenter regarding translocation plans is specific to desert tortoise as the USWFWS methodology specifically utilizes that terminology. However, as noted, the Project has applied for a Section 2081 ITP for MGS, which will authorize relocation by an authorized biologist to avoid direct impacts to MGS. The ITP will further require a worker environmental awareness program prepared by an authorized biologist for the Project's construction, operations and maintenance, and decommissioning phases; pre-construction surveys; on-site monitoring by an authorized biologist, as well as reporting and notifications to the CDFW for all phases of the Project (e.g., post-clearance survey, construction, operations and maintenance, decommissioning, and mitigation actions).

Comment 3-10

With regards to MGS, we read the following statement on page 4.3-51: "Therefore, while no MGS were observed or detected during the surveys, development of the Project would potentially impact individuals and remove approximately 418.54 acres of suitable habitat for the MGS such that impacts to the MGS population and its habitat would be potentially significant." We disagree with this conclusion, knowing that MGS occupy all of the vegetation types within the Project footprint except for barren areas and playa surfaces (BLM 2005). We see in Table 4.3-1 that barren areas comprise 23 acres and playa surfaces comprise 12 acres. So, we conclude that 826 acres (861 minus 35 acres), not 418 acres, would be lost to full development of the Project, and that take of MGS is more than likely to occur. The above information also needs to be applied to BIO-9, which reiterates that compensation would be only for 418.54 acres rather than the full extent of suitable potentially occupied habitat. The FEIR needs to rectify this erroneous conclusion wherever it occurs in the DEIR.

With regards to the following statement on page 4.3-51, "…purchase credits in a mitigation bank equivalent to at least a 1:1 replacement," the Project proponent can expect the CDFW to require a minimum of 3:1 habitat replacement for impacts to the MGS. It is not apparent from these naïve statements (e.g., that only 418 acres of the Project area comprise suitable MGS habitat) that the

proponent or County have consulted with either the USFWS or CDFW prior to completing the DEIR. This conclusion is supported by the absence of these agencies in Section 8.1 of the DEIR. Whereas consultation may not be a requirement, we recommend that the proponent actually consult with these two agencies and report factual determinations in the FEIR, like what the actual compensation ratio will be for the MGS, rather than speculate as is currently done in the DEIR.

We disagree with the conclusion at the top of page 4.3-52, "Therefore, removal of the suitable habitat as a result of the Project would not result in a significant impact [to the MGS] related to the loss of vegetation communities." Absent a formal protocol trapping survey, the proponent must assume presence of the MGS, and impacts to a State-listed species constitute a significant impact. This erroneous conclusion needs to be retracted or revised in the FEIR.

Response to Comment 3-10

The comment disagrees with the Draft EIR's conclusion that habitat compensation for the MGS should be for 418 acres. See Responses to Comments 2-15 and 2-20.

The comment also asserts that the proponent or County have not consulted with the USWFS or CDFW prior to completing the Draft EIR. See Response to Comment 2-21.

The comment lastly states that the proponent must assume presence of MGS and impacts to a State-listed species constitutes a significant impact. See Response to Comment 2-22.

Comment 3-11

Finally, we ask that the County reorganize the platform for providing documents associated with the FEIR. For example, the DEIR indicates that Appendix D includes a Biological Resources Assessment, indicating on page vi that it is "Provided under separate cover." However, the only available documents at the County's website (https://ceqanet.opr.ca.gov/2022090646/2) are the DEIR and NOP; no appendices are provided. Please be sure that the platform makes ALL related environmental documentation available to the concerned public with distribution of the FEIR.

Response to Comment 3-11

The comment requests that the County reorganize the platform for providing documents associated with the Final EIR and states that the documents were not provided at the County's website. See Response to Comment 2-25.

Comment 3-12

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

Response to Comment 3-12

The commenter concludes their comment letter. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Letter 4

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Defenders of Wildlife
P.O. Box 401
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Received on December 13, 2023

Comment 4-1

Thank you for the opportunity to provide comments in response to the Draft Environmental Impact Report (DEIR) for the proposed Desert Breeze Solar Project (Project). Defenders of Wildlife (Defenders) is dedicated to protecting all wild animals and plants in their natural communities and has nearly 2.1 million members and supporters in the United States, with more than 316,000 residing in California. Defenders strongly supports generation of electricity from renewable energy sources. A low-carbon energy future is critical for California's economy, communities and environment. Achieving this future—and how we achieve it—is critical for protecting California's internationally treasured wildlife, landscapes and diverse habitats. We believe transitioning to a renewable energy future need not exacerbate the ongoing extinction crisis by thoughtfully planning projects while protecting habitat critical to species. The proposed 923-acre utility-scale solar photovoltaic facility would generate up to 130 MW of solar power and include up to 2 GWh of energy storage. It is bordered on the south by two previously approved solar projects, the Lockhart Solar PV Facility (Lockhart I) and the Lockhart Solar PV II Project (Lockhart II). The Project site is in unincorporated Hinkley and is 7 miles northwest of the intersection of Harper Lake Road and Mojave-Barstow Highway 58.

Comments

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

Response to Comment 4-1

This comment acknowledges receipt of the Draft EIR and the Defenders' opportunity to provide comment. The comment also introduces the Defenders and serves as an introduction to the remainder of the letter. The comment also provides an abbreviated project description from **Chapter 3.0: Project Description** of the Draft EIR. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 4-2

1. Raven Monitoring and Management Program

The DEIR directs the applicant to participate in the interagency Raven Monitoring and Management Program for desert tortoise (DT) impacts related to the potential increase in the raven population by requiring the applicant to implement appropriate measures to reduce raven attraction. Ravens are known predators of DT and are likely a significant impediment to desert tortoise recovery. Solar

development and the associated infrastructure can be expected to increase raven threats to desert tortoises by providing raven perching, roosting and nesting sites. Defenders applauds the inclusion of the Raven Monitoring and Management Program as ensuring implementation and monitorization of the plan is vital to reducing DT predation.

Response to Comment 4-2

The comment notes the inclusion of the Raven Monitoring and Management Program for the Applicant to participate in as a means of reducing desert tortoise predation. The comment is noted. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 4-3

2. Incidental Take Permit

Given the Project contains suitable Mohave ground squirrel (MGS) habitat with 55 records of occurrence within the MGS survey area, and that DT was observed on site, it is foreseeable that the Project may result in take of both species. The DEIR only states an Incidental Take Permit (ITP) will be required **if** the Project results in take and does not provide a timeline or mention ongoing applications or conversations with the California Department of Fish and Wildlife (CDFW) or US Fish and Wildlife Services (USFWS) regarding obtaining an ITP. The Project proponent should begin discussions with CDFW and USFWS immediately to begin the process of obtaining an ITP.

Response to Comment 4-3

The comment recommends that the Project proponent begin discussion with the CDFW and USFWS immediately to begin the process of obtaining an ITP. As described in **Appendix B** of this Final EIR, the Applicant has been in regular contact with the CDFW and USFWS under the ITP application process under Section 2081 of the CFGC and the HCP application process under Section 10 of the federal Endangered Species Act, respectively. See Response to Comment 2-9 above.

Comment 4-4

3. Mitigation Measures

a. Revise MM BIO-5

Compensatory mitigation to offset impacts to DT is included at a ratio of at least 1:1 for replacement for habitat impacts from the Project. This is inadequate and below the ratio typically set for permanent loss of DT habitat from development projects. The ITP for the Aratina Solar Farm Project required funding for the acquisition, enhancement, monitoring and long-term management of 7,305 acres as compensatory mitigation for the 2,435-acre permanent loss of habitat for DT and MGS.[1] This is a 3:1 ratio that is well above the proposed ratio within the Desert Breeze DEIR. Furthermore, in comments on the adjacent Lockhart Solar II Project, CDFW states, "[f]or desert tortoise for example, compensatory mitigation ratios from 1:1 to 5:1 of mitigation acres to impacted areas are most typical. The higher mitigation ratios are often used for impacts

that most affect the species, such as impacts of high quality, connected, other important habitat areas, and impacts to areas with greater distribution and presence of the species. The low mitigation ratios are often used for impact areas with low habitat value and low to very low presence of the species."[2] Defenders is concerned that the mitigation ratio is assigned at the low end of the range for the Project, which is typically required for areas with a low abundance of DT. The Project warrants a higher ratio given ten live DTs were found within the Project survey area, along with 45 DT burrows and six carcasses. It is evident the Project will significantly impact the federally and state Threatened species. Defenders therefore recommends a minimum 3:1 mitigation ratio to compensate for Project impacts to DT habitat.

Additionally, the measure allows for permittee-responsible mitigation. It is unclear if the intent is for the developer to be responsible for acquiring the compensatory mitigation lands or for the developer to manage the compensatory mitigation instead of an entity permitted under California Civil Code § 815.3. Under no circumstances should a developer be permitted to hold the mitigation lands as they must be managed in perpetuity by a qualified conservation organization as defined by § 815.3. Alternatively, the developer can purchase credits in a CDFW-approved mitigation bank. We request the measure be revised to clarify that the permittee shall be responsible for acquiring compensatory mitigation but shall not manage or hold the compensatory mitigation lands.

"Compensatory mitigation to offset impacts to desert tortoise shall ~~**be implemented through off-site, permittee-responsible mitigation**~~ **the responsibility of the permittee to implement and such mitigation lands shall be managed in perpetuity by a qualified conservation organization as defined by CA Civil Code Section 815.3,** mitigation bank credit purchase (e.g., purchase of credits at the Black Mountain Conservation Bank), or a combination of these options depending on availability, equivalent to at least a **3:1**~~**1:1**~~ replacement for habitat impacted by project development. The proposed mitigation strategy shall be done in accordance with USFWS and CDFW authorizations."

Footnote 1: California Department of Fish and Wildlife. 2023. *Reissued Incidental Take Permit for the Aratina Solar Farm Project (2081-2020-022-04)*.

Footnote 2: California Department of Fish and Wildlife. 2021. *Notice of Preparation of a Draft Environmental Impact Report Lockhart Solar PV II Project State Clearinghouse No. 2021070070*.

Response to Comment 4-4

The comment requests revisions to **Mitigation Measure BIO-5** related to the desert tortoise mitigation ratio and language related to the permittee-responsible mitigation. As stated on page 4.3-6 of **Section 4.3: Biological Resources** of the Draft EIR, the Survey Area (defined therein) and Project Site are not within designated critical habitat for desert tortoise. Further, as detailed on page 4.3-20, tortoise activity was concentrated in the western and northwestern portion of the Survey Area, likely due to the availability of annual wildflowers as forage, stable soils, and the low possibility of flooding to allow for brumation burrows. However, the eastern and southeastern portion of the Survey Area lacked evidence of tortoise

sign/activities during the surveys, likely due to the sparser vegetation and lower wildflower abundance in the bush seepweed scrub and the open areas of unvegetated playa. These areas do not currently support live desert tortoises. The lower elevation and nature of the unvegetated playa would make it less suitable for burrows due to the possibility of flooding from winter rains. Additionally, there are no wildlife corridors traversing the Project Site, as mapped by the California Essential Habitat Connectivity Project. The Project Site could be used as a habitat linkage for the desert tortoise for the identified critical habitat to the north and west of the Project. However, this critical habitat is contiguous and is not fragmented by the Project, as such, it is unlikely that the desert tortoise relies solely on the Project as a habitat linkage. Finally, as stated in Response to Comment 2-21, and as noted in **Appendix B** of the Final EIR, consultations with the CDFW and USFWS have been underway since August 2022. If compensatory mitigation obligations included in the permits issued by the respective agencies are higher than 1:1, the Project will be subject to the higher ratios.

Mitigation Measure BIO-5 is revised as follows (*see strikethrough and double underline)* and is reflected in **Chapter 3: Corrections and Additions to the Draft EIR** and in the Mitigation Monitoring and Reporting Program (MMRP)**:**

> **Mitigation Measure BIO-5:** Compensatory mitigation to offset impacts to desert tortoise shall be ~~implemented through off-site, permittee-responsible mitigation~~ implemented through either off-site mitigation lands, which shall be managed in perpetuity by a qualified conservation organization as defined by California Civil Code Section 815.3, mitigation bank credit purchase (e.g., purchase of credits at the Black Mountain Conservation Bank), or a combination of these options depending on availability, equivalent to at least a 1:1 replacement for habitat impacted by project development. The proposed mitigation strategy shall be done in accordance with USFWS and CDFW authorizations.

Comment 4-5

b. Revise MM BIO-9 (3)

Compensatory mitigation is included for MGS at a 1:1 ratio. This is inadequate and is inconsistent with CDFW's MGS Conservation Strategy, which sets the compensation ratio for MGS at 2:1.[3] Defenders requests the compensatory mitigation ratio for MGS adhere to CDFW's recommendation.

Furthermore, this measure also allows for permittee-responsible mitigation. We once again request the measure be revised to clarify that the permittee shall be responsible for acquiring compensatory mitigation but shall not manage or hold the compensatory mitigation lands.

"If the species is either confirmed or assumed present, compensatory mitigation to offset impacts to Mohave ground squirrel shall be **~~implemented through off-site, permittee-responsible mitigation~~ the responsibility of the permittee to implement and such mitigation lands shall be managed in perpetuity by a qualified conservation organization as defined by CA Civil Code Section 815.3,** mitigation bank credit purchase (e.g., purchase of credits at the Black Mountain

Conservation Bank), or a combination of these options depending on availability, equivalent to at least a **2:1~~1:1~~** replacement for habitat impacted by project development. The proposed mitigation strategy shall be done in accordance with CDFW authorizations."

Footnote 3: California Department of Fish and Wildlife. 2019. A Conservation Strategy for the Mohave Ground Squirrel. https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=171301&inline

Response to Comment 4-5

The comment recommends revisions to **Mitigation Measure BIO-9** related to the MGS mitigation ratio and language related to the permittee-responsible mitigation. As stated on page 4.3-51 of **Section 4.3: Biological Resources** of the Draft EIR, the Survey Area contains allscale scrub, bush seepweed scrub, spinescale scrub, creosote bush scrub, playa, and developed land covers. Among these, allscale scrub, spinescale scrub, and creosote bush scrub are known to be suitable for MGS within its range, whereas playa and developed land cover are unsuitable. In addition to **Mitigation Measure BIO-9** (revised below), the Project would also be required to implement **Mitigation Measure BIO-6** to prohibit off-road travel in native habitats adjacent to the Project Site, **Mitigation Measure BIO-7** to limit vehicle speed on the Project Site, and **Mitigation Measure BIO-8** to have the Project Applicant and construction manager conduct a Worker Education Awareness Program to encourage awareness and preservation of key species and to avoid disturbance of wildlife. **Mitigation Measure BIO-14** prescribes general best practices to implement during Project grading and construction and decommissioning activities. The inclusion of **Mitigation Measure BIO-6** through **Mitigation Measure BIO-8** and **BIO-14** would allow for best practices to avoid incidental take of the MGS. Additionally, as stated in Response to Comment 5-4 below, **Mitigation Measure BIO-19** would also be implemented assign a Lead Biologist to implement all biological construction monitoring duties. Further, it is not anticipated that many individual animals would be taken due to the avoidance measures detailed in **Mitigation Measure BIO-14** and similar measures anticipated to be imposed by CDFW. With implementation of **Mitigation Measures BIO-6, BIO-7, BIO-8, BIO-9, BIO-14**, and **BIO-19,** the Project is not expected to have a substantial adverse effect on the MGS population, and impacts to MGS would be reduced to less than significant. Additionally, there is available suitable habitat for the MGS within the Survey Area outside of the solar array area of the Project Site (see **Figure 4.3-5**). Therefore, removal of the suitable habitat as a result of the Project would not result in a significant impact related to the loss of vegetation communities. Finally, as stated in Response to Comments 2-15, 2-21 and 3-10, and as noted in **Appendix B** of the Final EIR, consultations with the CDFW and USFWS have been underway since August 2022. If compensatory mitigation obligations included in the permits issued by the respective agencies are higher than 1:1, the Project will be subject to the higher ratios.

Mitigation Measure BIO-9 is revised as follows (*see strikethrough and double underline)* (and in Response to Comment 5-9 below) and is reflected in **Chapter 3: Corrections and Additions to the Draft EIR** and in the MMRP**:**

> **Mitigation Measure BIO-9:** The Project proponent has assumed Mohave ground squirrel are present on the 418.54-acre portion of suitable habitat for the Mohave ground squirrel on the

Project Site. To mitigate potential impacts to the Mohave ground squirrel, the Project proponent ~~may elect one of two options:~~

~~1. Carry out a protocol survey in accordance with the California Department of Fish and Wildlife (CDFW) focused survey protocol to assess presence/ absence of the species. If the survey demonstrates absence, no Mohave ground squirrel "take" would occur, and no mitigation would be required; or~~

~~2. Assume the presence of Mohave ground squirrel on the 418.54 acre portion of suitable habitat on the Project Site.~~

~~3. If the species is either confirmed or assumed present,~~ shall provide compensatory mitigation to offset impacts to Mohave ground squirrel through either off-site mitigation lands, which shall be ~~implemented through off-site, permittee-responsible mitigation~~ managed in perpetuity by a qualified conservation organization as defined by California Civil Code Section 815.3, mitigation bank credit purchase (e.g., purchase of credits at the Black Mountain Conservation Bank), or a combination of these options depending on availability, equivalent to at least a 1:1 replacement for habitat impacted by project development. The proposed mitigation strategy shall be done in accordance with CDFW authorizations.

~~4.~~ Additionally, ~~if the species is either confirmed or assumed present,~~ the Applicant shall implement the following additional measures:

- Use only qualified biologists for conducting surveys and monitoring
- Relocate Mohave ground squirrels out of harm's way in coordination with CDFW.
- Provide onsite monitoring during construction for presence of Mohave ground squirrels
- Cease work if a Mohave ground squirrel is encountered in a work area
- Conduct worker environmental awareness training and education program training as it pertains to Mohave ground squirrel protection and reporting requirements.

Comment 4-6

c. Revise MM BIO-12 b.

The DEIR includes the acquisition of burrowing owl (BUOW) habitat in the form of a conservation easement at the ratio of 15 acres per passively relocated BUOW pair. However, there is no mention of artificial replacement burrows or single bird relocation. Defenders recommends the inclusion of artificial burrows and that the number of burrows lost be replaced at the recommended[4] 1:1 ratio.

"The Applicant shall implement the Mitigation Land Management Plan and permanently conserve in a conservation easement offsite habitat suitable for burrowing owl at a ratio of 15 acres per passively relocated burrowing owl pair **or individual bird**, not to exceed the size of the final Project

footprint. **Artificial burrows shall be installed at a ratio of 1:1.** Land identified to mitigate for passive relocation of burrowing owl may be combined with other offsite mitigation requirements of the Project if the compensatory habitat is deemed suitable to support the species. The Applicant may purchase available burrowing owl conservation bank credits in lieu of placing offsite habitat into a conservation easement, if acceptable to CDFW."

Footnote 4: California Burrowing Owl Consortium. 1993. *Burrowing Owl Survey Protocol and Mitigation Guidelines*.

Response to Comment 4-6

The comment recommends revisions to **Mitigation Measure BIO-12** related to burrowing owls to include conservation at a ratio of 15 acres per passively relocated burrowing owl pair or individual bird and also to include artificial burrows. **Mitigation Measure BIO-12** requires that all recommendations and guidelines from the CDFW's 2012 Staff Report on Burrowing Owl Mitigation be followed. The CDFW's 2012 Staff Report on Burrowing Owl Mitigation does not request conservation ratios for individual birds or artificial burrows. Compensatory mitigation land provided under **Mitigation Measure BIO-12** would provide suitable habitat for burrowing owls, such that there is enhancement of conserved lands, habitat management for vegetation, sustained management of burrow cleaning and maintenance, and monitoring and surveys for adaptive management. Further, there is additional suitable foraging and nesting habitat for the burrowing owl outside the Project Site. Therefore, **Mitigation Measure BIO-12** adequately mitigates impacts to burrowing owls to less than significant levels.

Comment 4-7

d. Revise MM BIO-14

The prohibition of firearms should be included as a best management practice to reduce potential impacts to special-status species.

"Workers shall be prohibited from bringing firearms to the project area."

Response to Comment 4-7

The comment recommends revisions to **Mitigation Measure BIO-14** to prohibit firearms to reduce potential impacts to special-status species. **Mitigation Measure BIO-14** is revised as follows (*see double underline)* and is reflected in **Chapter 3: Corrections and Additions to the Draft EIR** and in the MMRP**:**

Mitigation Measure BIO-14: The following best management practices shall be implemented during Project grading and construction and decommissioning activities to further address potential impacts on biological resources:

- To prevent inadvertent entrapment during construction, at the end of each workday all excavated, steep-walled holes or trenches more than two feet deep shall be covered with plywood or similar materials or be equipped with one or more escape ramps constructed of earth fill or wooden planks. Before such holes or trenches are filled, they shall be thoroughly

inspected for trapped animals by construction personnel trained by a qualified biologist. Should wildlife become trapped, a qualified biologist shall be notified by construction personnel to remove and relocate the individual(s). If a trapped listed species is discovered, the Project shall contact CDFW and/or USFWS to determine appropriate action.

- All open ends of pipes, culverts, and conduits temporarily installed in open trenches or stored in staging/laydown areas shall be covered/capped at the end of each workday. Any such materials that have not been capped shall be inspected by construction personnel for wildlife before being moved, buried, or handled. Should wildlife become trapped, a qualified biologist shall be notified by construction personnel to remove and relocate the individual(s). If a listed species is discovered inside a pipe, that section of pipe shall not be moved. The Project shall contact CDFW and/or USFWS to determine the appropriate action.
- Construction personnel trained by the qualified biologist shall inspect for special-status species and other wildlife under vehicles and equipment every time the vehicles or equipment are moved. If an animal is present, site workers shall wait for the individual to move to a safe location. If a listed species is discovered under equipment or vehicles and does not move on its own, the project shall contact CDFW and/or USFWS to determine the appropriate action.
- To avoid toxic substances on road surfaces, soil binding and weighting agents used on unpaved surfaces shall be nontoxic to wildlife and plants.
- To minimize spills of hazardous materials, all vehicles and equipment shall be maintained in proper condition to minimize the potential for fugitive emissions of motor oil, antifreeze, hydraulic fluid, grease, or other hazardous materials. Hazardous spills shall be immediately cleaned up and the contaminated soil shall be properly handled or disposed of at a licensed facility. Servicing of construction equipment shall take place only in designated areas.
- To discourage attraction by predators to the Project Site, all food-related trash items, such as wrappers, cans, bottles, and food scraps, shall be disposed of in solid, closed containers (trash cans) on a daily basis. Onsite trash receptacles shall be emptied as necessary (for example, weekly) to prevent overflow of trash. Trash removed from the receptacles shall be hauled to an offsite waste disposal facility. Workers shall not feed wildlife or bring pets to the Project Site.
- The Project shall incorporate methods to control runoff, including a stormwater pollution prevention plan to meet National Pollutant Discharge Elimination System (NPDES) regulations. Implementation of stormwater regulations is expected to substantially control adverse edge effects (e.g., erosion, sedimentation, habitat conversion) during and following construction, both adjacent to and downstream from the Project area. Typical construction best management practices specifically related to reducing impacts from dust, erosion, and runoff generated by construction activities shall be implemented. During construction, material stockpiles shall be placed such that they cause minimal interference with on-site drainage patterns, which will protect sensitive vegetation from being inundated with sediment-laden runoff. Dewatering shall be conducted in accordance with standard regulations of the Lahontan Regional Water Quality Control Board. An NPDES permit, issued by the RWQCB to discharge water from dewatering activities, shall be required prior to the start of dewatering. This permit will minimize erosion, siltation, and pollution in sensitive vegetation communities.

- Workers shall be prohibited from bringing firearms to the Project area.

Comment 4-8

4. Desert Tortoise Connectivity

The DEIR identified the project site as a potential habitat linkage for DT for the USFWS identified critical habitat to the north and west of the Project. Despite the potential for DT to utilize the site for movements between critical habitats, there is no monitoring verification plan to ensure connectivity corridors remain functional. We recommend the inclusion of a monitoring plan and adaptive management to ensure connectivity to critical habitat is not lost.

Response to Comment 4-8

The comment recommends the inclusion of a monitoring plan and adaptive management to ensure connectivity to critical habitat is not lost. As discussed in Response to Comment 2-19 and 4-4, there are no limits or obstructions to wildlife movement within most of the Project Site, especially along the northern, western, and eastern boundaries. As stated on page 4.3-50 of **Section 4.3: Biological Resources** of the Draft EIR, the western and northwestern portions of the Survey Area also had more presence of desert dandelion and redstem stork's bill, which provides greater food availability for the desert tortoise. While existing chain-link and desert tortoise fencing along the shared southern border, perimeter of the Project, and the perimeter of the adjacent solar projects prevent larger wildlife movement in the vicinity and significantly impede smaller wildlife (i.e., small mammals, reptiles) movement in the vicinity, and new chain link fence with incorporated desert tortoise exclusionary fencing would be placed on the north, west, and eastern boundary of the solar array area, the Project Site is surrounded by undeveloped land to the north, west, and east. Desert tortoise would have food availability outside of the Project Site, and there is available suitable habitat outside of the solar array area of the Project Site for the desert tortoise. Additionally, there are no wildlife corridors traversing the Project Site, as mapped by the California Essential Habitat Connectivity Project. The identified critical habitat for desert tortoise to the north and west of the Project is contiguous and is not fragmented by the Project. Therefore, the Project would not result in the loss of connectivity to critical habitat.

Comment 4-9

5. Cumulative impact

The ever-increasing large-scale renewable energy footprint within the California desert is significantly impacting biological resources in the region. This proposed Project is not an exception and would significantly contribute to the cumulative loss of the region's important and declining biological resources, including but not limited to BUOW, DT and MGS. The DEIR's cumulative analysis on biological resources is lacking as it fails to detail the potential impacts on the individual biological resource level and provide specific data on the loss of habitat. We request the analysis include a detailed map of all existing and planned development with the remaining habitat and connectivity for DT and MGS.

Furthermore, the biological resources cumulative impacts section states that habitat would only be temporarily disturbed or removed during the construction as vegetation would be reestablished

during the lifetime of the project, allowing wildlife to continue inhabiting and foraging the project. The DEIR continues to state that after decommissioning, the site could return to its existing condition. This is not likely and should be revised to state that the Project will result in permanent habitat conversion. Given the infrastructure and surrounding utility-scale solar development, it is reasonable to assume the site will not revert to natural habitat and vegetation after the 30-year lifetime of the Project. Assuming the Project impacts are only temporary results in an inaccurate cumulative impacts analysis. Defenders recommends revising the impact analysis based on a permanent conversion of habitat.

Response to Comment 4-9

The comment asserts that the Draft EIR fails to detail the potential impacts on the individual biological resource level and provide specific data on the loss of habitat. **Table 4.0-1: Cumulative Projects** and **Figure 4.0-1: Cumulative Projects Map** of **Chapter 4.0: Introduction to the Environmental Analysis** provide the cumulative projects (e.g., past, present, and probable future projects) that have been determined to be reasonably foreseeable. As stated on page 4.0-4, these projects were considered in the cumulative impact analysis as appropriate.

CEQA Guidelines Section 15130 provides that the discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. Further, if a project's incremental effect is not cumulatively considerable, and if a cumulative impact is not significant, the EIR need only include a brief explanation of the basis for the finding, and identify facts and analysis supporting it. In accordance with these requirements, the Draft EIR analyzed cumulative impacts to biological resources. As stated on page 4.3-70 of **Section 4.3: Biological Resources** of the Draft EIR, the Project-specific impacts of the Project would be less than significant with implementation of **Mitigation Measures BIO-1** through **BIO-18**. Additionally, as stated in Response to Comment 5-4 below, **Mitigation Measure BIO-19** would also be implemented assign a Lead Biologist to implement all biological construction monitoring duties. However, the Draft EIR acknowledges that development of cumulative projects, primarily other renewable energy projects in the County's Desert Region, could result in direct impacts to special-status plant and wildlife species; construction, operational, and decommissioning disturbances; and/or special-status habitat conversion. While most of the cumulative projects would convert undeveloped land into renewable energy facilities, over time, vegetation communities would re-establish between the panels, fencing, and utility structures, allowing wildlife (e.g., rodents, raptors, small birds, and reptiles) to continue inhabiting and foraging on the sites over the lifetime of the projects (approximately 30 years). Decommissioning plans, required for solar projects, also outline revegetation requirements for potential habitat restoration. Therefore, while habitat would be temporarily disturbed or removed during the construction and decommissioning phases, operation and post-operation of such renewable energy facilities would not result in substantial permanent impacts to special-status species and habitats, and the affected lands could return to existing conditions for the foreseeable future after decommissioning.

Specifically for the Project, as stated on page 4.3-58 and 59, implementation of **Mitigation Measures BIO-8** and **BIO-14** (and the inclusion of **Mitigation Measure BIO-19**) during the decommissioning period would

reduce impacts to less than significant. Furthermore, all decommissioning activities would comply with federal, State, and local standards and all regulations that exist when the Project is decommissioned, including the requirements of San Bernardino County Development Code Section 84.29.070.

As with the Project, the cumulative projects would be required to avoid and/or mitigate impacts to special-status species and habitats in accordance with County, CDFW, and USFWS requirements. Thus, cumulative impacts would not be cumulatively considerable, and would be less than significant. The comment does not provide substantial evidence to support a different conclusion.

Comment 4-10

Thank you once again for the opportunity to provide comments on the DEIR for the Desert Breeze Solar Project and for considering our comments. We look forward to reviewing the Final EIR for the Project and request to be notified when it is available. Please feel free to contact me with any questions.

Response to Comment 4-10

The commenter concludes their comment letter. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Letter 5

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State of California – Natural Resources Agency
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Received on December 15, 2023

Comment 5-1

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from San Bernardino County (Lead Agency) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may 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.

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

Response to Comment 5-1

This comment acknowledges receipt of the Notice of Availability of the Draft EIR and summarizes the roles and responsibilities of the CDFW. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 5-2

PROJECT DESCRIPTION SUMMARY

Applicant: Desert Breeze Solar, LLC

Objective: Desert Breeze Solar, LLC proposes to develop the Desert Breeze Solar Project (Project), a utility-scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 130 megawatts (MW) of solar power and include up to 2 gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS). The Project would be developed within an approximately 923-acre Project Site comprised of an 813-acre solar array area and a 110-acred Shared Facilities Area (SFA). The Project has the following objectives:

- Locate photovoltaic (PV) solar power-generating facilities and energy storage systems near existing utility infrastructure, thereby achieving economies of scale to maximize shared operation and maintenance facilities with existing solar operations;
- Establish solar PV power-generating facilities and energy storage of sufficient size and configuration to produce and deliver reliable electricity in an economically feasible and commercially financeable manner that can be marketed to different power, utility and other offtake companies;
- Use proven and established solar PV and energy storage technology that is efficient and requires low maintenance;
- Assist California in meeting or exceeding its Renewable Portfolio Standard under Senate Bill 100;
- Promote the County's Renewable Energy and Conservation Element policies by siting a solar PV power-generating facility and energy storage in an area suited for utility oriented renewable energy generation projects;
- Develop a solar PV power generation and energy storage facility in San Bernardino County, which would support the economy by investing in the local community, creating local construction jobs, and increasing tax and fee revenue to the County.

Location: The proposed Project site is in unincorporated Hinkley, CA, approximately seven miles north of the intersection of Harper Lake Road and Mojave-Barstow Highway 58. The Project site consists of area within two parcels: County Assessor's Parcel Number (APN) 0490-223-33 which is currently vacant and recently approved under a Parcel Merger; and APN 0490-101-56, which contains existing shared infrastructure and support facilities for the adjacent solar facilities. The solar array area of the Project site

is bordered on the south by the existing and approved solar facilities; Harper Lake Road to the east; Hoffman Road to the west; and Maltice Drive to the north.

Timeframe: Project construction is anticipated to be completed over a period of approximately 18 months, followed by an operational life of approximately 30 years. At the end of the Project's operational term, the Applicant may determine that the Project should be decommissioned and deconstructed, or it may seek an extension of its Conditional Use Permits.

Response to Comment 5-2

This comment provides a summary of the Project's location, description, and background as presented in **Chapter 3.0: Project Description** of the Draft EIR. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 5-3

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency 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.

Project Description and Related Impact Shortcoming

Comment #1: Clarification of Project Footprint

DEIR Section 3, Page 3-1

Issue: The DEIR states that of the 813-acre solar array area, 638 acres would include solar arrays. The application that CDFW has received from the Applicant for a CESA incidental take permit describes the Project footprint area as covering approximately 677 acres.

Evidence impact would be significant: CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate Project description, the DEIR likely provides an incomplete assessment of Project-related impacts to biological resources.

CDFW Recommendations: The Final EIR should provide clarity regarding the Project development footprint to reflect the most up-to-date Project design and to be consistent with the permit applications that the Applicant has submitted to date.

Response to Comment 5-3

The comment requests that the Final EIR provide clarity regarding the Project development footprint to reflect the most up-to-date Project design and to be consistent with the permit applications. As described in the **Chapter 3.0: Project Description** of the Draft EIR, the Project would be developed within an

approximately 923-acre Project Site comprised of an 813-acre solar array area (Conditional Use Permit [CUP] 1) and a 110-acre Shared Facilities Area (SFA) (CUP 2). The Draft EIR further states that of the 813-acre solar array area within CUP 1, *approximately* 638 acres would include solar arrays. The 638 acres referenced in the Draft EIR was therefore an approximate coverage for solar arrays, and has since been refined to 677 acres as referenced in CESA ITP application. However, the Draft EIR properly analyzes potential impacts to biological resources as a result of the Project. Indeed, as stated on page 4.3-1 of **Section 4.3: Biological Resources** of the Draft EIR, the survey area for the Biological Resources Assessment consisted of the 813-acre solar array area (i.e., the entire boundary of CUP 1) and up to a 55-foot buffer for a total of approximately 861 acres and excluded the currently developed SFA. The Survey Area also included the off-site improvement of a portion of Harper Lake Road, which is an existing dirt road. See F**igure 4.3-1: Biological Resources Survey Area** of the Draft EIR. The road improvement may extend up to approximately 60 feet wide and approximately 1 mile long from the southeastern corner of Hoffman Road and Harper Lake Road (adjacent to the east of SEGS IX) to the existing secondary access gate. The survey area for the Mohave Ground Squirrel (MGS Survey Area) encompassed the 813-acre solar array area of the Project Site. As further described on page 4.3-3, the SFA was surveyed as part of the permitting effort for the approved Lockhart I Facility. The SFA has incurred comprehensive severe surface disturbance over the past 30 years as part of two operational solar thermal facilities (SEGS VIII and IX), and continues to be completely denuded of vegetation. Desert tortoise exclusionary fencing was installed and has been maintained in place around the former SEGS VIII facility and the existing SEGS IX facility as well as the SFA since construction of those facilities in 1990 and was intact at the time of the field surveys. As a result, use of the SFA by terrestrial wildlife is severely restricted and likely limited to small mammals and reptiles and did not need to be resurveyed.

Thus, the survey area for biological resources covers more than the 677 acres of solar arrays—it includes the entire boundary of CUP 1 (plus a buffer), as CUP 1 will include solar arrays, internal access roads, and other infrastructure. Therefore, the Draft EIR provides an accurate, and potentially conservative, analysis regarding Project-related impacts to biological resources (and other resource areas). As reflected in **Chapter 3.0: Corrections and Additions to the Draft EIR**, the Final EIR has corrected to note that that approximately 677 acres within CUP 1 would include solar arrays. This change does not constitute significant new information as the areas were surveyed and analyzed within the Draft EIR, but rather constitutes an insignificant modification to the Draft EIR.

Comment 5-4

Mitigation Measures and Related Impact Shortcoming

Comment #2 Designation of a Lead Biologist

DEIR Section 4.3 Page 59

Issue: An EIR must identify potentially feasible mitigation measures that avoid or reduce each significant impact to the extent feasible. Effective mitigation measures should be able to answer the following questions: who, what, where, when, why and how.

Specific impact: The DEIR includes a number of mitigation measures to reduce impacts to biological resources but lacks a measure to clarify who is responsible to ensure oversight of those measures and to provide communication with CDFW.

Recommended Potentially Feasible Mitigation Measure: CDFW appreciates the inclusion of Mitigation Measures BIO-1 through BIO-18, and recommends that the Final EIR add the following measure to specify that the Applicant will assign a Lead Biologist to implement all biological construction monitoring duties as described in the other measures:

Mitigation Measure BIO-xx Biological Monitoring: The Applicant shall assign a Lead Biologist as the primary point of contact for the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) regarding biological resources mitigation and compliance. For desert tortoise protection measures (Mitigation Measure BIO-3), the Lead Biologist will serve as the Field Contact Representative or Designated Representative. The Applicant shall provide the resume of the proposed Lead Biologist CDFW and USFWS for concurrence prior to onset of ground-disturbing activities. The Lead Biologist shall have demonstrated expertise with the biological resources within the Project area.

Response to Comment 5-4

The comment states that a number of mitigation measures to reduce impacts to biological resources are provided, but lacks a measure to clarify who is responsible to ensure oversight of those measures and to provide communication with CDFW. Responsibility for mitigation measure implementation and verification is provided in the MMRP.

The comment further recommends that the Final EIR add a mitigation measure that species that the Applicant will assign a Lead Biologist to implement all biological construction monitoring duties. **Mitigation Measure BIO-19** is added as follows and is reflected in **Chapter 3.0: Corrections and Additions to the Draft EIR** and in the MMRP**:**

> **Mitigation Measure BIO-19:** Prior to the issuance of grading or building permits, and prior to decommissioning, the Project operator shall retain a Lead Biologist(s) who meets the qualifications of an Authorized Biologist as defined by U.S. Fish and Wildlife Service to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. The contact information for the Lead Biologist(s) shall be provided in writing to the San Bernardino County Land Use Services Department.

Comment 5-5

Comment #3 Nesting Birds

DEIR Section 4.3, Pages 23, 62 BIO-11

Issue: CDFW is concerned that the DEIR does not sufficiently ensure that impacts to nesting birds are mitigated to a level less than significant.

Specific impact: Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of desert scrub vegetation onsite. The DEIR (4.3 page 23) indicates that "the many scrubs located within the Survey Area provide nesting habitat for a limited number of bird species. For example, three active nests…were observed during biological resources surveys conducted for the Project". The biggest threat to birds includes habitat loss and the conversion of natural vegetation into commercial, residential and industrial land uses.

Evidence impact would be significant: It is the Applicant's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et. seq.). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code also afford protective measures as follows: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Recommended Potentially Feasible Mitigation Measures: The final EIR should include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise, sound walls, and buffers. The final EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. CDFW supports the inclusion of Mitigation Measure BIO-11, with minor edits (in ~~strikethrough~~ and **bold**) in the final EIR to avoid impacts to nesting birds:

Mitigation Measure BIO-11 – Project construction activities shall avoid being conducted during the nesting bird season (February 1 through August 31), if feasible. ~~If infeasible to avoid construction during the nesting season,~~ **Regardless of the time of year,** prior to construction activities, including vegetation removal, a preconstruction nesting bird survey shall be conducted by a qualified biologist no more than ~~7~~ **three** days prior to any construction activities including vegetation removal **and shall include any potential habitat (including trees, shrubs, the ground, or nearby structures)**. Should nesting birds be found, an exclusionary buffer (depending upon the species) shall be established by the qualified biologist.

The buffer shall be clearly marked in the field by construction personnel under guidance of the qualified biologist. A qualified biologist will continue to monitor active nests adjacent to active work areas to determine whether exclusionary buffers are sufficient to prevent stress or other negative behavioral changes to nesting birds. Exclusionary buffers may be adjusted at any time by a qualified biologist based on project activities and nesting bird behavior. **If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the no disturbance buffer shall be expanded.** No construction activities shall be allowed within the exclusionary buffer until the qualified biologist determines that the young have fledged or the nest is no longer active. **A nesting bird survey report shall be provided to CDFW. If an active nest is encountered during construction, construction shall stop immediately until a qualified biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws.**

Response to Comment 5-5

The comment requests revisions to Draft EIR **Mitigation Measure BIO-11** relating to nesting birds. Based on the results of the Biological Resources Assessment, no birds were found on-site that nested outside of the nesting bird season. Therefore, the County respectfully disagrees with the CDFW-recommended edits regarding avoiding construction during the nesting season. **Mitigation Measure BIO-11** is revised as follows (*see double underline)* and is reflected in **Chapter 3: Corrections and Additions to the Draft EIR** and in the MMRP**:**

> **Mitigation Measure BIO-11:** Project construction activities shall avoid being conducted during the nesting bird season (February 1 through August 31), if feasible. If infeasible to avoid construction during the nesting season, prior to construction activities, including vegetation removal, a preconstruction nesting bird survey shall be conducted by a qualified biologist no more than ~~7~~ 3 days prior to any construction activities including vegetation removal and shall include any potential habitat (including trees, shrubs, the ground, or nearby structures). Should nesting birds be found, an exclusionary buffer (depending upon the species) shall be established by the qualified biologist. The buffer shall be clearly marked in the field by construction personnel under guidance of the qualified biologist. A qualified biologist will continue to monitor active nests adjacent to active work areas to determine whether exclusionary buffers are sufficient to prevent stress or other negative behavioral changes to nesting birds. Exclusionary buffers may be adjusted at any time by a qualified biologist based on project activities and nesting bird behavior. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the no disturbance buffer shall be expanded. No construction activities shall be allowed within the exclusionary buffer until the qualified biologist determines that the young have fledged or the nest is no longer active. A nesting bird survey report shall be provided to the County within 30 days of Project completion. If an active nest is encountered during construction, construction shall stop immediately until a qualified biologist can determine the status of the nest and when work can proceed without risking violation to State or federal laws.

Comment 5-6

CDFW also appreciates that the DEIR states that the Applicant will voluntarily develop and implement a Bird and Bat Conservation Plan (BBCP) to reduce impacts to birds and bats during Project operations (page 4.3-58). Please note, however, that while the DEIR states that "in the event of an injury or death of a listed species, CDFW and/or USFWS shall be contacted to consult on appropriate next steps", any take of a listed species absent an ITP would be unauthorized. CDFW further recommends that a Mitigation Measure is included specifically to require a BBCP:

Mitigation Measure BIO-xx Bird and Bat Conservation Plan. The Applicant shall prepare and implement a BBCP to avoid or minimize take of migratory birds that may nest on the site or may be vulnerable to collision with Project components. The BBCP shall identify potential hazards to birds during construction and operations and maintenance phases of the Project and specify measures to recognize, minimize, or avoid those hazards. The BBCP shall articulate the Applicant's commitment to reduce risk to birds and bats. Over the course of construction and operations and maintenance, progress and challenges that are encountered may necessitate review or revision of the BBCP, on mutual agreement among the Applicant and the resource agencies. The initial goals of the BBCS are as follows:

- **Assess potential risk to birds and bats based on the proposed activities**
- **Specify the adaptive management process that will be used to address potential adverse effects on avian and bat species**
- **Describe baseline conditions for bird species present within the Project site, including results of site-specific surveys**
- **Specify conservation measures that will be employed to avoid, minimize, and/or mitigate potential adverse effects to birds and bats**
- **Describe the incidental bird and bat monitoring and reporting that will take place during construction, if not described in the Nesting Bird Management Plan.**
- **Provide details for following systematic post-construction bird and bat monitoring and reporting.**

Response to Comment 5-6

The comment recommends that a BBCP be implemented as a mitigation measure to reduce impacts to birds and bats during Project operations. As stated on page 4.3-57 and 58 of **Section 4.3: Biological Resources** of the Draft EIR, there would be no significant direct or indirect impact on migratory birds or bats during Project operations. Therefore, no mitigation is necessary for Project operations related to birds and bats. Additionally, the Project would implement various mitigation measures, including **Mitigation Measure BIO-8** (conduct a Worker Education Awareness Program to encourage awareness and preservation of key species and to avoid disturbance of wildlife) and **Mitigation Measure BIO-14** (general best practices to implement during Project construction and decommissioning), and **Mitigation Measure BIO-19** (retaining a Lead Biologist to oversee compliance with protection measures for all listed and other special-status species that may be affected by operation, and decommissioning), all of which would

further reduce impacts during Project operations. However, because Project operations would not result in significant impacts to birds and bats, no mitigation is required.

Comment 5-7

Comment #4 Burrowing Owl

DEIR Section 4.3, Page 55 and 62

Issue: CDFW is concerned that the DEIR does not sufficiently identify Project impacts to burrowing owl (*Athene cunicularia*) or ensure that impacts are mitigated to a level less than significant.

Specific impact: The DEIR states that four live burrowing owls and 29 suitable burrowing owl burrows were observed during surveys conducted for the Project, and suitable foraging and nesting habitat occurs throughout the site. However, burrowing owl-focused surveys were not conducted. Absent such focused surveys CDFW is unable to determine the potential significance of Project impacts. The DEIR includes Mitigation Measure BIO-12 for burrowing owl; however, given the lack of information that would have been provided with burrowing owl-focused surveys, CDFW is concerned that the timing and scope of the measure is insufficient to ensure that impacts to burrowing owls are reduced to a level that is less than significant.

Evidence impact would be significant: Burrowing owl is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited bye *[sic]* sections 3503, 3503.5, and 3513. Fish and Game Code 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703. et. seq.).

Recommended Potentially Feasible Mitigation Measure: In areas where burrowing owl may be present, CDFW recommends that the Lead Agency follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (2012 Staff Report). The 2012 staff report specifies three steps for project impact evaluations: a habitat assessment; surveys; and an impact assessment. As stated in the *Staff Report*, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owl, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of the proposed Project activity. The biological surveys that were conducted for the Project is not sufficient to provide a complete analysis of potential impacts to burrowing owl.

Burrowing owl are susceptible to impacts year-round as their breeding season generally extends from February 1 to August 31 and their overwintering period generally from September 1 to January 31. In

areas where burrowing owl may be present, ground disturbing activities should be avoided to the extent practicable. Solar development may be considered a high level of disturbance and an appropriate buffer should be determined to avoid take of the species. If burrowing owl are found within the Project area during pre-construction surveys or construction activities, and it is not possible to avoid active burrows, passive relocation and mitigation should be implemented.

Given that burrowing owl habitat and presence has been confirmed on the site, CDFW recommends that Mitigation Measure BIO-12 incorporate the following:

Focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report*. If burrowing owls are detected during the focused surveys, the qualified biologist and Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Plan shall include the number and locations of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat burrow cannot be avoided, the Plan shall also describe relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated, as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Applicant shall implement the Plan following CDFW review and approval.

Preconstruction burrowing owl surveys shall be conducted by a qualified biologist no less than 14 days prior to the start of Project-related activities. If construction is delayed or suspended for more than 30 days after the survey, the area shall be resurveyed. A secondary survey must be conducted within 24 hours prior to ground-disturbance, in accordance with the *Staff Report*. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report*.

Response to Comment 5-7

The comment recommends that **Mitigation Measure BIO-12** be revised to incorporate a focused burrowing owl survey. **Mitigation Measure BIO-12** in the Draft EIR already notes the burrowing owl breeding season and also includes pre-construction surveys according to the CDFW's 2012 Staff Report on Burrowing Owl Mitigation. The surveys required by **Mitigation Measure BIO-12** will be consistent with the recommendations and guidelines provided within the CDFW 2012 Staff Report on Burrowing Owl Mitigation. As stated therein, if burrowing owls are observed during the pre-construction surveys, no ground-disturbing activities shall be permitted within 656 feet or 165 feet of an occupied burrow during the breeding season or non-breeding season, respectively, unless authorized by a qualified biologist. If burrow avoidance is infeasible during the non-breeding season or during the breeding season where resident burrowing owls have not yet begun egg laying or incubation, or when the juveniles are foraging

independently and capable of independent survival, **Mitigation Measure BIO-12** requires the qualified biologist to implement a passive relocation program in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. The Burrowing Owl Exclusion and Mitigation Plan and Mitigation Land Management Plan shall be prepared by a qualified biologist in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation, and shall include a requirement for the permanent conservation of offsite Burrowing Owl Passive Relocation Compensatory Mitigation Land. The Plan shall be approved by CDFW prior to commencing passive relocation. Therefore, the mitigation requested by the CDFW in the comment is already implemented as part of **Mitigation Measure BIO-12** of the Draft EIR, and no changes are necessary.

Comment 5-8

Comment #5 Desert Kit Fox (*Vulpes macrotis*) and American Badger (*Taxidea taxus*)

DEIR Section 4.3 page 56 and 63

Issue: The Project occurs within the range of desert kit fox and American badger, Species of Special Concern and protected species pursuant to Title 14 of the California Code of Regulations section 460, which prohibits the take of the species at any time.

Specific impact: Project construction and related activities may result in the injury or mortality of the two species.

Why impact may occur: The DEIR states that during surveys conducted for the Project, one live desert kit fox, one desert kit fox carcass, and 29 desert kit fox burrows were observed, along with five burrows displaying American badger sign. Suitable habitat for both species occurs throughout the Project site.

Evidence impact would be significant: Desert kit fox is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations section 460, and American badger is a CDFW Species of Special Concern. CEQA provides protection not only for CESA-listed species, but for any species including but not limited to Species of Special Concern which can be shown to meet the criteria for State listing.

Recommended potentially feasible mitigation measure: CDFW supports the inclusion of Mitigation Measure BIO-13 to minimize impacts to desert kit fox and American Badger with the following minor edits in ~~strikethrough~~ and **bold** recommended to ensure impacts are reduced to a level less than significant:

The Applicant shall prepare and implement a plan for desert kit fox and American badger. The plan shall be reviewed, and guidance provided by CDFW prior to the start of ground-disturbing activities. Pre-construction burrow clearance surveys shall be conducted by a qualified biologist to ensure that impacts to American badger and desert kit fox are avoided. The preconstruction survey shall be conducted 14-30 days and 24 hours prior to any vegetation removal or ground-disturbing activities consistent with pedestrian pre-construction survey protocols for the listed species. **Surveys shall also consider the potential presence of dens within 100 feet of the Project boundary.** As part of the survey, burrows observed shall be determined to be either inactive, **potentially active,** or active through the use of wildlife

cameras, scope, and tracking substrate or similar. **Active dens shall be avoided between January 15 and July 1 (or when pups are independent) and a 500-foot (no vegetation removal) buffer will be established around the den. Depending on the location of the den, a 500-foot buffer of intact vegetation may need to be maintained all the way up to the fence line to allow cover for desert kit fox and/or American badger to get on and off the site before animals can be passively relocated. CDFW may agree to a reduction in the buffer distance in limited circumstances where site access is inhibited, and a buffer reduction would not adversely affect desert kit fox and/or American badger.** Inactive burrows may be collapsed by hand or through the use of non-powered tools **and backfilled to prevent reuse** either by or in the presence of a qualified biologist. ~~If active burrows are identified, a non-disturbance buffer shall be implemented around the burrow as selected by a qualified biologist. Active burrows shall be avoided until they are confirmed inactive by a qualified biologist.~~

During the non-breeding/pupping season potentially active dens within the construction footprint shall be monitored by a Biological Monitor for 3 consecutive nights using a tracking medium such as diatomaceous medium or fire clay and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after 3 nights, the den shall be excavated and backfilled by hand. If tracks are observed, dens shall be fitted with one-way trap doors to encourage animals to move off site. After 48 hours post-installation, the den shall be excavated by hand and collapsed. Dens shall be collapsed prior to construction of the perimeter fence, to allow animals the opportunity to move off site without impediment. If an active natal den is detected on the site, CDFW shall be contacted within 24 hours. The course of action would depend on the age of the pups, location of the den site, status of the perimeter fence, and the pending construction activities proposed near the den. A 500-foot no disturbance buffer shall be maintained around all active dens. Additionally, the following measures are required to minimize the likelihood of distemper transmission:

- **Disinfection procedures for equipment and personnel will be followed during any activities related to kit fox on site. Any documented kit fox mortality shall be reported to CDFW within 24 hours of identification. If a dead kit fox is observed, it shall be retained and protected from scavengers until CDFW determines if the collection of necropsy samples is justified.**

Response to Comment 5-8

The comment recommends that **Mitigation Measure BIO-13** be revised. As the commenter does not specifically state what plan should be prepared or implemented, the initial recommendation is not included in the revision. To the extent that a plan would detail the requirements for pre-construction surveys and avoidance, such a plan is not necessary to be added to the mitigation measure as written. **Mitigation Measure BIO-13** already requires that a qualified biologist conduct pre-construction surveys to assess burrows for activity using wildlife cameras, scope, and tracking substrate or similar. Further, no exclusionary or relocation plan is necessary, as **Mitigation Measure BIO-13** already requires that active burrows that may be used as dens by desert kit fox and/or American badger be avoided through a non-disturbance buffer, until the burrows become inactive and confirmed to be inactive by a qualified biologist, at which time they may be collapsed.

Mitigation Measure BIO-13 is however revised as follows (*see strikethrough and double underline)* to clarify buffer distance and passive relocation standards and is reflected in **Chapter 3: Corrections and Additions to the Draft EIR** and in the MMRP**:**

> **Mitigation Measure BIO-13:** Pre-construction burrow clearance surveys shall be conducted by a qualified biologist to ensure that impacts to American badger and desert kit fox are avoided. The pre-construction survey shall be conducted 14-30 days and 24 hours prior to any vegetation removal or ground-disturbing activities consistent with pedestrian pre-construction survey protocols for the listed species. Surveys shall also consider the potential presence of dens within 100 feet of the Project boundary to the extent access is authorized. As part of the survey, burrows observed shall be determined to be either inactive or active through the use of wildlife cameras, scope, and tracking substrate or similar. Active dens shall be avoided between January 15 and July 1 (or when pups are independent) and a 500-foot (no vegetation removal) buffer will be established around the den. Depending on the location of the den, a 500-foot buffer of intact vegetation may need to be maintained all the way up to the fence line to allow cover for desert kit fox and/or American badger to get on and off the site before animals can be passively relocated. CDFW may agree to a reduction in the buffer distance in limited circumstances where site access is inhibited, and a buffer reduction would not adversely affect desert kit fox and/or American badger. Inactive burrows may be collapsed by hand or through the use of non-powered tools and backfilled to prevent reuse either by or in the presence of a qualified biologist. ~~If active burrows are identified, a non-disturbance buffer shall be implemented around the burrow as selected by a qualified biologist. Active burrows shall be avoided until they are confirmed inactive by a qualified biologist.~~
>
> During the non-breeding/pupping season potentially active dens within the construction footprint shall be monitored by a Biological Monitor for 3 consecutive nights using a tracking medium such as diatomaceous medium or fire clay and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after 3 nights, the den shall be excavated and backfilled by hand. If tracks are observed, dens shall be fitted with one-way trap doors to encourage animals to move off site. After 48 hours post-installation, the den shall be excavated by hand and collapsed. Dens shall be collapsed prior to construction of the perimeter fence, to allow animals the opportunity to move off site without impediment. If an active natal den is detected on the site, CDFW shall be contacted within 24 hours. The course of action would depend on the age of the pups, location of the den site, status of the perimeter fence, and the pending construction activities proposed near the den. A 500-foot no disturbance buffer shall be maintained around all active dens. Additionally, the following measures are required to minimize the likelihood of distemper transmission:
>
> - Disinfection procedures for equipment and personnel will be followed during any activities related to kit fox on site. Any documented kit fox mortality shall be reported to CDFW within 24 hours of identification. If a dead kit fox is observed, it shall be retained

and protected from scavengers until CDFW determines if the collection of necropsy samples is justified.

Comment 5-9

Comment #6: California Endangered Species Act

Issue: CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. A CESA incidental take permit (ITP) is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 and 2085).

Specific impact: CESA-listed species that the Project will impact include desert tortoise (*Gopherus agassizii*; threatened, candidate for endangered) and Mohave ground squirrel (*Xerospermophilus mohavensis*; threatened).

CDFW recommendation: CDFW acknowledges and appreciates that the Applicant has been coordinating with CDFW to obtain an ITP to cover these two species. CDFW deemed the ITP application complete on August 23, 2023. Please note that final compensatory mitigation will be determined through the ITP process and will likely be higher than the proposed minimum of 1:1 in Mitigation Measures BIO-5 and BIO-9.

As with the general Project description, CDFW recommends that the Final EIR reconcile any discrepancies in the description of Project impacts to the species, as acreages described in the CESA ITP application are more refined than those in the DEIR.

Mohave ground squirrel: Because no protocol surveys were conducted for Mohave ground squirrel and the Applicant has already assumed presence and submitted their application for an ITP, with no indication that they intend to conduct protocol surveys, CDFW recommends that the Final EIR revise the language in Mitigation Measure Bio-9 (page 4.3-51 and 4.3-61) accordingly (i.e., remove references to conducting protocol surveys to determine absence/presence).

Desert tortoise: CDFW appreciates the inclusion of Mitigation Measure BIO-3, and while the ITP will include additional more fully developed measures, CDFW recommends incorporating the following language in the DEIR to clarify the intention to avoid unauthorized take: **No desert tortoise may be handled or relocated without authorization from U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW). Applicant shall obtain incidental take authorization from both agencies to address any potential take of desert tortoise, including authorization to handle or translocate desert tortoise. Desert tortoises would be handled or translocated according to a Desert Tortoise Relocation Plan, pending approval by both agencies.**

The Applicant shall employ an approved Authorized Biologist(s) who is qualified to handle desert tortoises and an approved Biological Monitor(s). Additionally, the Applicant shall designate a Lead Biologist as the Designated Representative for purposes of the desert tortoise protection measures identified in the ITP.

Response to Comment 5-9

The comment recommends **Mitigation Measure BIO-9** be revised to remove references to conducting MGS protocol surveys to determine absence/presence. As the Applicant has assumed presence, **Mitigation Measure BIO-9** is revised as follows (*see strikethrough and double underline)* and is reflected in **Chapter 3: Corrections and Additions to the Draft EIR** and in the MMRP**:**

Mitigation Measure BIO-9: The Project proponent has assumed Mohave ground squirrel are present on the 418.54-acre portion of suitable habitat for the Mohave ground squirrel on the Project Site. To mitigate potential impacts to the Mohave ground squirrel, the Project proponent ~~may elect one of two options:~~

1. ~~Carry out a protocol survey in accordance with the California Department of Fish and Wildlife (CDFW) focused survey protocol to assess presence/ absence of the species. If the survey demonstrates absence, no Mohave ground squirrel "take" would occur, and no mitigation would be required; or~~

2. ~~Assume the presence of Mohave ground squirrel on the 418.54-acre portion of suitable habitat on the Project Site.~~

3. ~~If the species is either confirmed or assumed present,~~ shall provide compensatory mitigation to offset impacts to Mohave ground squirrel through either off-site mitigation lands, which shall be ~~implemented through off-site, permittee-responsible mitigation~~ managed in perpetuity by a qualified conservation organization as defined by California Civil Code Section 815.3, mitigation bank credit purchase (e.g., purchase of credits at the Black Mountain Conservation Bank), or a combination of these options depending on availability, equivalent to at least a 1:1 replacement for habitat impacted by project development. The proposed mitigation strategy shall be done in accordance with CDFW authorizations.

4. Additionally, ~~if the species is either confirmed or assumed present,~~ the Applicant shall implement the following additional measures:

    - Use only qualified biologists for conducting surveys and monitoring
    - Relocate Mohave ground squirrels out of harm's way in coordination with CDFW.
    - Provide onsite monitoring during construction for presence of Mohave ground squirrels
    - Cease work if a Mohave ground squirrel is encountered in a work area

- Conduct worker environmental awareness training and education program training as it pertains to Mohave ground squirrel protection and reporting requirements.

The comment also recommends incorporating additional language to **Mitigation Measure BIO-3** to clarify the intention to avoid unauthorized take of desert tortoise. **Mitigation Measure BIO-3** is revised as follows (*see double underline)* and is reflected in **Chapter 3: Corrections and Additions to the Draft EIR** and in the MMRP**:**

> **Mitigation Measure BIO-3:** Prior to any vegetation or ground disturbance activities, pre-construction surveys shall be conducted for the desert tortoise according to the United States Fish and Wildlife's (USFWS) *2019 Preparing for Any Action That May Occur Within the Range of the Mojave Desert Tortoise (Gopherus agassizii)*. Should relocation of individuals be required, they shall be done so according to USFWS's 2*019 Desert Tortoise (Mojave Population) Field Manual: (Gopherus agassizii)* in close consultation with USFWS. Two (2) pre-construction wildlife clearance surveys should be conducted 14-30 days and 24 hours prior to any vegetation removal or ground disturbing activities consistent with the pedestrian pre-construction survey protocols for the desert tortoise. Once surveys are completed, the qualified biologist shall prepare a final report documenting surveys and findings. If no occupied burrows are detected, Project construction activities may begin. If an occupied burrow is found within the Project Site during pre-construction clearance surveys, a CDFW- and USFWS-approved Desert Tortoise Relocation Plan shall be submitted to the County prior to initiating Project construction activities. The plan shall provide details on desert tortoise clearance surveys and translocation, disease testing protocols, disposition decision process, protocols for managing desert tortoises found during active versus inactive seasons, post-translocation monitoring requirements, if any, and shall be consistent with current USFWS guidelines (USFWS 2020). All best management practices as detailed in **Mitigation Measure BIO-14** shall be implemented to reduce the potential for inadvertent trapping and attractiveness to opportunistic predators. No desert tortoise may be handled or relocated without authorization from USFWS and the CDFW. The Applicant shall obtain incidental take authorization from both agencies to address any potential take of desert tortoise, including authorization to handle or translocate desert tortoise. Desert tortoises would be handled or translocated according to a Desert Tortoise Relocation Plan, pending approval by both agencies.
>
> The Applicant shall employ an approved Authorized Biologist(s) who is qualified to handle desert tortoises and an approved Biological Monitor(s). Additionally, the Applicant shall designate a Lead Biologist as the Designated Representative for purposes of the desert tortoise protection measures identified in the ITP.

Comment 5-10

Comment #7 Lake and Streambed Alteration Program

Fish and Game Code section 1602 requires an 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. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to https://www.wildlife.ca.gov/Conservation/LSA/Forms.

CDFW acknowledges and appreciates that the Applicant has been coordinating with CDFW to obtain a 1600 Agreement for impacts to the identified 1602 resources on the Project site. The Applicant submitted a notification to CDFW on July 25, 2023, with a revised notification submitted on October 31, 2023 which CDFW subsequently deemed complete on November 7, 2023. Compensatory mitigation requirements will be determined through the LSA process and may be more than the proposed minimum of 1:1 in Mitigation Measure BIO-18.

Response to Comment 5-10

The comment acknowledges the Applicant's coordination with the CDFW regarding the 1600 Agreement for impacts to the identified 1602 resources on the Project Site. This comment is noted. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 5-11

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 (CNDDB). The CNNDB field survey form can be found at the following link:

http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

Response to Comment 5-11

The comment requests that any special status species and natural communities detected during Project surveys be reported to the California Natural Diversity Database (CNDDB) at the link provided. It is noted that the field survey forms can now be submitted digitally and online via the CNDDB Online Field Survey Form (https://wildlife.ca.gov/Data/CNDDB/Submitting-Data). These forms will be completed and submitted upon completion of the entitlement process with the County.

Comment 5-12

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

Response to Comment 5-12

The comment states that the payment of the filing fees is required in order for the underlying Project approval to be operative, vested, and final. This comment is noted, and the fees will be paid upon Project approval and along with the Notice of Determination. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

Comment 5-13

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 Rose Banks, Senior Environmental Scientist (Specialist) at (760) 218-0022 or Rose.Banks@wildlife.ca.gov.

Response to Comment 5-13

This comment provides a conclusion to the comment letter and contact information for further information, as necessary. As this comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is warranted.

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3.0 CORRECTIONS AND ADDITIONS TO THE DRAFT EIR

In accordance with the CEQA Guidelines Section 15132 (a), this Chapter of the Final EIR provides changes to the Draft EIR that have been made to clarify, correct, or supplement the information provided in that document. These changes and additions are due to recognition of inadvertent errors or omissions, and to respond to comments received on the Draft EIR during the public review period. The changes described in this Chapter do not add significant new information to the Draft EIR that would require recirculation of the Draft EIR. More specifically, CEQA requires recirculation of a Draft EIR only when "significant new information" is added to a Draft EIR after public notice of the availability of the Draft EIR has occurred (refer to California Public Resources Code [PRC] Section 21092.1 and CEQA Guidelines Section 15088.5), but before the EIR is certified. Section 15088.5 of the CEQA Guidelines specifically states:

> *New information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. 'Significant new information' requiring recirculation includes, for example, a disclosure showing that:*
>
> - *A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.*
> - *A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted to reduce the impact to a level of insignificance.*
> - *A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.*
> - *The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.*

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

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

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

Ordinance No. 440, Land Use Zoning District Map Amendment was signed and certified at the Board of Supervisors regular meeting on June 28, 2022 to amend the zoning for the Project Site from Rural Living (RL) to Resource Conservation (RC). Therefore, because the Draft EIR analyzed the request for a Project-specific zone change from RL to RC for the solar array area of the Project Site, the Applicant is withdrawing the Project-specific zone change request. This removal would not result in any new or more severe environmental impacts than were identified in the Draft EIR; therefore, no changes to the environmental findings as determined in the Draft EIR are required.

Executive Summary

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

Chapter 3.0, Project Description

1. Page 3-1, the first paragraph is revised as follows:

   Desert Breeze Solar, LLC (Applicant) proposes to develop the Desert Breeze Solar Project (Project), a utility-scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 130 megawatts (MW) of solar power and include up to 2 gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS). Key entitlements to construct and operate the Project include ~~a zoning amendment to change the current zoning designation from Rural Living (RL) to Resource Conservation (RC), as well as~~ two (2) Conditional Use Permits (CUPs).

2. Page 3-1, Footnote 1 is revised as follows:

   Of the 813-acre area within CUP 1, approximately ~~638~~ 677 acres would include solar arrays.

3. Page 3-8, **Table 3-1: Project Site and Surrounding Uses** is revised as follows:

Revised Table 3-1: Project Site and Surrounding Uses

	Existing Land Use	Existing Land Use Category	Existing Zoning Designation	County-proposed Zoning Designation
Solar Array Area of Project Site	Undeveloped Vacant Land	RLM – Resource Land Management	~~RL – Rural Living~~ RC – Resource Conservation	RC – Resource Conservation
SFA	Existing and County-Approved Solar facilities	RLM – Resource Land Management	RC – Resource Conservation	RC – Resource Conservation
North of Solar Array Area	Vacant Land	RLM – Resource Land Management	RC – Resource Conservation	RC – Resource Conservation

	Existing Land Use	Existing Land Use Category	Existing Zoning Designation	County-proposed Zoning Designation
South of Solar Array Area	Existing and County-Approved Solar facilities	RLM – Resource Land Management	RL – Rural Living	RC – Resource Conservation
East of Solar Array Area	Undeveloped Vacant Land	RLM – Resource Land Management	RL- Rural Living	RC – Resource Conservation / RL- Rural Living
West of Solar Array Area	Undeveloped Vacant Land	RLM – Resource Land Management	RC – Resource Conservation	RC – Resource Conservation

4. Page 3-9, **Figure 3-5: Land Use** is revised below.

5. Page 3-11, the first paragraph is revised as follows:

   As shown above in **Table 3-1**, the existing zoning for the solar array area of the Project Site is ~~RL~~ RC and the SFA is zoned RC. The Project is located within an area that is scheduled to be largely re-zoned to RC through a County-initiated update to the Countywide zoning ordinance to be consistent with the Countywide Plan Land Use Element. This zoning update is anticipated to be considered by the Board of Supervisors in ~~2023~~ 2024. ~~Because the Countywide zoning update might not be approved before the County considers approval of this Project, the Project includes a request for a Project-specific zone change from RL to RC for the solar array area of the Project Site. If the County-initiated zone change is approved before the County acts on this Project, the Applicant will then withdraw the Project-specific zone change request.~~

6. Page 3-12, the last paragraph is revised as follows:

   ~~The Project includes a request for a Project-specific zone change from RL to RC for the solar array area of the Project Site. The Project is subject to CUP approval in the RC zone.~~ For the purpose of power distribution to multiple receiving customers and for specific entity management of the BESS and Project components (e.g., solar arrays), the Applicant is requesting two CUPs for review and approval, see **Figure 3-7: Conditional Use Permit Areas**).

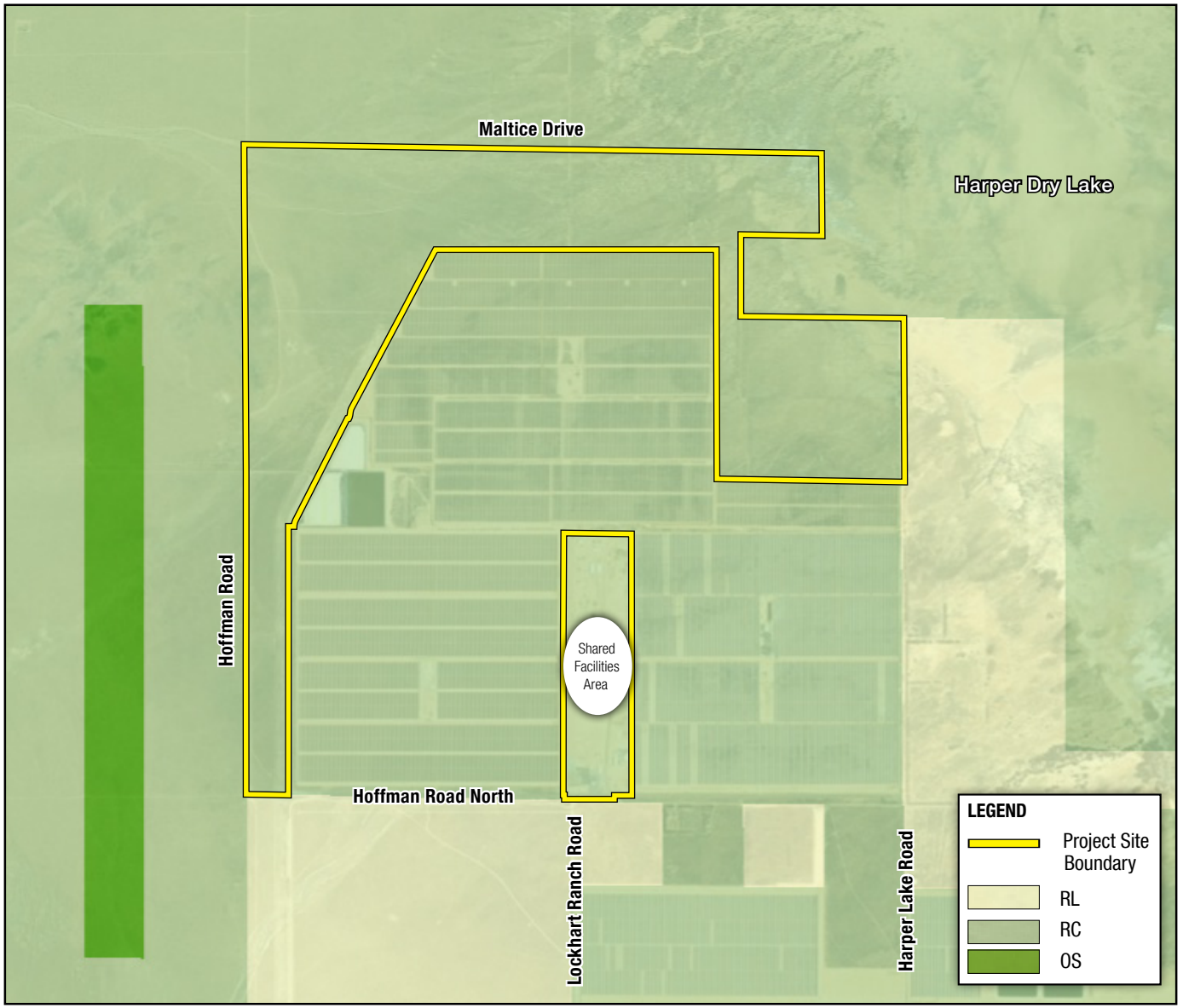
7. Page 3-16, the first bullet is deleted:

   - ~~**Zoning Change**: The Project includes a zone change the from RL to RC for the portion of the Project Site that would be developed with the solar array (APN 0490-223-33) in order to be in compliance with the Countywide Plan/Policy Plan adopted October 27, 2020, and the Renewable Energy Conservation Element adopted August 8, 2017 (amended February 28, 2019) [unless the County-initiated zone change is approved before the County acts on this Project, in which case this Project-specific zone change request will not be required]. The SFA is currently zoned RC and does not require a zoning amendment.~~

8. Page 3-23, **Table 3-3: Matrix of Potential Approvals Required** is revised as follows:

Revised Table 3-3: Matrix of Potential Approvals Required

Permit/Action Required	Approving Agency	Lead/Trustee/Responsible Agency Designation
Environmental Impact Report Certification	County	Lead Agency
Conditional Use Permits	County	Lead Agency
~~Zone Change~~	~~County~~	~~Lead Agency~~
Variance for Height of new on-site collection line poles	County	Lead Agency
Air Quality Construction Management Plan	Mojave Desert Air Quality Management District (MDAQMD)	Responsible Agency
Permit to Construct/Permit to Operate for backup generator	MDAQMD	Responsible Agency
Waste Discharge Permit, if required	Lahontan Regional Water Quality Control Board (RWQCB)	Responsible Agency
General Construction Stormwater Permit	Lahontan RWQCB	Responsible Agency
Grading, Building, and Encroachment Permit(s)	County	Lead Agency
Incidental Take Permit, if required	California Department of Fish & Wildlife (CDFW) and United States Fish and Wildlife Service (USFWS)	Responsible Agency
Lake and Streambed Alteration Agreement, if required	CDFW	Responsible Agency



SOURCE: County of San Bernardino, ~~2023~~ 2024

N.T.S.

REVISED FIGURE 3-5: Land Use

DESERT BREEZE SOLAR PROJECT

Kimley»Horn

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Section 4.1, Aesthetics

1. Page 4.1-25, the second to last paragraph is revised as follows:

   Construction and operation of any cumulative project and the Project would modify the local and regional landscape in the Project area. Depending on the cumulative projects in the area (see **Table 4.0-1**), there could be a moderate level of visual change to the landscape due to existing encroachments in the viewshed. The Project Site is zoned as Resource Conservation (RC), and ~~, as well as~~ the existing adjacent facilities~~,~~ are located in an area of the County that are scheduled to be largely re-zoned to Resource Conservation (RC), which permits solar generation facilities with a CUP, through a County-initiated update to the Countywide zoning ordinance to be consistent with the Countywide Plan Land Use Element.

Section 4.2, Air Quality

1. Page 4.2-17, the second paragraph is revised as follows:

   Zoning is local law that regulates various aspects of how land can be used. Zoning in the Project area is regulated by the San Bernardino County Development Code and Zoning designations are found on the County Zoning Maps.[8] The Project Site is designated as RLM (Resource Land Management) in the Countywide Plan / Policy Plan. The existing zoning for the Project Site is ~~RL (Rural Living)~~ Resource Conservation (RC).[9] ~~When the 2016-2040 RTP/SCS was adopted, the property likely was designated Resource Conservation (RC). Solar generation facilities are allowed under the current land use designation and were allowed under the RC land use designation. However, the zoning is expected to be changed to RC, consistent with the Policy Plan Land Use Element, with Board of Supervisors approval of an upcoming County-initiated Zoning ordinance. In the event the Project is considered prior to the adoption of the County-initiated zoning ordinance, the Project is requesting a site-specific zone change for the Project Site from RL to RC.~~ The RC land use zoning district provides sites for open space and recreational activities, single-family homes on very large parcels and similar and compatible uses. Utility scale Renewable Energy Facilities are allowed in this zone. Solar generation facilities are permitted under the RC zone upon approval of a Conditional Use Permit (CUP).

2. Page 4.2-31, the first paragraph is revised as follows:

   implements plans for future attainment…The MDAQMD significance thresholds take into account the cumulative contribution of a project that adds emissions to the Basin, which has significant cumulative impacts related to O_3 and PM. As noted above, ~~with mitigation,~~ the Project would not make cumulatively considerable contribution to existing significant cumulative impacts.

3. Page 4.2-31, the second paragraph is revised as follows:

   With regard to compliance with MDAQMD's air quality plans, the Project would not result in a significant impact ~~after mitigation~~. Each cumulative project would need to comply with the land

uses set forth by the San Bernardino Land Use Service Maps which are part of the Countywide Plan, or otherwise submit a CUP(s) if their proposed land use is not consistent with the Plan…

4. Page 4.2-31, the third paragraph is revised as follows:

   With regard to considerable net increases to criteria air pollutants for which the Basin are in nonattainment for, the Project would not result in significant impact ~~after mitigation~~. Currently, the Basin is in federal nonattainment for O_3 and PM_{10} and in state nonattainment for O_3, PM_{10}, and $PM_{2.5}$...

5. Page 4.2-31, the last paragraph is revised as follows:

   With regard to impacts to sensitive receptors, the Project would not result in a significant impact during Project operations. Sensitive receptors are defined as facilities or land uses that include members of the population that are particularly sensitive to the effects of air pollutants. Potential pollutants that may impact sensitive receptors include DPM, CO, and other TACs. As part of the air quality analyses that each potential cumulative project would need to complete, these TACs would be investigated, and mitigation measures applied as applicable to reduce impacts. A sensitive receptor's exposure to potential pollutants and their health impacts is hard to measure against individual projects and more closely related to regional concentrations. Additionally, in order for an individual project to greatly impact the regional concentrations of pollutants, the project would likely need to exceed MDAQMD significance thresholds by a significant margin, which is unlikely with individual project's implementation of mitigation measures, as applicable. It is not anticipated that cumulative impacts would be significant.

   Regarding cumulative construction impacts to sensitive receptors related to Valley Fever, each cumulative project would be required to complete analysis of impacts regarding air emissions as part of CEQA and implement mitigation measures as appropriate. The cumulative projects that could disturb dust particles and, if present, CI spores, which could then be released into the air and be potentially inhaled by on-site workers and nearby sensitive receptors could result in potentially significant impacts. The cumulative projects would be required to implement similar mitigation measures as those implemented under the Project to reduce construction impacts to sensitive receptors to less than significant levels. Therefore, the Project's contribution to cumulative construction impacts associated with impacts to sensitive receptors would be less than cumulatively considerable.

Section 4.3, Biological Resources

1. Page 4.3-1, Footnote 1 is revised as follows:

   Of the 813-acre area within CUP 1, approximately ~~638~~ 677 acres would include solar arrays.

2. Page 4.3-49, the last paragraph before Special Status Wildlife Species is revised as follows:

Mitigation Measure BIO-2 would be implemented to reduce potentially significant impacts on special-status plant species that could be present on-site prior to the commencement of Project construction. The implementation of **Mitigation Measure BIO-2** would include an appropriately-timed botanical survey to capture any annual plant species or special-status species that may not have been observable during the 2022 rare plant survey and would require compensatory mitigation for impacts to any rare plants identified during preconstruction surveys. **Mitigation Measure BIO-19** would require that the Project operator retain a Lead Biologist who meets the qualifications of an Authorized Biologist as defined by the USFWS to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. With the implementation of **Mitigation Measures BIO-1, BIO-2**, and **BIO-19**, potential impacts on special-status plant species would be reduced to less than significant.

3. Page 4.3-51, the first paragraph is revised as follows:

…Further, it is not anticipated that many individual animals would be taken due to the avoidance measures detailed in **Mitigation Measure BIO-14** and similar measures anticipated to be imposed by USFWS and CDFW. Mitigation Measure BIO-19 would require that the Project operator retain a Lead Biologist who meets the qualifications of an Authorized Biologist as defined by the USFWS to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. With implementation of **Mitigation Measures BIO-3, BIO-4, BIO-5**, **BIO-6**, **BIO-7, BIO-8,** ~~and~~ **BIO-14,** and **BIO-19**, the Project is not expected to have a substantial adverse effect on the desert tortoise population and impacts to desert tortoise would be reduced to less than significant.

4. Page 4.3-51, the last paragraph is revised as follows:

~~Formal consultation with CDFW would be required, and a State ITP under CFGC Section 2081 would be required if the Project would result in "take" of the species.~~ **Mitigation Measure BIO-9** would be implemented to either ~~(1) conduct a protocol survey in accordance with the CDFW focused survey protocol to assess the presence/absence of the species or (2) assume the presence of MGS on the suitable habitat of the Project Site, and (3) if presence of the species is either confirmed or assumed,~~ acquire off-site mitigation lands or purchase credits in a mitigation bank equivalent to at least a 1:1 replacement, or as otherwise approved by the CDFW. In addition to the ~~protocol survey or~~ compensatory mitigation for the MGS as detailed in **Mitigation Measure BIO-9**, … **Mitigation Measure BIO-14** prescribes general best practices to implement during Project grading and construction and decommissioning activities. **Mitigation Measure BIO-19** would require that the Project operator retain a Lead Biologist who meets the qualifications of an Authorized Biologist as defined by the USFWS to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. The inclusion of **Mitigation Measure BIO-6** through

Mitigation Measure BIO-8, ~~and~~ **BIO-14, and BIO-19** would allow for best practices to avoid incidental take of the MGS. Further, it is not anticipated that many individual animals would be taken due to the avoidance measures detailed in **Mitigation Measure BIO-14** and similar measures anticipated to be imposed by CDFW. With implementation of **Mitigation Measures BIO-6, BIO-7, BIO-8, BIO-9,** ~~and~~ **BIO-14**, and **BIO-19,** the Project is not expected to have a substantial adverse effect on the MGS population, and impacts to MGS would be reduced to less than significant.

5. Page 4.3-52, the first paragraph is revised as follows:

The Mojave fringe-toed lizard is a CDFW Species of Special Concern…Additionally, the Project would implement **Mitigation Measure BIO-6** to prohibit off-road travel in native habitats adjacent to the Project Site, **Mitigation Measure BIO-7** to limit vehicle speed on the Project Site, **Mitigation Measure BIO-8** to conduct a WEAP to encourage awareness and avoidance of wildlife, ~~and~~ **Mitigation Measure BIO-14** for general best practices to avoid impacts to special-status wildlife species, and **Mitigation Measure BIO-19** to retain a Lead Biologist to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. Implementation of **Mitigation Measures BIO-6, BIO-7, BIO-8, BIO-10,** ~~and~~ **BIO-14**, and **BIO-19** would reduce impacts to the Mojave fringe-toed lizard to less than significant.

6. Page 4.3-52, the last paragraph is revised as follows:

The prairie falcon is a CDFW Special Animal... **Mitigation Measure BIO-14** prescribes general best practices to implement during Project grading and construction and decommissioning activities. **Mitigation Measure BIO-19** would require that the Project operator retain a Lead Biologist who meets the qualifications of an Authorized Biologist as defined by the USFWS to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. With implementation of **Mitigation Measures BIO-8, BIO-10,** ~~and~~ **BIO-14,** and **BIO-19,** impacts to the prairie falcon would be reduced to less than significant.

7. Page 4.3-53, the second paragraph is revised as follows:

Nonetheless, **Mitigation Measure BIO-11** requires construction avoidance during the nesting bird season, if feasible, and if not feasible requires that a pre-construction nesting bird survey be conducted within seven days prior to any construction activities and establishment of avoidance buffers if nesting birds are found on the project site. **Mitigation Measure BIO-8** would require the Project Applicant and construction manager conduct a WEAP to encourage awareness and preservation of key species and to avoid disturbance of wildlife. **Mitigation Measure BIO-14** prescribes general best practices to implement during Project grading and construction and decommissioning activities. **Mitigation Measure BIO-19** would require that the Project operator retain a Lead Biologist who meets the qualifications of an Authorized Biologist as defined by the

USFWS to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. With implementation of **Mitigation Measures BIO-8, BIO-11,** ~~and~~ **BIO-14,** and **BIO-19,** impacts to the western snowy plover would be reduced to less than significant.

8. Page 4.3-53, the last paragraph is revised as follows:

   The golden eagle is a CDFW Fully Protected Species…**Mitigation Measure BIO-14** prescribes general best practices to implement during Project grading and construction and decommissioning activities. **Mitigation Measure BIO-19** would require that the Project operator retain a Lead Biologist who meets the qualifications of an Authorized Biologist as defined by the USFWS to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. With implementation of **Mitigation Measures BIO-8, BIO-11,** ~~and~~ **BIO-14,** and **BIO-19,** impacts to the golden eagle would be reduced to less than significant.

9. Page 4.3-54, the second to last paragraph is revised as follows:

   The mountain plover is a CDFW Species of Special Concern (wintering)...**Mitigation Measure BIO-14** prescribes general best practices to implement during Project grading and construction and decommissioning activities. **Mitigation Measure BIO-19** would require that the Project operator retain a Lead Biologist who meets the qualifications of an Authorized Biologist as defined by the USFWS to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. With implementation of **Mitigation Measures BIO-8, BIO-11,** ~~and~~ **BIO-14,** and **BIO-19,** impacts to the mountain plover would be reduced to less than significant.

10. Page 4.3-54, the last paragraph is revised as follows:

    The loggerhead shrike is a CDFW Special Species of Concern…**Mitigation Measure BIO-14** prescribes general best practices to implement during Project grading and construction and decommissioning activities. **Mitigation Measure BIO-19** would require that the Project operator retain a Lead Biologist who meets the qualifications of an Authorized Biologist as defined by the USFWS to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. With implementation of **Mitigation Measures BIO-6, BIO-7, BIO-8, BIO-11,** ~~and~~ **BIO-14,** and **BIO-19,** impacts to the loggerhead shrike would be reduced to less than significant.

11. Page 4.3-55, the last paragraph is revised as follows:

    The burrowing owl is a CDFW Species of Special Concern… **Mitigation Measure BIO-14** prescribes general best practices to implement during Project grading and construction and decommissioning activities. **Mitigation Measure BIO-19** would require that the Project operator

retain a Lead Biologist who meets the qualifications of an Authorized Biologist as defined by the USFWS to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. With implementation of **Mitigation Measures BIO-8, BIO-12,** ~~and~~ **BIO-14,** and **BIO-19,** impacts to the burrowing owl would be reduced to less than significant.

12. Page 4.3-56, the first paragraph is revised as follows:

The American badger is a CDFW Special Species of Concern that occurs throughout most of California… ~~and~~ **Mitigation Measure BIO-14** for general best practices to avoid impacts to special-status wildlife species, and **Mitigation Measure BIO-19** to retain a Lead Biologist to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. With implementation of **Mitigation Measures BIO-6, BIO-7, BIO-8, BIO-13,** ~~and~~ **BIO-14,** and **BIO-19,** impacts to the American badger would be reduced to less than significant.

13. Page 4.3-56, the last paragraph is revised as follows:

The desert kit fox is protected as a fur-bearing mammal under Title 14 of CCR Section 460…, ~~and~~ **Mitigation Measure BIO-14** for general best practices to avoid impacts to special-status wildlife species, and **Mitigation Measure BIO-19** to retain a Lead Biologist to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. With implementation of **Mitigation Measures BIO-6, BIO-7, BIO-8, BIO-13,** ~~and~~ **BIO-14,** and **BIO-19,** impacts to the desert kit fox would be reduced to less than significant.

14. Page 4.3-59, the second paragraph is revised as follows:

Mitigation Measures BIO-8 and **BIO-14** require worker education training and best management practices (BMPs) for avoidance and protection of biological resources. Mitigation Measure BIO-19 would require that the Project operator retain a Lead Biologist who meets the qualifications of an Authorized Biologist as defined by the USFWS to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. Implementation of **Mitigation Measures BIO-8,** ~~and~~ **BIO-14, and BIO-19** during the decommissioning period would reduce impacts to less than significant. Furthermore, all decommissioning activities would comply with federal, State, and local standards and all regulations that exist when the Project is decommissioned, including the requirements of San Bernardino County Development Code Section 84.29.070.

15. Page 4.3-60, Mitigation Measure BIO-3 is revised as follows:

BIO-3 Prior to any vegetation or ground disturbance activities, pre-construction surveys shall be conducted for the desert tortoise according to the United States Fish and Wildlife's (USFWS) *2019 Preparing for Any Action That May Occur Within the*

Range of the Mojave Desert Tortoise (Gopherus agassizii). Should relocation of individuals be required, they shall be done so according to USFWS's 2*019 Desert Tortoise (Mojave Population) Field Manual: (Gopherus agassizii)* in close consultation with USFWS. Two (2) pre-construction wildlife clearance surveys should be conducted 14-30 days and 24 hours prior to any vegetation removal or ground disturbing activities consistent with the pedestrian pre-construction survey protocols for the desert tortoise. Once surveys are completed, the qualified biologist shall prepare a final report documenting surveys and findings. If no occupied burrows are detected, Project construction activities may begin. If an occupied burrow is found within the Project Site during pre-construction clearance surveys, a CDFW- and USFWS-approved Desert Tortoise Relocation Plan shall be submitted to the County prior to initiating Project construction activities. The plan shall provide details on desert tortoise clearance surveys and translocation, disease testing protocols, disposition decision process, protocols for managing desert tortoises found during active versus inactive seasons, post-translocation monitoring requirements, if any, and shall be consistent with current USFWS guidelines (USFWS 2020). All best management practices as detailed in **Mitigation Measure BIO-14** shall be implemented to reduce the potential for inadvertent trapping and attractiveness to opportunistic predators. No desert tortoise may be handled or relocated without authorization from USFWS and the CDFW. The Applicant shall obtain incidental take authorization from both agencies to address any potential take of desert tortoise, including authorization to handle or translocate desert tortoise. Desert tortoises would be handled or translocated according to a Desert Tortoise Relocation Plan, pending approval by both agencies.

The Applicant shall employ an approved Authorized Biologist(s) who is qualified to handle desert tortoises and an approved Biological Monitor(s). Additionally, the Applicant shall designate a Lead Biologist as the Designated Representative for purposes of the desert tortoise protection measures identified in the ITP.

16. Pages 4.3-60 and -61, Mitigation Measure BIO-5 is revised as follows:

BIO-5 Compensatory mitigation to offset impacts to desert tortoise shall be ~~implemented through off-site, permittee-responsible mitigation~~ implemented through either off-site mitigation lands, which shall be managed in perpetuity by a qualified conservation organization as defined by California Civil Code Section 815.3, mitigation bank credit purchase (e.g., purchase of credits at the Black Mountain Conservation Bank), or a combination of these options depending on availability, equivalent to at least a 1:1 replacement for habitat impacted by project development. The proposed mitigation strategy shall be done in accordance with USFWS and CDFW authorizations.

17. Page 4.3-61 and -61, Mitigation Measure BIO-9 is revised as follows:

BIO-9 The Project proponent has assumed Mohave ground squirrel are present on the 418.54-acre portion of suitable habitat for the Mohave ground squirrel on the Project Site. To mitigate potential impacts to the Mohave ground squirrel, the Project proponent ~~may elect one of two options:~~

~~1. Carry out a protocol survey in accordance with the California Department of Fish and Wildlife (CDFW) focused survey protocol to assess presence/ absence of the species. If the survey demonstrates absence, no Mohave ground squirrel "take" would occur, and no mitigation would be required; or~~

~~2. Assume the presence of Mohave ground squirrel on the 418.54 acre portion of suitable habitat on the Project Site.~~

~~3. If the species is either confirmed or assumed present,~~ shall provide compensatory mitigation to offset impacts to Mohave ground squirrel through either off-site mitigation lands, which shall be ~~implemented through off-site, permittee-responsible mitigation~~ managed in perpetuity by a qualified conservation organization as defined by California Civil Code Section 815.3, mitigation bank credit purchase (e.g., purchase of credits at the Black Mountain Conservation Bank), or a combination of these options depending on availability, equivalent to at least a 1:1 replacement for habitat impacted by project development. The proposed mitigation strategy shall be done in accordance with CDFW authorizations.

~~4.~~ Additionally, ~~if the species is either confirmed or assumed present,~~ the Applicant shall implement the following additional measures:

- Use only qualified biologists for conducting surveys and monitoring
- Relocate Mohave ground squirrels out of harm's way in coordination with CDFW.
- Provide onsite monitoring during construction for presence of Mohave ground squirrels
- Cease work if a Mohave ground squirrel is encountered in a work area
- Conduct worker environmental awareness training and education program training as it pertains to Mohave ground squirrel protection and reporting requirements.

18. Page 4.3-62, Mitigation Measure BIO-11 is revised as follows:

BIO-11 Project construction activities shall avoid being conducted during the nesting bird season (February 1 through August 31), if feasible. If infeasible to avoid construction during the nesting season, prior to construction activities, including vegetation removal, a preconstruction nesting bird survey shall be conducted by a qualified biologist no more than ~~7~~ 3 days prior to any construction activities including vegetation removal and shall include any potential habitat (including

trees, shrubs, the ground, or nearby structures). Should nesting birds be found, an exclusionary buffer (depending upon the species) shall be established by the qualified biologist. The buffer shall be clearly marked in the field by construction personnel under guidance of the qualified biologist. A qualified biologist will continue to monitor active nests adjacent to active work areas to determine whether exclusionary buffers are sufficient to prevent stress or other negative behavioral changes to nesting birds. Exclusionary buffers may be adjusted at any time by a qualified biologist based on project activities and nesting bird behavior. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the no disturbance buffer shall be expanded. No construction activities shall be allowed within the exclusionary buffer until the qualified biologist determines that the young have fledged or the nest is no longer active. A nesting bird survey report shall be provided to the County within 30 days of Project completion. If an active nest is encountered during construction, construction shall stop immediately until a qualified biologist can determine the status of the nest and when work can proceed without risking violation to State or federal laws.

19. Page 4.3-64, Mitigation Measure BIO-13 is revised as follows:

BIO-13 Pre-construction burrow clearance surveys shall be conducted by a qualified biologist to ensure that impacts to American badger and desert kit fox are avoided. The pre-construction survey shall be conducted 14-30 days and 24 hours prior to any vegetation removal or ground-disturbing activities consistent with pedestrian pre-construction survey protocols for the listed species. Surveys shall also consider the potential presence of dens within 100 feet of the Project boundary to the extent access is authorized. As part of the survey, burrows observed shall be determined to be either inactive or active through the use of wildlife cameras, scope, and tracking substrate or similar. Active dens shall be avoided between January 15 and July 1 (or when pups are independent) and a 500-foot (no vegetation removal) buffer will be established around the den. Depending on the location of the den, a 500-foot buffer of intact vegetation may need to be maintained all the way up to the fence line to allow cover for desert kit fox and/or American badger to get on and off the site before animals can be passively relocated. CDFW may agree to a reduction in the buffer distance in limited circumstances where site access is inhibited, and a buffer reduction would not adversely affect desert kit fox and/or American badger. Inactive burrows may be collapsed by hand or through the use of non-powered tools and backfilled to prevent reuse either by or in the presence of a qualified biologist. ~~If active burrows are identified, a non-disturbance buffer shall be implemented around the burrow as selected by a qualified biologist. Active burrows shall be avoided until they are confirmed inactive by a qualified biologist.~~

During the non-breeding/pupping season potentially active dens within the construction footprint shall be monitored by a Biological Monitor for 3

consecutive nights using a tracking medium such as diatomaceous medium or fire clay and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after 3 nights, the den shall be excavated and backfilled by hand. If tracks are observed, dens shall be fitted with one-way trap doors to encourage animals to move off site. After 48 hours post-installation, the den shall be excavated by hand and collapsed. Dens shall be collapsed prior to construction of the perimeter fence, to allow animals the opportunity to move off site without impediment. If an active natal den is detected on the site, CDFW shall be contacted within 24 hours. The course of action would depend on the age of the pups, location of the den site, status of the perimeter fence, and the pending construction activities proposed near the den. A 500-foot no disturbance buffer shall be maintained around all active dens. Additionally, the following measures are required to minimize the likelihood of distemper transmission:

- Disinfection procedures for equipment and personnel will be followed during any activities related to kit fox on site. Any documented kit fox mortality shall be reported to CDFW within 24 hours of identification. If a dead kit fox is observed, it shall be retained and protected from scavengers until CDFW determines if the collection of necropsy samples is justified.

20. Pages 4.3-63 and -64, Mitigation Measure BIO-14 is revised as follows:

BIO-14 The following best management practices shall be implemented during Project grading and construction and decommissioning activities to further address potential impacts on biological resources:

- To prevent inadvertent entrapment during construction, at the end of each workday all excavated, steep-walled holes or trenches more than two feet deep shall be covered with plywood or similar materials or be equipped with one or more escape ramps constructed of earth fill or wooden planks. Before such holes or trenches are filled, they shall be thoroughly inspected for trapped animals by construction personnel trained by a qualified biologist. Should wildlife become trapped, a qualified biologist shall be notified by construction personnel to remove and relocate the individual(s). If a trapped listed species is discovered, the Project shall contact CDFW and/or USFWS to determine appropriate action.
- All open ends of pipes, culverts, and conduits temporarily installed in open trenches or stored in staging/laydown areas shall be covered/capped at the end of each workday. Any such materials that have not been capped shall be inspected by construction personnel for wildlife before being moved, buried, or handled. Should wildlife become trapped, a qualified biologist shall be notified by construction personnel to remove and relocate the individual(s). If a listed species is discovered inside a pipe, that section of pipe shall not be

moved. The Project shall contact CDFW and/or USFWS to determine the appropriate action.

- Construction personnel trained by the qualified biologist shall inspect for special-status species and other wildlife under vehicles and equipment every time the vehicles or equipment are moved. If an animal is present, site workers shall wait for the individual to move to a safe location. If a listed species is discovered under equipment or vehicles and does not move on its own, the project shall contact CDFW and/or USFWS to determine the appropriate action.
- To avoid toxic substances on road surfaces, soil binding and weighting agents used on unpaved surfaces shall be nontoxic to wildlife and plants.
- To minimize spills of hazardous materials, all vehicles and equipment shall be maintained in proper condition to minimize the potential for fugitive emissions of motor oil, antifreeze, hydraulic fluid, grease, or other hazardous materials. Hazardous spills shall be immediately cleaned up and the contaminated soil shall be properly handled or disposed of at a licensed facility. Servicing of construction equipment shall take place only in designated areas.
- To discourage attraction by predators to the Project Site, all food-related trash items, such as wrappers, cans, bottles, and food scraps, shall be disposed of in solid, closed containers (trash cans) on a daily basis. Onsite trash receptacles shall be emptied as necessary (for example, weekly) to prevent overflow of trash. Trash removed from the receptacles shall be hauled to an offsite waste disposal facility. Workers shall not feed wildlife or bring pets to the Project Site.
- The Project shall incorporate methods to control runoff, including a stormwater pollution prevention plan to meet National Pollutant Discharge Elimination System (NPDES) regulations. Implementation of stormwater regulations is expected to substantially control adverse edge effects (e.g., erosion, sedimentation, habitat conversion) during and following construction, both adjacent to and downstream from the Project area. Typical construction best management practices specifically related to reducing impacts from dust, erosion, and runoff generated by construction activities shall be implemented. During construction, material stockpiles shall be placed such that they cause minimal interference with on-site drainage patterns, which will protect sensitive vegetation from being inundated with sediment-laden runoff. Dewatering shall be conducted in accordance with standard regulations of the Lahontan Regional Water Quality Control Board. An NPDES permit, issued by the RWQCB to discharge water from dewatering activities, shall be required prior to the start of dewatering. This permit will minimize erosion, siltation, and pollution in sensitive vegetation communities.
- <u>Workers shall be prohibited from bringing firearms to the Project area.</u>

21. Page 4.3-65, Mitigation Measure BIO-19 is added as follows:

BIO-19 Prior to the issuance of grading or building permits, and prior to decommissioning, the Project operator shall retain a Lead Biologist(s) who meets the qualifications of an Authorized Biologist as defined by U.S. Fish and Wildlife Service to oversee compliance with protection measures for all listed and other special-status species that may be affected by the construction, operation, and decommissioning of the Project. The contact information for the Lead Biologist(s) shall be provided in writing to the San Bernardino County Land Use Services Department.

Section 4.4, Cultural Resources

1. Page 4.4-20, the third paragraph of Mitigation Measure CUL-1 is revised as follows:

In the event that archaeological materials are encountered during Project activities, all work in the immediate vicinity of the find (within a 60-foot buffer) shall cease, and a Qualified Archaeologist shall be hired to assess the find. The Qualified Archaeologist shall have the authority to stop or divert construction excavation as necessary. Work on the other portions of the Project outside of the buffered area may continue during this assessment period. Additionally, and immediately following discovery, the respective Cultural Resources Management offices of the Yuhaaviatam of San Manuel Nation ~~Cultural Resources Department~~ and the Morongo Band of Mission Indians (Consulting Tribes) shall be contacted by the archaeologist, as detailed within **Mitigation Measure TCR-1**, regarding any significant pre-contact and/or post-contact finds (see **Mitigation Measure CUL-2**), and ~~be provided information after the archaeologist makes his/her initial assessment of the nature of the find~~ shall be notified of any finds, so as to provide Tribal input with regards to significance and treatment.

2. Page 4.4-20, Mitigation Measure CUL-2 is revised as follows:

MM CUL-2 If significant pre-contact and/or post-contact cultural resources, as defined by CEQA are discovered, and avoidance cannot be ensured, the Qualified Archaeologist shall develop a Monitoring and Treatment Plan, the drafts of which shall be provided to the Director of the San Bernardino County Planning Division for review and comment and submitted for dissemination to the ~~Yuhaaviatam of San Manuel Nation Cultural Resources Department~~ Cultural Resources Management offices of the Consulting Tribes. Any and all findings shall be subject to the protocol detailed within the Monitoring and Treatment Plan. The Qualified Archaeologist shall monitor the remainder of the Project and implement the plan accordingly.

3. Page 4.4-21, the first paragraph under Impact 4.4-3 is revised as follows:

The Project Site is not located on a known cemetery, and no human remains are anticipated to be disturbed during Project construction. However, the County has ~~complied~~ and will continue to

comply with procedures for consulting with Native American tribes as outlined in AB 52, and the Project would be conditioned by the County to be compliant with the requirements for treatment of Native American human remains contained in California HSC Sections 7050.5-7055 and PRC Sections 5097.98 and 5097.99. HSC Sections 7050.5-7055 describe the general provisions for treatment of human remains. Specifically, HSC Section 7050.5 prescribes the requirements for the treatment of any human remains that are accidentally discovered during excavation of a site. HSC Section 7050.5 also requires that all activities cease immediately, and a qualified archaeologist and Native American monitor be contacted immediately. As required by State law, the procedures set forth in PRC Section 5097.98 would be implemented, including evaluation by the County Coroner and notification of the NAHC. The NAHC would then designate the "Most Likely Descendent" of unearthed human remains. If human remains are found during excavation, excavation would be halted in the vicinity of the discovery and any area that is reasonably suspected to overlay adjacent remains shall remain undisturbed until the County Coroner has investigated, and appropriate recommendations have been made for the treatment and disposition of the remains. Compliance with the established regulatory framework (i.e., HSC Sections 7050.5-7055 and PRC Sections 5097.98 and 5097.99) would ensure potential Project impacts concerning human remains are less than significant.

It is understood by all Parties that unless otherwise required by law, the site of any reburial of Native American human remains or cultural artifacts shall not be disclosed and shall not be governed by public disclosure requirements of the California Public Records Act. The Coroner, Parties, and Lead Agency will be asked to withhold public disclosure information related to such reburial, pursuant to the specific exemption set forth in California Government Code Section 6254 (r).

Section 4.12, Tribal Cultural Resources

1. Page 4.12-7, Mitigation Measure TCR-1 is revised as follows:

MM TCR-1 A Tribal monitor from a Consulting Tribe, in addition to the archaeological monitor required in **Mitigation Measure CUL-1**, shall be given the opportunity to be present and provide full-time monitoring of ground-clearing and ground-disturbing activities. The Project Applicant shall arrange for a Tribal Monitoring Services Agreement by contacting the Consulting Tribes: the Morongo THPO, Ann Brierty, Email: thpo@morongo-nsn.gov, 951-755-5059; and the Yuhaaviatam San Manuel Nation THPO, Alexandra McCleary, Email: Alexandra McCleary, Email: Alexandra.McCleary@sanmanuel-nsn.gov, 909-864-8933. As detailed in **Mitigation Measure CUL-2**, a Monitoring and Treatment Plan that shall be developed by a Qualified Archaeologist and submitted to the Lead Agency for dissemination to the Consulting Tribes for their review. Any and all findings will be subject to the protocol detailed within the Monitoring and Treatment Plan.

Chapter 7.0, Effects Found Not to be Significant

1. Page 7-1, the third paragraph is revised as follows:

   The existing zoning for the ~~solar array area of the~~ Project Site is ~~Rural Living (RL), and the SFA is zoned~~ Resource Conservation (RC). The Project Site is not zoned for agricultural uses and is not under a Williamson Act contract. The Countywide Plan does not designate any land within the Project Site or in its immediate vicinity for agricultural use and no nearby parcels are under a Williamson Act contract. Therefore, the Project would not conflict with existing/future zoning for agricultural uses or a Williamson Act contract. Potential impacts are considered less than significant.

2. Page 7-3, the last paragraph is revised as follows:

   ~~Pursuant to Policy 4.10, a newly proposed utility oriented RE project is not an authorized use in RL zone. The solar array area of the Project Site is located within an area of RL zoning that is scheduled to be re-zoned to RC with a future update to the Countywide zoning ordinance to be consistent with the Countywide Plan Land Use Element. The Countywide zoning ordinance update is anticipated to be considered by the Board in 2023. If the Countywide zoning update occurs prior to a decision on the Project, the change in zoning on the solar array area of the Project Site to RC would occur, and the Project would be consistent with both the Countywide Plan and zoning land use designations. In the event the Countywide zoning update does not occur prior to the Planning Commission's consideration of the Project, the Project includes a request for a site-specific zone change from RL to RC. With the rezone of the solar array area of the Project Site from RL to RC,~~ Because the Project is zoned RC, the Project would be consistent with the Countywide Plan and zoning land use designations. In addition, the Project is consistent with RE Policy 5.2(x), which allows for utility-oriented RE generation projects on private land on sites within or adjacent to electric transmission and utility distribution corridors. Therefore, the Project would be consistent with policies that would allow the Project Site to be a suitable location for utility oriented RE generation projects.

3. Page 7-4, the second paragraph is revised as follows:

   Therefore, with ~~approval of the zone change from RL to RC, whether approved as part of the upcoming Zoning ordinance and map update or as a site-specific request applicable only to the Project Site, and~~ issuance of the requested CUPs, the Project is not anticipated to have the potential to conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project adopted for the purpose of avoiding or mitigating an environmental effect. Therefore, potential impacts are considered less than significant.

Appendix A

Original Comment Letters

Appendix B

Desert Breeze Agency Consultation Memorandum

Kimley»Horn

Comment Letter 1

From: Tom Adamson <tadamson@voltility.net>
Sent: Tuesday, September 26, 2023 2:13 AM
To: Braginton, Jon <Jon.Braginton@lus.sbcounty.gov>
Cc: Warrick, Chris - LUS <Chris.Warrick@lus.sbcounty.gov>
Subject: RE: PROJ-2022-00110: Draft EIR Public Review: Desert Breeze LLC Solar Project

Hi Jon,

Thanks for informing me of the EIR.

Desert Breeze Solar looks to be 130MW of solar with up to 2GWh of battery storage, and I've read the battery will be charged from the solar farm and the grid. 1-1

Do you know the megawatt capacity of the battery? How many hours can the battery operate for?

All the best,

Tom

Voltility
E-mail: tadamson@voltility.net

VOLTILITY

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

Via email only

Date: December 12, 2023

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

RE: Desert Breeze Solar Project (SCH# 2022090646, PROJ-2022-00110)

Dear Mr. Braginton,

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

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer to receive emails for future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail." 2-1

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats known to be occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments include recommendations intended to enhance protection of this species and its habitat during activities authorized by San Bernardino County (County), which we recommend be added to project terms and conditions in the authorizing document (e.g., right of way grant, etc.) as appropriate. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), "… based on population reduction (decreasing density), habitat loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract disease/mycoplasmosis). *Gopherus agassizii* (sensu stricto) comprises tortoises in the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses have been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (sensu stricto) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units." 2-2

This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from threatened to endangered in California. The decision is still pending at the time of this writing.

Please note that we received an email from you on October 27, 2023 that indicated the deadline for comments had been extended to December 15, 2023.

> *"Good Morning Ed,*
>
> *"This is to inform* [you] *that the attached NOA/NOI for this Project has been updated in regard to a revised 45-day public review period (10/27/23-**12/15/23**). This is a result of the NOA/NOI originally not being sent out to surrounding property owners within 1,300 feet of the proposed project, which is a requirement by the County when issuing a NOA/NOI for Public Review. Please let me know if you have any questions.* 2-3
>
> *"Thank You,*
>
> *"Jon [Braginton]"*

But I see in the Notice of Availability (NOA)/Notice of Intent (NOI) that the due date is shown as December 10, 2023. So, we trust that the County will work in good faith and consider our comments even if they are several days late. Unless otherwise noted, page numbers given below refer to the Draft Environmental Impact Report (DEIR), prepared Kimley-Horn and Associates, dated September 25, 2023. The Council provided scoping comments on the Desert Breeze Solar Project (Project) on October 27, 2023, which are incorporated by reference and attached.

We find that the DEIR is deficient in its failure to consider most of the recommendations we made in our attached scoping comments, with page numbers referenced in the following bullets.

• On page 3, we specifically asked that the County confer with CDFW and USFWS in preparation of the DEIR, which as given herein, did not apparently occur. We also suggested that Tribal governments/agencies be consulted, which is not apparent in the DEIR. 2-4

• On pages 4 and 5, we asked that the DEIR analyze roof-top solar, urban solar, and brownfield area alternatives, any one of which could have been mentioned as the Environmentally Superior Alternative, but not one of them is mentioned. 2-5

• On page 5, we asked that the DEIR review available monitoring reports to analyze the efficacy of crushing rather than blading the vegetation within the Project footprint. Not only is this analysis lacking, but we also cannot tell from the project description what the proponent plans to do: crush or blade the vegetation? 2-6

• On pages 5 through 9, we provided extensive data on the downward tortoise population trends throughout the listed range and particularly in the West Mojave "…so that these or similar data may be included in the DEIR." We note that nothing like this appears in the DEIR, leaving an uninformed public unknowing what the plight of the tortoise is within the affected region surrounding the Project. 2-7

• On pages 11 and 12, we asked for an "…economic analysis that provides the total cost of constructing the proposed project versus other alternatives," including "…habitat replacement or restoration costs including the time needed to achieve full replacement, not just acquisition, management, monitoring, and adaptive management costs;" "…a thorough analysis of the status and trend of the tortoise in the action area, tortoise conservation area(s), recovery unit(s), and rangewide," "…a discussion of all likely sources of mortality for the tortoise and degradation and loss of habitat from implementation of solar development including construction, operation and maintenance, decommissioning, and restoration;" and "We also request that separate calculations document how many acres of desert tortoise habitats would be temporarily and permanently impacted both directly and indirectly (e.g., "road effect zone," etc.) by the proposed Project," none of which appears in the DEIR. 2-8

• On page 12, we specifically asked that "The DEIR should include effective mitigation for all direct, indirect, and cumulative effects to the tortoise and its habitats," and on pages 13 through 15 provided requests for the following specific management and monitoring plans to be included in the DEIR: Translocation Plan - Translocated Tortoises & Translocation Sites, Tortoise Predators and a Predator Management Plan, Fire Prevention/Management Plans, Habitat Compensation Plan, and Impacts from Proliferation of Nonnative Plant Species and Management Plan, stating on page 13 that "Too often, such plans are alluded to in the draft environmental document and promised later, which does not allow the reviewers to assess their adequacy, which is unacceptable," which accurately characterizes this DEIR. 2-9

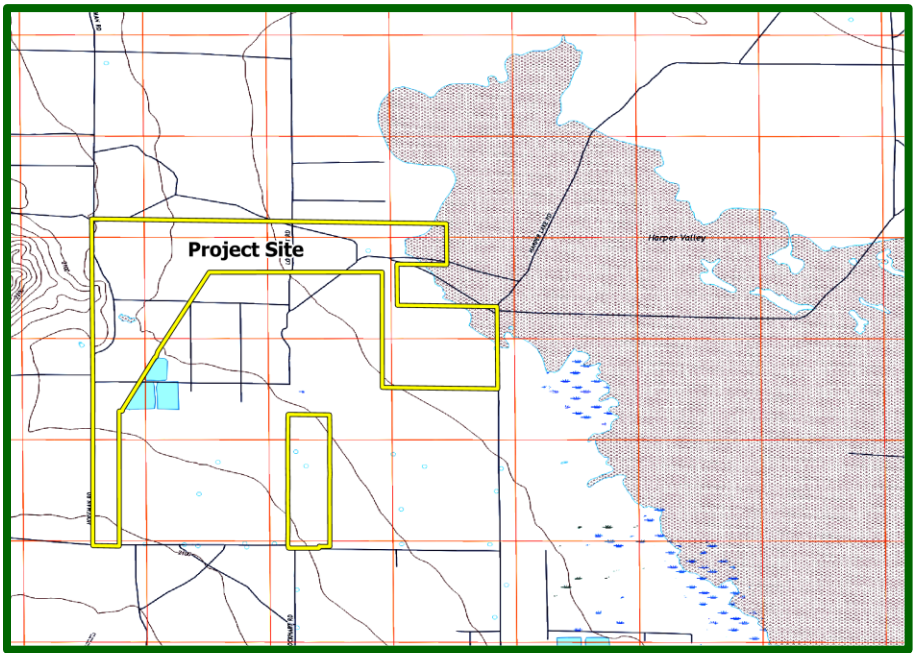
The FEIR must address the above requests and provide supplemental information or it too, like the DEIR, will continue to be deemed deficient. 2-10

The following Project description is given on page 2-2: "Desert Breeze Solar, LLC (Applicant) proposes to develop the Desert Breeze Solar Project (Project), a utility-scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 130 megawatts (MW) of solar power and include up to 2 gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS). Key entitlements to construct and operate the Project include a zoning amendment to change the current zoning designation from Rural Living (RL) to Resource Conservation (RC), as well as two (2) Conditional Use Permits (CUPs). The Project would be developed within an approximately 923-acre Project Site comprised of an 813-acre solar array area (CUP1) and a 110-acre Shared Facilities Area (SFA) (CUP 2)." 2-11

On page 2-1, we also read the following statements: "Additionally, the Project proposes improvement of a portion of Harper Lake Road, which is an existing dirt road. Construction activities associated with the road improvement will include grading to widen or level the existing road; importing and compacting materials, such as soil and gravel; and may include paving. The road improvement may extend up to approximately 60 feet wide and approximately 1 mile long from the southeastern corner of Hoffman Road and Harper Lake Road (adjacent to the east of SEGS IX) to the existing secondary access gate."

We interpret the above information to mean that Harper Lake Road will be used as the primary access to the site. There is an existing tortoise-proof fence along both sides of the road between Highway 58 and the existing solar arrays that is intended to preclude tortoises from the roadway. Please be sure that the integrity of this fence is intact. We read on page 3-19 that as many as 250 construction workers may visit the site, which is a substantial increase in use of Harker Lake Road. Although a previous project proponent was responsible for installing the fence, in order to ensure that take of tortoises inside this fence resulting from this project is avoided, please be sure that the proponent maintains the integrity of this fence. It may also be appropriate for the east side of Harper Lake Road located north of Hoffman Road to be fenced to avoid the take of tortoises associated with this project.

2-11 cont.



On page 2-4 and 2-5, we appreciate that Alternative 3 was dropped, as it occurs in an area that has been determined to be important to the conservation of the Mohave ground squirrel (*Xerospermophilus mohavensis*) (CDFW 2019, LaRue 2016). As stated on page 2-4, "…however, further evaluation is required on the MGS conservation requirements for the area before it can be opened to renewable energy applications for individual projects" is absolutely true.

2-12

Page 4.3-6 states, "The Survey Area is not located within USFWS-designated Critical Habitat or any of the sections noted as critical habitat in the Federal Register for desert tortoise (*Gopherus agassizii*). The Project Site is also located outside of Bureau of Land Management (BLM) Area of

2-13

Critical Concern (ACEC) with the Superior-Cronese ACEC **located adjacent to the north** and the Fremont-Kramer ACEC located to the west. The Project Site is within the current range of the desert tortoise" (bold emphasis added). For full disclosure the Final EIR (FEIR) should document the distances from the proposed Project to tortoise Critical Habitat, the Superior-Cronese ACEC, which we assume occurs at the boundary of the Project footprint (e.g., "adjacent to"), and the Fremont-Kramer ACEC. Although not within any of the Tortoise Conservation Areas (TCAs), the proximity is important when considering indirect impacts. 2-13 cont.

We note in Table 4.3-2: Special Status Species on page 4.3-11 that "Ten live desert tortoises were found within the Survey Area along with fresh scat, tracks, burrows, and skeletal remains." However, there is no indication that the consulting biologist used the USFWS formula (2019) to estimate densities of tortoises with confidence intervals. Tortoises are notoriously difficult to see, so it is appropriate that density estimates are included in the FEIR. 2-14

In the same table on page 4.3-15, we note that "No MGS were observed during the MGS habitat assessment or other biological resources surveys conducted," which is reiterated on page 4.3-22. We note that MGS are rarely ever observed; that protocol trapping surveys are required to ascertain presence of absence (CDFW 2023). Alternatively, the proponent may forego trapping surveys, assume presence, and acquire a 2081 Incidental Take Permit from the California Department of Fish and Wildlife. We ask that the proponent actually confer with the CDFW and that the FEIR report actual determinations rather than a range of alternatives. 2-15

On page 4.3-51, we read "**Mitigation Measure BIO-14** includes best management practices to be implemented during Project grading and construction and decommissioning activities to prevent inadvertent entrapment of species and attraction of predators to the Project Site. Further, it is not anticipated that many individual animals would be taken due to the avoidance measures detailed in **Mitigation Measure BIO-14** and similar measures anticipated to be imposed by USFWS and CDFW." The document author seems to synonymize "take" with "death." We note that "take" refers to "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Therefore, ALL tortoises found on the site will be subject to take. This conclusion should be changed to reflect the definition of take in the FEIR. 2-16

As given above, the DEIR fails to divulge the proximities of tortoise Critical Habitat and ACECs are to the subject property. We note that Section 4.3.5 Impacts and Mitigation Measures fails to mention or analyze indirect, cumulative, and synergistic impacts to tortoises in adjacent areas. Nor does a baseline inventory and survey that extends to only a 50-foot buffer around the project allow the County and resource agencies to know how many tortoises in adjacent areas may be subject to take associated with indirect impacts. The FEIR needs to be substantially revised to fully document likely indirect, cumulative, and synergistic impacts resulting from project development. 2-17

The mitigation measures referenced at the bottom of page 4.3-50 and top of page 4.3-51 must be supplemented in the FEIR to include tortoise translocation procedures, fire management and fire prevention plans, weed abatement plan, minimization of impacts to water quality and use from the local aquifer, a predator management plan (not only common ravens, but also coyotes and American badgers), and how and for how long residual impacts, particularly of displaced tortoises, will be monitored. 2-18

To focus on only one of these issues, that of tortoise translocation, the County and proponent need to address the following questions in the FEIR: How many tortoises will be displaced by the proposed project? How long will translocated tortoises be monitored? Will the monitoring report show how many of those tortoises lived and died after translocation and over time? Are there any degraded habitats or barren areas that may impair success of the translocation? Are there incompatible human uses in the new translocation area that need to be eliminated or managed to protect newly-translocated tortoises? Were those translocation areas sufficiently isolated that displaced tortoises were protected by existing or enhanced land management? How will the proponent minimize predation of translocated tortoises and avoid adverse climatic conditions, such as low winter rainfall conditions that may exacerbate translocation success? Were tortoises translocated to a site where they would be protected from threats (e.g., off-highway vehicles, future development, etc.)?

2-18 cont.

The impacts to adjacent areas were not considered especially with respect to wildlife linkages/movement corridors/wildlife population connectivity with a focus on the tortoise and MGS. To assist the County with this resource issue, we provide the following information for use in the analysis in the FEIR.

Mojave desert tortoise linkage habitat: In 2021, Averill-Murray et al. published a paper on connectivity of Mojave desert tortoise populations and linkage habitat. The authors emphasized that "[m]aintaining an ecological network for the Mojave desert tortoise, with a system of core habitats (TCAs = Tortoise Conservation Areas) connected by linkages, is necessary to support demographically viable populations and long-term gene flow within and between TCAs."

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

2-19

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

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

We add that the fundamentals of conservation biology include the need for gene flow between populations to maintain genetic diversity; this enables a species to more likely survive, especially during climate change, which enables biodiversity. Thus, linkage habitats are important as they provide connectivity among wildlife populations to maintain viability and biodiversity. Governor Newsome issued Executive Order N-82-20 to combat biodiversity and the climate crisis. The executive order seeks to restore and protect biodiversity in California.

The scientific literature, CDFW, and USFWS should be consulted to determine whether there are linkages that have been identified as important to any special status species including the tortoise and MGS. Once identified, if any linkage occurs in the project area, the County should analyze whether the additional development would affect the effectiveness of the linkage habitat for that species. For example, CDFW (2019) has identified linkages for the Mohave ground squirrel in their Mohave Ground Squirrel Conservation Strategy. Without this information and analysis, it is not possible to make a conclusion about the impacts of the proposed project on the effectiveness of the linkage habitat with the addition of the proposed project.

2-19 cont.

Although we note on page 4.3-60 in BIO-3 that a "…CDFW- and USFWS-approved Desert Tortoise Relocation Plan shall be submitted to the County prior to initiating Project construction activities," we note that the proponent already knows that at least 10 tortoises occur on the site and question why that plan has not already been completed and does not appear in an appendix to the DEIR. Absent the draft plan, the concerned public, including the Council, is unable to review the plan and provide constructive feedback. We therefore expect to see the Desert Tortoise Relocation Plan as an appendix to the FEIR.

With regards to MGS, we read the following statement on page 4.3-51: "Therefore, while no MGS were observed or detected during the surveys, development of the Project would potentially impact individuals and remove approximately 418.54 acres of suitable habitat for the MGS such that impacts to the MGS population and its habitat would be potentially significant." We disagree with this conclusion, knowing that MGS occupy all of the vegetation types within the Project footprint except for barren areas and playa surfaces (BLM 2005). We see in Table 4.3-1 that barren areas comprise 23 acres and playa surfaces comprise 12 acres. So, we conclude that 826 acres (861 minus 35 acres), not 418 acres, would be lost to full development of the Project, and that take of MGS is more than likely to occur. The above information also needs to be applied to BIO-9, which reiterates that compensation would be only for 418.54 acres rather than the full extent of suitable, potentially occupied habitat. The FEIR needs to rectify this erroneous conclusion wherever it occurs in the DEIR.

2-20

With regards to the following statement on page 4.3-51, "…purchase credits in a mitigation bank equivalent to at least a 1:1 replacement," the Project proponent can expect the CDFW to require a minimum of 3:1 habitat replacement. This observation also applies to compensation for tortoises impacts described for BIO-5 on page 4.3-60/61 and BIO-9 on page 4.3-61/62. It is not apparent from these naïve statements (e.g., that only 418 acres of the Project area comprise suitable MGS habitat) that the proponent or County have consulted with either the USFWS or CDFW prior to completing the DEIR. This conclusion is supported by the absence of these agencies from Section 8.1 of the DEIR. Whereas consultation may not be a requirement, we recommend that the proponent actually consults with these two agencies and report factual determinations in the FEIR, like what the actual compensation ratio will be for both tortoises and MGS, rather than speculate as is currently done in the DEIR.

2-21

We disagree with the conclusion at the top of page 4.3-52, "Therefore, removal of the suitable habitat as a result of the Project would not result in a significant impact [to the MGS] related to the loss of vegetation communities." Absent a formal protocol trapping survey, the proponent must assume presence of the MGS, and impacts to a State-listed species constitute a significant impact. This erroneous conclusion needs to be retracted or revised in the FEIR. 2-22

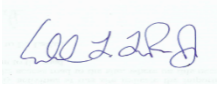
With regards to BIO-4 on page 4.3-60, the FEIR should clarify that "…a onetime fee not to exceed $150 and no less than $105 per disturbed acre" should be applied to all 861 acres, for a total amount of between $129,150 and $90,405 to reflect the maximum and minimum per-acre costs. We also note that the USFWS has failed to revise its 2010 cost estimates to account for current financial conditions, so the maximum per-acre fee should be applied to the project, for ALL acres, not just a subset as was suggested for MGS compensation on page 4.3-51 described above. 2-23

Further, with regards to BIO-4, we expect to see the Raven Management Plan attached to the FEIR. Like the tortoise translocation plan described above, the public does not have an opportunity to review and comment on plans that do not yet exist. 2-24

Finally, we ask that the County reorganize the platform for providing documents associated with the FEIR. For example, the DEIR indicates that Appendix D includes a Biological Resources Assessment, indicating on page vi that it is "Provided under separate cover." However, the only available documents at the County's website (https://ceqanet.opr.ca.gov/2022090646/2) are the DEIR and NOP; no appendices are provided. Please be sure that the platform makes ALL related environmental documentation available to the concerned public. 2-25

We appreciate this opportunity to provide the above comments and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by San Bernardino County that may affect desert tortoises, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project. 2-26

Respectfully,



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

cc.
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Literature Cited

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DESERT TORTOISE COUNCIL
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Via email only

27 October 2022

Attn: Jon Braginton, Planner
County of San Bernardino
Land Use Services Department - Planning Division
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0187
Jon.Braginton@lus.sbcounty.gov

RE: Scoping Comments for the proposed Desert Breeze Solar Project

Dear Mr. Braginton,

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

As of June 2022, our mailing address has changed to:

Desert Tortoise Council
3807 Sierra Highway #6-4514
Acton, CA 93510

Our email address has not changed. Both addresses are provided above in our letterhead for your use when providing future correspondence to us.

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats potentially occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to

enhancing protection of this species during activities funded, authorized, or carried out by the San Bernardino County Land Use Services Department - Planning Division (County), which we assume will be added to the Decision Record for this project as needed. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

Project Description

The following project description is provided by the County's Notice of Preparation (NOP), dated September 30, 2022:

> The Desert Breeze Solar Project (Project) includes development of a utility scale solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 130 megawatts (MW) of solar power and include up to 2 gigawatt hours (GWh) of energy storage capacity in a battery energy storage system (BESS) on an approximately 923-acre Project Site comprised of an 813-acre solar array development area and a 110-acre Shared Facilities Area (SFA). The Project will be processed under two separate Conditional Use Permits (CUPs), described below. The Project is bordered on the south by the approved Lockhart Solar PV II Project (Lockhart II; PROJ-2021-00029), approved by the County Board of Supervisors on June 28, 2022, and the Lockhart Solar PV Facility (Lockhart I; PROJ-2019-00125), approved by the County Board of Supervisors on January 7, 2020. The Lockhart I project area is comprised of the former Solar Energy Generating System (SEGS) VIII Solar Thermal Plant site [now decommissioned] and the existing SEGS IX Solar Thermal Plant. The remainder of the Project Site is bordered by vacant land.

The proposed project is located in the Western Recovery Unit for the Mojave desert tortoise and is surrounded by the Superior-Cronese Critical Habitat Unit.

Scoping Comments

Even though the project would be developed on private lands, we feel it is prudent that the Draft Environmental Impact Report (DEIR) discusses how this proposed project fits within the management structure of the current land management plan for the surrounding public lands [e.g., California Desert Conservation Area Plan (CDCA Plan) (BLM 1980 as amended), Desert Renewable Energy Conservation Plan (BLM 2015, 2016)]. It should provide maps of critical habitat for the Mojave desert tortoise (USFWS 1994a), Areas of Critical Environmental Concern (ACECs), and other areas identified for special management by Bureau of Land Management (BLM) [e.g., National Conservation Lands (NCLs)]; U.S. Fish and Wildlife Service (USFWS) (e.g., linkage habitats between desert tortoise populations); and other federal, state, and local agencies; and tribal lands.

Proposed Action and Alternatives Considered

We fully expect that the County will comply with all applicable statutes, regulations, codes, and other requirements as they pertain to this project. The County should demonstrate in the DEIR that the proposed project meets all these requirements with respect to the tortoise, that:

- The proposed project will be consistent with priority conservation, restoration, and/or adaptation objectives in the best available landscape-scale information (e.g., for tortoise population connectivity, etc.);

- the applicant has coordinated with governments and agencies, including consideration of consistency with officially adopted plans and policies (e.g., recovery plans);
- the proposed project is in an area with low or comparatively low resource conflicts and where conflicts can be resolved;
- the proposed project will be located in, or adjacent to, previously contaminated or disturbed lands;
- the proposed project will minimize adverse impacts on important fish and wildlife habitats and migration/movement corridors including the desert tortoise habitats and corridors;
- the proposed project will minimize impacts on lands with wilderness characteristics and the values associated with these lands;
- the proposed project will not adversely affect lands donated or acquired for conservation purposes, or mitigation lands identified in previously approved projects such as translocation areas for desert tortoise;
- significant cumulative impacts on resources of concern should not occur as a result of the proposed project (i.e., exceedance of an established threshold such as population viability for the tortoise and connectivity of tortoise populations among recovery units); and,
- County's analysis would use current data on the tortoise for the project area, population, Western Mojave Recovery Unit, and range wide, as population numbers and densities have substantially declined in most recovery units and the data/knowledge currently available on what is needed for habitat linkages for the tortoise.

The County should ensure that the project results in:

- Mitigation to improve conditions within the connectivity areas, and if these options do not exist, mitigation may be applied toward the nearest tortoise conservation area [e.g., an Area of Critical Environmental Concern (ACEC) for which tortoise had been identified in the Relevant and Important Criteria or critical habitat]; and
- a plan included in the DEIR that would effectively monitor all desert tortoise impacts, including verification that desert tortoise connectivity corridors are functional. The Federal Endangered Species Act (FESA) and California Endangered Species Act (CESA) incidental take permits should further define this monitoring plan.

Regarding the first concern, we believe that a multiagency approach is best to ensure the County is meeting its obligations, soliciting review and input from pertinent federal and state resource agencies, Tribal governments/agencies, and non-governmental organizations (NGOs). Mitigation of impacts should include, in priority order, avoidance, minimization and compensation for unavoidable impacts. Mitigation should at a minimum offset all direct, indirect, and cumulative impacts, especially given the status and trend of the tortoise (please see *Affected Environment - Status of the Populations of the Mojave Desert Tortoise* below). The County should ensure it is effectively implementing its section 10(a)(1)(B) conservation mandate under the FESA and section 2081 requirements to fully mitigate under California Fish and Game Code.

Mitigation should be applied only in areas where the lands are effectively managed for the benefit of the tortoise for both the short-term and long-term. As currently managed, BLM ACECs in the California Desert Conservation Area (CDCA) are not meeting this criterion. Consequently,

mitigation should be implemented on lands with a durable conservation designation, or on privately owned lands with a conservation easement or other legal instrument that ensures conservation in perpetuity. Please see *Mitigation Plans* below for additional concerns and requested requirements.

Regarding the second concern, a monitoring plan should (1) be scientifically and statistically credible; (2) be implementable and fully funded; and (3) require the project proponent to implement adaptive management to correct land management practices if the mitigation is not accomplishing its intended purposes.

The Council requests that the County describe the purpose and need for this project and develop and analyze other viable alternatives, such as rooftop solar, which we believe constitute "other reasonable courses of actions" (40 CFR 1508.25). The Council supports alternatives to reduce the need for additional solar energy projects in relatively undisturbed habitats in the Mojave Desert. For example, the City of Los Angeles has implemented a rooftop solar Feed-in Tariff (FiT) program, the largest of its kind in America. The FiT program enables the owners of large buildings to install solar panels on their roofs, and sell the power they generate back to utilities for distribution into the power grid.

We request that County include an urban solar alternative. Under this alternative, owners of large buildings or parking areas would grant the project proponent permission to install solar panels on their roofs and cover parking areas, and sell the power they generate back to utilities for distribution into the power grid.

This approach puts the generation of electricity where the demand is greatest, in populated areas. It may also reduce transmission costs, greenhouse gas emissions from constructing energy projects far from the sources of power demand and materials for construction, the number of affected resources in the desert that must be analyzed under the California Environmental Quality Act (CEQA), and mitigation costs for direct, indirect, and cumulative impacts; monitoring and adaptive management costs; and habitat restoration costs following decommissioning. The DEIR should include an analysis of where the energy generated by this project would be sent and the needs for energy in those targeted areas that may be satisfied by urban solar. We request that at least one viable alternative be analyzed in the DEIR where electricity generation via solar energy is located much closer to the areas where the energy will be used, including generation in urban/suburban areas.

In addition, the County should include another viable alternative of locating solar projects on bladed or highly degraded tracts of land (e.g., abandoned agricultural fields). Such an alternative would not result in the destruction of desert habitats and mitigation for the lost functions and values of these habitats. These losses and mitigation are costly from an economic, environmental, and social perspective.

The latter two alternatives are important to consider to minimize or avoid the loss of vegetation that sequesters carbon. Studies around the world have shown that desert ecosystems can act as important carbon sinks. For example, the California deserts account for nearly 10 percent of the state's carbon sequestration; below ground in soil and root systems, and above ground in biomass.

Protecting this biome can contribute to securing carbon stores in the state (MDLT 2021). Given the current climate change conditions, there is an increasing need for carbon sequestration. Because vascular plants are a primary user of carbon and the proposed Project would result in the loss/degradation of more than 900 acres of plants and their ability to sequester carbon for decades or longer unless successful measures are implemented to restore the same biomass of native vegetation as it is being destroyed, it is imperative that proposed project not result in the loss of vegetation.

The DEIR should consider the monitoring results of recently developed solar projects where soils have been bladed versus those facilities where the vegetation has been mowed or crushed and allowed to revegetate the area. In the latter case, it may be appropriate to allow tortoises to enter the facilities and re-establish residency (i.e., repatriate) under the solar panels as vegetation recolonizes the area. This could be an *option* for the currently described project alternative. It should be designed/implemented as a scientific experiment to add to the limited data on this approach to determine the extent of effects on Mojave desert tortoise populations and movements/connectivity between populations, which is an important issue for this species, particularly over the long-term (see *Desert Tortoise Habitat Linkages/Connectivity among Populations and Recovery Units* below). Long-term monitoring for the life of the project would need to be included to accurately evaluate the effectiveness of this strategy.

Affected Environment

Status of the Population of the Mojave Desert Tortoise: The Council provides the following information for the proponent so that these or similar data may be included in the DEIR. The Council believes that BLM's failure to implement effective recovery actions for the Mojave desert tortoise as given in the recovery plan (both USFWS 1994b and 2011) has contributed to tortoise declines between 2004 to 2014 (Table 1; USFWS 2015). There are 17 populations of Mojave desert tortoise described below that occur in Critical Habitat Units (CHUs) and Tortoise Conservation Areas (TCAs); 14 are on lands managed by the BLM; 8 of these are in the CDCA.

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

Recovery Unit: Designated Critical Habitat Unit/Tortoise Conservation Area	Surveyed area (km^2)	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/km^2 (SE)	% 10-year change (2004–2014)
Western Mojave, CA	**6,294**	**24.51**	**2.8 (1.0)**	**–50.7 decline**
Fremont-Kramer	2,347	9.14	2.6 (1.0)	–50.6 decline
Ord-Rodman	852	3.32	3.6 (1.4)	–56.5 decline
Superior-Cronese	3,094	12.05	2.4 (0.9)	–61.5 decline
Colorado Desert, CA	**11,663**	**45.42**	**4.0 (1.4)**	**–36.25 decline**
Chocolate Mtn AGR, CA	713	2.78	7.2 (2.8)	–29.77 decline
Chuckwalla, CA	2,818	10.97	3.3 (1.3)	–37.43 decline
Chemehuevi, CA	3,763	14.65	2.8 (1.1)	–64.70 decline

Fenner, CA	1,782	6.94	4.8 (1.9)	–52.86 decline
Joshua Tree, CA	1,152	4.49	3.7 (1.5)	+178.62 increase
Pinto Mtn, CA	508	1.98	2.4 (1.0)	–60.30 decline
Piute Valley, NV	927	3.61	5.3 (2.1)	+162.36 increase
Northeastern Mojave	**4,160**	**16.2**	**4.5 (1.9)**	**+325.62 increase**
Beaver Dam Slope, NV, UT, AZ	750	2.92	6.2 (2.4)	+370.33 increase
Coyote Spring, NV	960	3.74	4.0 (1.6)	+ 265.06 increase
Gold Butte, NV & AZ	1,607	6.26	2.7 (1.0)	+ 384.37 increase
Mormon Mesa, NV	844	3.29	6.4 (2.5)	+ 217.80 increase
Eastern Mojave, NV & CA	**3,446**	**13.42**	**1.9 (0.7)**	**–67.26 decline**
El Dorado Valley, NV	999	3.89	1.5 (0.6)	–61.14 decline
Ivanpah Valley, CA	2,447	9.53	2.3 (0.9)	–56.05 decline
Upper Virgin River	**115**	**0.45**	**15.3 (6.0)**	**–26.57 decline**
Red Cliffs Desert	115	0.45	15.3 (6.0)	–26.57 decline
Range-wide Area of CHUs - TCAs/Range-wide Change in Population Status	**25,678**	**100.00**		**–32.18 decline**

Table 2. Estimated change in abundance of adult Mojave desert tortoises in each recovery unit between 2004 and 2014 (Allison and McLuckie 2018). Decreases in abundance are in red.

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

Important points from these tables include the following:

Change in Status for the Mojave Desert Tortoise Range-wide

● Ten of 17 populations of the Mojave desert tortoise declined from 2004 to 2014.

● Eleven of 17 populations of the Mojave desert tortoise are no longer viable. These 11 populations represent 89.7 percent of the range-wide habitat in CHUs/TCAs.

Change is Status for the Western Mojave Recovery Unit – Nevada and California

● This recovery unit had a 51 percent decline in tortoise density from 2004 to 2014.

● Tortoises in this recovery unit have densities that are below viability.

Change in Status for the Superior-Cronese Tortoise Population in the Western Mojave Recovery Unit.

● The population in this recovery unit experienced declines in densities of 61 percent from 2004 to 2014. In addition, there was a 51 percent decline in tortoise abundance.

● This population has densities less than needed for population viability (USFWS 1994b).

Change in Status for the Mojave Desert Tortoise in California

● Eight of 10 populations of the Mojave desert tortoise in California declined from 29 to 64 percent from 2004 to 2014 with implementation of tortoise conservation measures in the Northern and Eastern Colorado Desert (NECO), Northern and Eastern Mojave Desert (NEMO), and Western Mojave Desert (WEMO) Plans.

● Eight of 10 populations of the Mojave desert tortoise in California are no longer viable. These eight populations represent 87.45 percent of the habitat in California that is in CHU/TCAs.

● The two viable populations of the Mojave desert tortoise in California are declining. If their rates of decline from 2004 to 2014 continue, these two populations will no longer be viable in about 2020 and 2031.

Change in Status for the Mojave Desert Tortoise on BLM Land in California

● Eight of eight populations of Mojave desert tortoise on lands managed by the BLM in California declined from 2004 to 2014.

● Seven of eight populations of Mojave desert tortoise on lands managed by the BLM in California are no longer viable.

Change in Status for Mojave Desert Tortoise Populations in California that Are Moving toward Meeting Recovery Criteria

● The only population of Mojave desert tortoise in California that is not declining is on land managed by the National Park Service, which has increased 178 percent in 10 years.

The Endangered Mojave Desert Tortoise: The Council believes that the Mojave desert tortoise meets the definition of an endangered species. In the FESA, Congress defined an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range…" In the California Endangered Species Act (CESA), the California legislature defined an "endangered species" as a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant, which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes (California Fish and Game Code § 2062). Because most of the populations of the Mojave desert tortoise were non-viable in 2014, most are declining, and the threats to the Mojave desert tortoise are numerous and have not been substantially reduced throughout the species' range, the Council believes the Mojave desert tortoise should be designated as an endangered species by the USFWS and California Fish and Game Commission.

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

Table 3. Summary of data for Agassiz's desert tortoise, *Gopherus agassizii* (=Mojave desert tortoise) from 2004 to 2021 for the 5 Recovery Units and 17 Critical Habitat Units (CHUs)/Tortoise Conservation Areas (TCAs). The table includes the area of each Recovery Unit and CHU/TCA, percent of total habitat for each Recovery Unit and CHU/TCA, density (number of breeding adults/km^2 and standard errors = SE), and percent change in population density between 2004-2014 (USFWS 2015). Populations below the viable level of 3.9 breeding individuals/km^2 (10 breeding individuals per mi^2) (assumes a 1:1 sex ratio) (USFWS 1994a, 2015) or showing a decline from 2004 to 2014 are in **red.**

Recovery Unit: Designated CHU/TCA &	**% of total habitat area in Recovery Unit & CHU/TCA**	**2004 density/ km^2**	**2014 density/ km^2 (SE)**	**% 10-year change (2004–2014)**	**2015 density/ km^2**	**2016 density/ km^2**	**2017 density/ km^2**	**2018 density/ km^2**	**2019 density/ km^2**	**2020 density/ km^2**	**2021 density/ km^2**
Western Mojave, CA	**24.51**		**2.8 (1.0)**	**–50.7 decline**							
Fremont-Kramer	9.14		2.6 (1.0)	–50.6 decline	4.5	No data	4.1	No data	2.7	1.7	No data
Ord-Rodman	3.32		3.6 (1.4)	–56.5 decline	No data	No data	3.9	2.5/3.4*	2.1/2.5*	No data	1.9/2.5*
Superior-Cronese	12.05		2.4 (0.9)	–61.5 decline	2.6	3.6	1.7	No data	1.9	No data	No data
Colorado Desert, CA	**45.42**		**4.0 (1.4)**	**–36.25 decline**							
Chocolate Mtn AGR, CA	2.78		7.2 (2.8)	–29.77 decline	10.3	8.5	9.4	7.6	7.0	7.1	3.9
Chuckwalla, CA	10.97		3.3 (1.3)	–37.43 decline	No data	No data	4.3	No data	1.8	4.6	2.6
Chemehuevi, CA	14.65		2.8 (1.1)	–64.70 decline	No data	1.7	No data	2.9	No data	4.0	No data
Fenner, CA	6.94		4.8 (1.9)	–52.86 decline	No data	5.5	No data	6.0	2.8	No data	5.3
Joshua Tree, CA	4.49		3.7 (1.5)	+178.62 increase	No data	2.6	3.6	No data	3.1	3.9	No data
Pinto Mtn, CA	1.98		2.4 (1.0)	–60.30 decline	No data	2.1	2.3	No data	1.7	2.9	No data
Piute Valley, NV	3.61		5.3 (2.1)	+162.36 increase	No data	4.0	5.9	No data	No data	No data	3.9

Northeastern Mojave AZ, NV, & UT	**16.2**		**4.5 (1.9)**	**+325.62 increase**							
Beaver Dam Slope, NV, UT, & AZ	2.92		6.2 (2.4)	+370.33 increase	No data	5.6	1.3	5.1	2.0	No data	No data
Coyote Spring, NV	3.74		4.0 (1.6)	+ 265.06 increase	No data	4.2	No data	No data	3.2	No data	No data
Gold Butte, NV & AZ	6.26		2.7 (1.0)	+ 384.37 increase	No data	No data	1.9	2.3	No data	No data	2.4
Mormon Mesa, NV	3.29		6.4 (2.5)	+ 217.80 increase	No data	2.1	No data	3.6	No data	5.2	5.2
Eastern Mojave, NV & CA	**13.42**		**1.9 (0.7)**	**–67.26 decline**							
El Dorado Valley, NV	3.89		1.5 (0.6)	–61.14 decline	No data	2.7	5.6	No data	2.3	No data	No data
Ivanpah Valley, CA	9.53		2.3 (0.9)	–56.05 decline	1.9	No data	No data	3.7	2.6	No data	1.8
Upper Virgin River, UT & AZ	**0.45**		**15.3 (6.0)**	**–26.57 decline**							
Red Cliffs Desert**	0.45	29.1 (21.4-39.6)**	15.3 (6.0)	–26.57 decline	15.0	No data	19.1	No data	17.2	No data	
Rangewide Area of CHUs - TCAs/Rangewide Change in Population Status	**100.00**			**–32.18 decline**							

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

**Methodology for collecting density data initiated in 1999.

Standardized Surveys – Desert Tortoise and Other Species

For the DEIR to fully analyze the effects and identify potentially significant impacts, the following surveys should be performed to determine the extent of rare plant and animal populations occurring within areas to be directly and indirectly impacted.

Prior to conducting surveys, a knowledgeable biologist should perform a records search of the California Natural Diversity Data Base (CNDDB; CDFW 2022) for rare plant and animal species reported from the region. The results of the CNDDB review would be reported in the DEIR with an indication of suitable and occupied habitats for all rare species reported from the region based on performing the species-specific surveys described below.

California Department of Fish and Game (CDFG 2010) lists hundreds of plant communities occurring in California, including those that are considered Communities of Highest Inventory Priority, or "CHIPs." Biologists completing surveys on behalf of the project proponent should document such communities where they occur and indicate how impacts to them will be minimized.

The project proponent should fund focused surveys for all rare plant and animal species reported from the vicinity of the proposed project. Results of the surveys will determine appropriate permits from CDFW and USFWS and associated avoidance, minimization, and mitigation measures. Focused plant and animal surveys should be conducted by knowledgeable biologists for respective taxa (e.g., rare plant surveys should be performed by botanists), and to assess the likelihood of occurrence for each rare species or resource (e.g., plant community) that has been reported from the immediate region. Focused plant surveys should occur only if there has been sufficient winter rainfall to promote germination of annual plants in the spring. Alternatively, the environmental documents may assess the likelihood of occurrence with a commitment by the proponents to perform subsequent focused plant surveys prior to ground disturbance, assuming conditions are favorable for germination.

Specialized Reptile Surveys: If there are any loose, shifting sands within/near the impact areas of the panels, along the gen-tie lines, or access routes, focused surveys for Mojave fringe-toed lizards (*Uma scoparia*) should be performed (University of California, Riverside 2005, 2007).

Migratory Birds/Eagles: The County should ensure that all actions it authorizes are implemented in compliance with the Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and associated regulations, executive orders, and policies (e.g., Driscoll 2010, Pagel et al. 2010) to avoid mortality or injury to migratory birds and harassment of eagles.

Mohave Ground Squirrel: The Mohave ground squirrel (*Xerospermophilus mohavensis*) is a threatened species under the California Endangered Species Act (CESA). Because the Proposed Project occurs within the range of the Mohave ground squirrel, the project proponent should conduct focal Mohave ground squirrel surveys [CDFG 2003 (revised 2010)] to determine presence/absence. In the absence of these focal MGS surveys, the proponent must assume presence and mitigate accordingly [CDFG 2003 (revised 2010)].

Burrowing owl: Surveys for western burrowing owl (*Athene cunicularia*) should be performed implementing available methods (CDFG 2012). In addition to the project footprint, the protocol requires that peripheral transects be surveyed at 30-, 60-, 90-, 120-, and 150-meter intervals in all suitable habitats adjacent to the subject property to determine the potential indirect impacts of the project on this species. If burrowing owl sign is found, CDFG (2012) describes appropriate minimization and mitigation measures that would be required. If burrowing owl sign is found, the project proponent should develop a science-based mitigation/monitoring/adaptive management plan with the USFWS and CDFW and ensure that this plan is implemented.

Mojave Desert Tortoise Surveys: Formal protocol surveys for Mojave desert tortoise (USFWS 2019) must be conducted at the proper times of year. Because USFWS (2009) and CDFW require only experienced biologists to perform protocol surveys, USFWS and CDFW biologists should review surveyors' credentials prior to initiating the surveys. Per this protocol, since the impact area is larger than 500 acres, the surveys must be performed in the time periods of April-May or September-October so that a statistical estimate of tortoise densities can be determined for the "action area" (please see below). If any tortoise sign is found, the project proponent should coordinate with USFWS and CDFW to determine whether "take" under FESA or CESA is likely to occur from implementation of the proposed project. If tortoises are present, the project proponent must obtain a Section 10(a)(1)(B) incidental take permit from the USFWS and a Section 2081 incidental take permit from the CDFW prior to conducting any ground disturbance.

To determine the full extent of impacts to tortoises and to facilitate compliance with the FESA and CESA, authorized biologist(s) must consult with the USFWS to determine the action area for this project. The USFWS defines "action area" the Code of Federal Regulations and their Desert Tortoise Field Manual (USFWS 2009) as "all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action (50 CFR §402.02)."

Mojave Desert Tortoise Impacts Analysis:

Analysis of Direct and Indirect Impacts: The alternatives analysis should include an economic analysis that provides the total cost of constructing the proposed project versus other alternatives, so the public can see how much the total cost of each alternative is. This would include an analysis of the costs of replacing all public resources that would be lost from granting the proposed project including direct, indirect, and cumulative impacts. Please note, this analysis would include habitat replacement or restoration costs including the time needed to achieve full replacement, not just acquisition, management, monitoring, and adaptive management costs.

The DEIR should include a thorough analysis of the status and trend of the tortoise in the action area, tortoise conservation area(s), recovery unit(s), and rangewide. Tied to this analysis should be a discussion of all likely sources of mortality for the tortoise and degradation and loss of habitat from implementation of solar development including construction, operation and maintenance, decommissioning, and restoration. The DEIR should use the data from focused plant and wildlife surveys in their analysis of the direct, indirect, and cumulative impacts of the proposed project on the Mojave desert tortoise and its habitat, other listed species, and species of concern/special status species.

We expect that the DEIR will document how many acres would be impacted directly by solar arrays, access roads to the site, administration/maintenance buildings, parking areas, transmission towers, switchyards, laydown areas, internal access roads, access roads along gen-tie lines, a perimeter road, perimeter fencing, substations, battery storage (e.g., the project footprint). We also request that separate calculations document how many acres of desert tortoise habitats would be temporarily and permanently impacted both directly and indirectly (e.g., "road effect zone," etc.) by the proposed Project. As given below, these acreages should be based on field surveys for tortoises not just available models.

Desert Tortoise Habitat Linkages/Connectivity among Populations and Recovery Units: The DEIR should analyze how this proposed project will impact the movement of tortoises relative to linkage habitats/corridors. The DEIR should include an analysis of the minimum linkage design necessary for conservation and recovery of the desert tortoise (e.g., USFWS 2011, Averill-Murray et al. 2013, Hromada et al. 2020), and how the project, along with other existing projects, would impact the linkages between tortoise populations and all recovery units that are needed for survival and recovery. We strongly request that the environmental consequences section of the DEIR include a thorough analysis of this indirect effect (40 Code of Federal Regulations 1502.16) and appropriate mitigation to maintain the function of population connectivity for the Mojave desert tortoise and other wildlife species be identified. Similarly, please document how this project may impact proximate conservation areas, such as BLM-designated ACECs that surround the area.

Jurisdictional Waters in California: A jurisdictional waters analysis should be performed for all potential impacts to washes, streams, and drainages. This analysis should be reviewed by the CDFW as part of the permitting process and a section 1600 Streambed Alteration Agreement acquired, if deemed necessary by CDFW.

Mitigation Plans

The DEIR should include effective mitigation for all direct, indirect, and cumulative effects to the tortoise and its habitats. The mitigation should use the best available science with a commitment to implement the mitigation commensurate to impacts to the tortoise and its habitats. Mitigation should include a fully-developed desert tortoise translocation plan, including protection of tortoise translocation area(s) from future development and human disturbance in perpetuity; raven management plan; non-native plant species management plan; fire prevention plan; and compensation plan for the degradation and loss of tortoise habitat that includes protection of the acquired, improved, and restored habitat in perpetuity for the tortoise from future development and human use.

All plans should be provided in the DEIR so the public and the decisionmaker can determine their adequacy (i.e., whether they are scientifically rigorous and would be effective in mitigating for the displacement and loss of tortoises and degradation and loss of tortoise habitat from project implementation). Too often, such plans are alluded to in the draft environmental document and promised later, which does not allow the reviewers to assess their adequacy, which is unacceptable. If not available as appendices in draft documents, all indicated plans must be published in the final environmental documents. Their inclusion is necessary to determine their adequacy for mitigating direct, indirect, and cumulative impacts, and monitoring for effectiveness and adaptive management regarding the desert tortoise. If these plans are not provided, it is not possible for the County, other decisionmakers, and the interested public to determine the environmental consequences of the project to the tortoise.

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

Translocation Plan - Translocated Tortoises & Translocation Sites: How many tortoises will be displaced by the proposed project? How long will translocated tortoises be monitored? Will the monitoring report show how many of those tortoises lived and died after translocation and over time? Are there any degraded habitats or barren areas that may impair success of the translocation? Are there incompatible human uses in the new translocation area that need to be eliminated or managed to protect newly-translocated tortoises? Were those translocation areas sufficiently isolated that displaced tortoises were protected by existing or enhanced land management? How will the proponent minimize predation of translocated tortoises and avoid adverse climatic conditions, such as low winter rainfall conditions that may exacerbate translocation success? Were tortoises translocated to a site where they would be protected from threats (e.g., off-highway vehicles, future development, etc.)? These questions should be answered in the Environmental Consequences section of the DEIR.

The project proponent should implement the USFWS' Translocation Guidance (USFWS 2020) and coordinate translocation with CDFW. In addition, the proponent's project-specific translocation plan should be based on current data and developed using lessons learned from earlier translocation efforts (e.g., increased predation, drought). (see *Desert Tortoise Translocation Bibliography Of Peer-Reviewed Publications*[1] in the footnote).

The Translocation Plan should include implementation of a science-based monitoring plan approved by the USFWS and CDFW that will accurately access these and other issues to minimize losses of translocated tortoises and impacts to their habitat. For example, the health of tortoises may be jeopardized if they are translocated during drought conditions, which is known to undermine translocation successes (Esque et al. 2010). If drought conditions are present at the time of project development, we request that the proponent confer with the USFWS and CDFW immediately prior to translocating tortoises and seek input on ways to avoid loss of tortoises due to stressors associated with drought. One viable alternative if such adverse conditions exist is to postpone site development until which time conditions are favorable to enhance translocation success.

Moving tortoises from harm's way, the focus of the Translocation Guidance, does not guarantee their survival and persistence at the translocation site, especially if it will be subject to increased human use or development. In addition to the Translocation Guidance and because translocation sites are mitigation for the displacement of tortoises and loss of habitat, these sites should be managed for the benefit of the tortoise in perpetuity. Consequently, a conservation easement or other durable legal designation should be placed on the translocation sites. The project proponent should fully fund management of the site to enhance it for the benefit of the tortoise in perpetuity.

[1] https://www.fws.gov/nevada/desert_tortoise/documents/reports/2017/peer-reviewed_translocation_bibliography.pdf

Tortoise Predators and a Predator Management Plan: Common ravens are known predators of the Mojave desert tortoise and their numbers have increased substantially because of human subsidies of food, water, and sites for nesting, roosting, and perching to hunt (Boarman 2003). Coyotes and badgers are also predators of tortoises. Because ravens can fly at least 30 miles in search of food and water daily (Boarman et al. 2006) and coyotes can travel an average of 7.5 miles or more daily (Servin et al. 2003), this analysis should extend out at least 30 miles from the proposed project site.

The DEIR should analyze if this new use would result in an increase in common ravens and other predators of the desert tortoise in the action area. During construction, operations and maintenance, decommissioning, and restoration phases of the proposed project, the County should require science-based management of common raven, coyote, and badger predation on tortoises in the action area. This would include the translocation sites.

For local impacts, the Predator Management Plan should include reducing/eliminating human subsidies of food and water, and for the common raven, sites for nesting, roosting, and perching to address local impacts (footprint of the proposed project). This includes buildings, fences, and other vertical structures associated with the project site. In addition, the Predator Management Plan should include provisions that eliminate the pooling of water on the ground or on roofs. The Predator Management Plan should include science-based monitoring and adaptive management throughout all phases of the project to collect data on the effectiveness of the Plan's implementation and implement changes to reduce/eliminate predation on the tortoise if existing measures are not effective.

For regional and cumulative impacts, the County should require the project proponent to participate in efforts to address regional and cumulative impacts. For example, in California, the project proponent should be required to contribute to the National Fish and Wildlife Foundation's Raven Management Fund to help mitigation for regional and cumulative impacts. Unfortunately, this Fund that was established in 2010 has not revised its per acre payment fees to reflect increased labor and supply costs during the past decade to provide for effective implementation. The National Fish and Wildlife Foundation should revise the per acre fee.

We request that for any of the transmission options, the project use infrastructure (particularly towers) that prevent raven nesting and perching for hunting. For example, for gen-ties/transmission lines the tubular design pole with a steep-pointed apex and insulators on down-sloping cross arms is preferable to lattice towers, which should not be used. New fencing should not provide resources for ravens, like new perching and nesting sites.

According to Appendix A of Common Raven Predation on the Desert Tortoise (USFWS 2010), "The BLM's biological assessments and the USFWS' biological opinions for the CDCA plan amendments reiterate the need to address the common raven and its potential impacts on desert tortoise populations." Please ensure that all standard measures to mitigate the local, regional, and cumulative impacts of raven predation on the tortoise are included in this DEIR, including developing a raven management plan for this specific project. USFWS (2010) provides a template for a project-specific management plan for common ravens. This template includes sections on construction, operation, maintenance, and decommissioning (including restoration) with monitoring and adaptive management during each project phase (USFWS 2010).

Fire Prevention/Management Plans: The proposed project could include numerous infrastructure components that have been known to cause fires. Lithium-ion batteries at the project site have the potential to explode and cause fires and are not compatible with using water for fighting fires. Photovoltaic panel malfunctions have caused vegetation to burn onsite. We request that the DEIR include a Fire Prevention Plan in addition to a Fire Management Plan specifically targeting methods to deal with explosions/fires produced by these batteries/panels as well as other sources of fuel and explosives on the project site.

Habitat Compensation Plan: When the project proponent seeks an incidental take permit from the CDFW, because their project would result in take of a listed species under CESA (e.g., Mojave desert tortoise, Mohave ground squirrel, etc.), compensatory mitigation would be required. The mitigation lands must be occupied by the species and secured and managed in perpetuity for the listed species. Hence, the DEIR should include a Habitat Compensation Plan for the loss/degradation of habitat. This plan should calculate how it will fully mitigate for the impacts of the proposed project including direct, indirect, cumulative, and temporal impacts.

Climate Change and Non-native Plants

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

Impacts from Proliferation of Nonnative Plant Species and Management Plan: The DEIR should include an analysis of how the proposed project would contribute to the spread and proliferation of non-native invasive plant species; how this spread/proliferation would affect the desert tortoise and its habitats (including the frequency and size of human-caused fires); and how the proposed project may affect the frequency, intensity, and size of human-caused and naturally occurring fires. For reasons given in the previous paragraph, we strongly urge that the County require the project proponent to develop and implement a management and monitoring plan for nonnative plant species. The plan should integrate management/enhancement of native vegetation with fire prevention and fire response to wildfires.

Hydrology and Water Quality

Regarding water quality of surface and ground water, the DEIR should include an analysis of the impacts of water acquisition, use, and discharge for panel washing, potable uses, and any other uses associated with this proposed project, and cumulative impacts from water use and discharge

on native perennial shrubs and annual vegetation used for forage by the Mojave desert tortoise, including downstream and downstream impacts. The DEIR should analyze how much water is proposed to be used during construction and operation; how any grading, placement, and/or use of any project facilities will impact downstream/downslope flows that are reduced, altered, eliminated, or enhanced. This analysis should include impacts to native and non-native vegetation and habitats for wildlife species including the Mojave desert tortoise, for which washes are of particular importance for feeding, shelter, and movements.

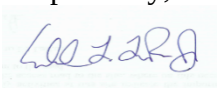
Therefore, we request that the DEIR include an analysis of how water use during construction, operations and maintenance, decommissioning, and habitat restoration will impact the levels of ground water in the region. These levels may then impact surface and near-surface flows at springs, seeps, wetlands, pools, and groundwater-dependent vegetation in the basin. The analyses of water quality and quantity of surface and ground water should include appropriate measures to ensure that these impacts are fully mitigated, preferably beginning with avoidance and continuing through to other forms of mitigation.

Cumulative Effects

With regards to cumulative effects, the DEIR should list and analyze all project impacts within the region including future state, federal, and private actions affecting listed species on state, federal, and private lands. We also expect that the environmental documents will provide a detailed analysis of the "heat sink" effects of solar development on adjacent desert areas and particularly Mojave desert tortoise in addition to climate change.

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

Respectfully,



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

cc: California State Clearinghouse state.clearinghouse@opr.ca.gov
Heidi Calvert, Regional Manager, Region 6, Inland and Desert Region, California Department of Fish and Wildlife, Heidi.Calvert@wildlife.ca.gov
Brandy Wood, Biologist, Region 6, Inland and Desert Region, California Department of Fish and Wildlife, Brandy.Wood@wildlife.ca.gov

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Comment Letter 3

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

Date: December 12, 2023

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

RE: Desert Breeze Solar Project (SCH# 2022090646, PROJ-2022-00110)

Dear Mr. Braginton,

The Mohave Ground Squirrel Conservation Council (MGSCC) is a nonprofit organization established to assure the perpetual survival of viable populations of Mohave Ground Squirrels (MGS) throughout their historical range and any future expansion areas. The MGS, for the purposes of the MGSCC, means the mammal species known scientifically as *Xerospermophilus mohavensis*. Among our objectives pertinent to this letter is to support and to advocate for such legislative, policy, and conservation measures as will contribute to ensuring the continued survival of viable MGS populations, the connectivity of these populations, and the maintenance of their habitats in a natural condition. 3-1

Please note that we received an email from you on October 27, 2023 that indicated the deadline for comments had been extended to December 15, 2023.

> *"Good Morning Ed,*
>
> *"This is to inform* [you] *that the attached NOA/NOI for this Project has been updated in regard to a revised 45-day public review period (10/27/23-**12/15/23**). This is a result of the NOA/NOI originally not being sent out to surrounding property owners within 1,300 feet of the proposed project, which is a requirement by the County when issuing a NOA/NOI for Public Review. Please let me know if you have any questions.*
>
> *"Thank You,*
>
> *"Jon [Braginton]"*

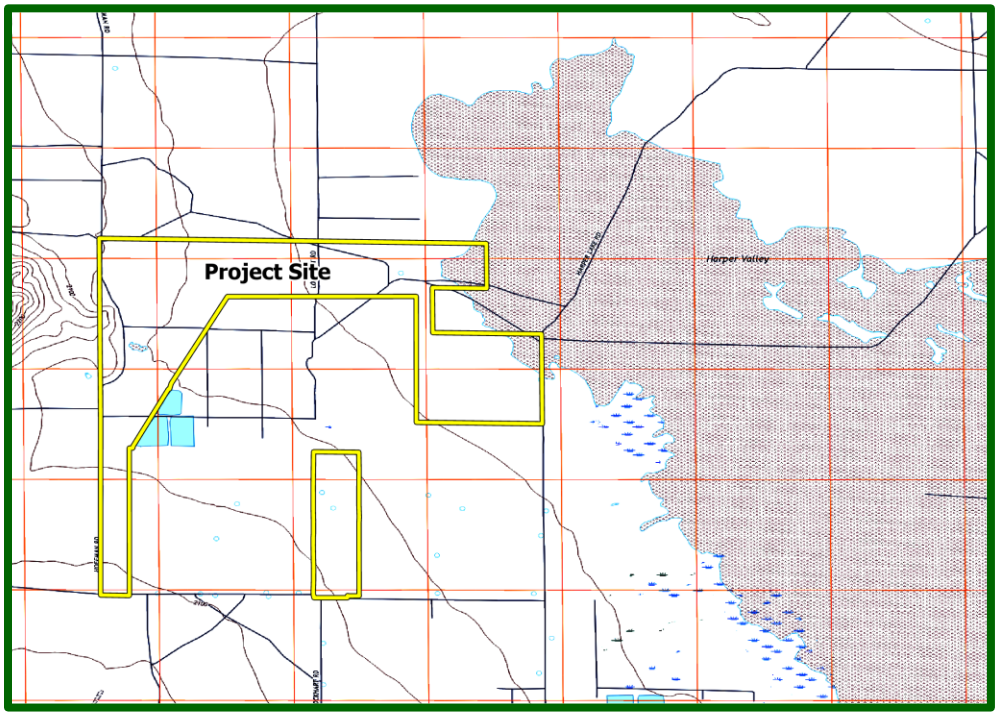
3-2

But I see in the Notice of Availability (NOA)/Notice of Intent (NOI) that the due date is shown as December 10, 2023. So, we trust that the County will work in good faith and consider our comments even if they are several days late. Unless otherwise noted, page numbers given below refer to the Draft Environmental Impact Report (DEIR), prepared by Kimley-Horn and Associates, dated September 25, 2023.

The following Project description is given on page 2-2: "Desert Breeze Solar, LLC (Applicant) proposes to develop the Desert Breeze Solar Project (Project), a utility-scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 130 megawatts (MW) of solar power and include up to 2 gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS). Key entitlements to construct and operate the Project include a zoning amendment to change the current zoning designation from Rural Living (RL) to Resource Conservation (RC), as well as two (2) Conditional Use Permits (CUPs). The Project would be developed within an approximately 923-acre Project Site comprised of an 813-acre solar array area (CUP1) and a 110-acre Shared Facilities Area (SFA) (CUP 2)."

On page 2-1, we also read the following statements: "Additionally, the Project proposes improvement of a portion of Harper Lake Road, which is an existing dirt road. Construction activities associated with the road improvement will include grading to widen or level the existing road; importing and compacting materials, such as soil and gravel; and may include paving. The road improvement may extend up to approximately 60 feet wide and approximately 1 mile long from the southeastern corner of Hoffman Road and Harper Lake Road (adjacent to the east of SEGS IX) to the existing secondary access gate."

3-3



On page 2-4 and 2-5, we appreciate that Alternative 3 was dropped, as it occurs in an area that has been determined to be important to the conservation of the Mohave ground squirrel (*Xerospermophilus mohavensis*) (CDFW 2019, LaRue 2016). As stated on page 2-4, "…however, further evaluation is required on the MGS conservation requirements for the area before it can be opened to renewable energy applications for individual projects" is absolutely true.

3-4

In Table 4.3-2 on page 4.3-15, we note that "No MGS were observed during the MGS habitat assessment or other biological resources surveys conducted," which is reiterated on page 4.3-22. We note that MGS are rarely ever observed; that protocol trapping surveys are required to ascertain presence or absence (CDFW 2023). Alternatively, the proponent may forego trapping surveys, assume presence, and acquire a 2081 Incidental Take Permit from the California Department of Fish and Wildlife (CDFW). The DEIR currently lists a range of approaches, including performing protocol trapping or assuming presence and mitigating accordingly. We recommend that the Final EIR (FEIR) document the actual intent of the proponent rather than list a range of alternatives. 3-5

Furthermore, we recommend that trapping be performed by authorized trappers with a Memorandum of Understanding to collect tissue samples from any MGS that are caught, as the project area is at the known contact zone between MGS and round-tailed ground squirrels (*Xerospermophilus tereticaudis*) where a hybrid was captured in 2014 a quarter mile east of Harper Lake Road several miles south of the proposed Project. 3-6

On page 4.3-51, we read "**Mitigation Measure BIO-14** includes best management practices to be implemented during Project grading and construction and decommissioning activities to prevent inadvertent entrapment of species and attraction of predators to the Project Site. Further, it is not anticipated that many individual animals would be taken due to the avoidance measures detailed in **Mitigation Measure BIO-14** and similar measures anticipated to be imposed by USFWS and CDFW." The document author seems to synonymize "take" with "death." We note that "take" refers to "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Therefore, although the above discussion applied to desert tortoises, ALL MGS found on the site will be subject to take. This conclusion should be changed to reflect an accurate definition of take in the FEIR. 3-7

We note that Section 4.3.5 Impacts and Mitigation Measures fails to mention or analyze indirect, cumulative, and synergistic impacts to MGS in adjacent areas. Nor does a baseline inventory and survey that extends to only a 50-foot buffer around the project allow the County and resource agencies to know how many MGS in adjacent areas may be subject to take associated with indirect impacts. The FEIR needs to be substantially revised to fully document likely indirect, cumulative, and synergistic impacts resulting from project development. 3-8

Although they pertain to tortoises, analogous mitigation measures referenced at the bottom of page 4.3-50 and top of page 4.3-51 must be supplemented in the FEIR to include MGS translocation procedures, fire management and fire prevention plans, weed abatement plan, minimization of impacts to water quality and use from the local aquifer, a predator management plan, and how and for how long residual impacts, particularly of displaced MGS, will be monitored.

Whereas we note on page 4.3-60 in BIO-3 that a "…CDFW- and USFWS-approved Desert Tortoise Relocation Plan shall be submitted to the County prior to initiating Project construction activities," we note that the proponent also needs to develop an MGS translocation plan to be appended to the FEIR. Absent the draft plan, the concerned public, including the MGSCC, is unable to review the plan and provide constructive feedback. We therefore expect to see the MGS Relocation Plan as an appendix to the FEIR. 3-9

With regards to MGS, we read the following statement on page 4.3-51: "Therefore, while no MGS were observed or detected during the surveys, development of the Project would potentially impact individuals and remove approximately 418.54 acres of suitable habitat for the MGS such that impacts to the MGS population and its habitat would be potentially significant." We disagree with this conclusion, knowing that MGS occupy all of the vegetation types within the Project footprint except for barren areas and playa surfaces (BLM 2005). We see in Table 4.3-1 that barren areas comprise 23 acres and playa surfaces comprise 12 acres. So, we conclude that 826 acres (861 minus 35 acres), not 418 acres, would be lost to full development of the Project, and that take of MGS is more than likely to occur. The above information also needs to be applied to BIO-9, which reiterates that compensation would be only for 418.54 acres rather than the full extent of suitable potentially occupied habitat. The FEIR needs to rectify this erroneous conclusion wherever it occurs in the DEIR.

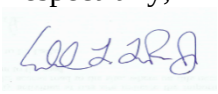
With regards to the following statement on page 4.3-51, "…purchase credits in a mitigation bank equivalent to at least a 1:1 replacement," the Project proponent can expect the CDFW to require a minimum of 3:1 habitat replacement for impacts to the MGS. It is not apparent from these naïve statements (e.g., that only 418 acres of the Project area comprise suitable MGS habitat) that the proponent or County have consulted with either the USFWS or CDFW prior to completing the DEIR. This conclusion is supported by the absence of these agencies in Section 8.1 of the DEIR. Whereas consultation may not be a requirement, we recommend that the proponent actually consult with these two agencies and report factual determinations in the FEIR, like what the actual compensation ratio will be for the MGS, rather than speculate as is currently done in the DEIR. 3-10

We disagree with the conclusion at the top of page 4.3-52, "Therefore, removal of the suitable habitat as a result of the Project would not result in a significant impact [to the MGS] related to the loss of vegetation communities." Absent a formal protocol trapping survey, the proponent must assume presence of the MGS, and impacts to a State-listed species constitute a significant impact. This erroneous conclusion needs to be retracted or revised in the FEIR.

Finally, we ask that the County reorganize the platform for providing documents associated with the FEIR. For example, the DEIR indicates that Appendix D includes a Biological Resources Assessment, indicating on page vi that it is "Provided under separate cover." However, the only available documents at the County's website (https://ceqanet.opr.ca.gov/2022090646/2) are the DEIR and NOP; no appendices are provided. Please be sure that the platform makes ALL related environmental documentation available to the concerned public with distribution of the FEIR. 3-11

We appreciate this opportunity to provide the above comments and trust they will help protect MGS during any resulting authorized activities. Herein, we reiterate that the MGSCC wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by San Bernardino County that may affect the species, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project. 3-12

Respectfully,



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

cc. Heidi Calvert, Regional Manager, Region 6, Inland and Desert Region, California Department of Fish and Wildlife, Heidi.Calvert@wildlife.ca.gov
Brandy Wood, Biologist, Region 6, Inland and Desert Region, California Department of Fish and Wildlife, Brandy.Wood@wildlife.ca.gov
Ann McPherson, Environmental Review, U.S. Environmental Protection Agency, mcpherson.ann@epa.gov

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December 13, 2023

Jon Braginton, Planner
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Delivered via email to: jon.braginton@lus.sbcounty.gov

RE: Draft Environmental Impact Report – Desert Breeze Solar Project
(SCH 2022090646)

Dear Mr. Braginton:

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

Defenders strongly supports generation of electricity from renewable energy sources. A low-carbon energy future is critical for California's economy, communities and environment. Achieving this future—and how we achieve it—is critical for protecting California's internationally treasured wildlife, landscapes and diverse habitats. We believe transitioning to a renewable energy future need not exacerbate the ongoing extinction crisis by thoughtfully planning projects while protecting habitat critical to species. 4-1

The proposed 923-acre utility-scale solar photovoltaic facility would generate up to 130 MW of solar power and include up to 2 GWh of energy storage. It is bordered on the south by two previously approved solar projects, the Lockhart Solar PV Facility (Lockhart I) and the Lockhart Solar PV II Project (Lockhart II). The Project site is in unincorporated Hinkley and is 7 miles northwest of the intersection of Harper Lake Road and Mojave-Barstow Highway 58.

Comments
We offer the following comments on the DEIR for the proposed Project:

1. **Raven Monitoring and Management Program**

The DEIR directs the applicant to participate in the interagency Raven Monitoring and Management Program for desert tortoise (DT) impacts related to the potential increase in the raven population by requiring the applicant to implement appropriate measures to reduce raven attraction. Ravens are known predators of DT and are likely a significant impediment to desert tortoise recovery. Solar development and the associated infrastructure can be expected to increase raven threats to desert tortoises by providing raven perching, roosting and nesting sites. Defenders applauds the inclusion of the Raven Monitoring and Management Program as ensuring implementation and monitorization of the plan is vital to reducing DT predation. 4-2

2. **Incidental Take Permit**

Given the Project contains suitable Mohave ground squirrel (MGS) habitat with 55 records of occurrence within the MGS survey area, and that DT was observed on site, it is foreseeable that the Project may result in take of both species. The DEIR only states an Incidental Take Permit (ITP) will be required **if** the Project results in take and does not provide a timeline or mention ongoing applications or conversations with the California Department of Fish and Wildlife (CDFW) or US Fish and Wildlife Services (USFWS) regarding obtaining an ITP. The Project proponent should begin discussions with CDFW and USFWS immediately to begin the process of obtaining an ITP. 4-3

3. **Mitigation Measures**

   a. **Revise MM BIO-5**

Compensatory mitigation to offset impacts to DT is included at a ratio of at least 1:1 for replacement for habitat impacts from the Project. This is inadequate and below the ratio typically set for permanent loss of DT habitat from development projects. The ITP for the Aratina Solar Farm Project required funding for the acquisition, enhancement, monitoring and long-term management of 7,305 acres as compensatory mitigation for the 2,435-acre permanent loss of habitat for DT and MGS.[1] This is a 3:1 ratio that is well above the proposed ratio within the Desert Breeze DEIR. Furthermore, in comments on the adjacent Lockhart Solar II Project, CDFW states, "[f]or desert tortoise for example, compensatory mitigation ratios from 1:1 to 5:1 of mitigation acres to impacted areas are most typical. The higher mitigation ratios are often used for impacts that most affect the species, such as impacts of high quality, connected, other important habitat areas, and impacts to areas with greater distribution and presence of the species. The low mitigation ratios are often used for impact areas with low habitat value and low to very low presence of the species."[2] Defenders is concerned that the mitigation ratio is assigned at the low end of the range for the Project, which is typically 4-4

[1] California Department of Fish and Wildlife. 2023. *Reissued Incidental Take Permit for the Aratina Solar Farm Project (2081-2020-022-04)*.

[2] California Department of Fish and Wildlife. 2021. *Notice of Preparation of a Draft Environmental Impact Report Lockhart Solar PV II Project State Clearinghouse No. 2021070070*.

required for areas with a low abundance of DT. The Project warrants a higher ratio given ten live DTs were found within the Project survey area, along with 45 DT burrows and six carcasses. It is evident the Project will significantly impact the federally and state Threatened species. Defenders therefore recommends a minimum 3:1 mitigation ratio to compensate for Project impacts to DT habitat.

Additionally, the measure allows for permittee-responsible mitigation. It is unclear if the intent is for the developer to be responsible for acquiring the compensatory mitigation lands or for the developer to manage the compensatory mitigation instead of an entity permitted under California Civil Code § 815.3. Under no circumstances should a developer be permitted to hold the mitigation lands as they must be managed in perpetuity by a qualified conservation organization as defined by § 815.3. Alternatively, the developer can purchase credits in a CDFW-approved mitigation bank. We request the measure be revised to clarify that the permittee shall be responsible for acquiring compensatory mitigation but shall not manage or hold the compensatory mitigation lands.

4-4 cont.

"Compensatory mitigation to offset impacts to desert tortoise shall be ~~**implemented through off-site, permittee-responsible mitigation**~~ **the responsibility of the permittee to implement and such mitigation lands shall be managed in perpetuity by a qualified conservation organization as defined by CA Civil Code Section 815.3**, mitigation bank credit purchase (e.g., purchase of credits at the Black Mountain Conservation Bank), or a combination of these options depending on availability, equivalent to at least a **3:1**~~**1:1**~~ replacement for habitat impacted by project development. The proposed mitigation strategy shall be done in accordance with USFWS and CDFW authorizations."

b. Revise MM BIO-9 (3)

Compensatory mitigation is included for MGS at a 1:1 ratio. This is inadequate and is inconsistent with CDFW's MGS Conservation Strategy, which sets the compensation ratio for MGS at 2:1.[3] Defenders requests the compensatory mitigation ratio for MGS adhere to CDFW's recommendation.

4-5

Furthermore, this measure also allows for permittee-responsible mitigation. We once again request the measure be revised to clarify that the permittee shall be responsible for acquiring compensatory mitigation but shall not manage or hold the compensatory mitigation lands.

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

"If the species is either confirmed or assumed present, compensatory mitigation to offset impacts to Mohave ground squirrel shall be ~~**implemented through off-site, permittee-responsible mitigation**~~ **the responsibility of the permittee to implement and such mitigation lands shall be managed in perpetuity by a qualified conservation organization as defined by CA Civil Code Section 815.3**, mitigation bank credit purchase (e.g., purchase of credits at the Black Mountain Conservation Bank), or a combination of these options depending on availability, equivalent to at least a **2:1**~~**1:1**~~ replacement for habitat impacted by project development. The proposed mitigation strategy shall be done in accordance with CDFW authorizations." 4-5 cont.

c. Revise MM BIO-12 b.

The DEIR includes the acquisition of burrowing owl (BUOW) habitat in the form of a conservation easement at the ratio of 15 acres per passively relocated BUOW pair. However, there is no mention of artificial replacement burrows or single bird relocation. Defenders recommends the inclusion of artificial burrows and that the number of burrows lost be replaced at the recommended[4] 1:1 ratio.

"The Applicant shall implement the Mitigation Land Management Plan and permanently conserve in a conservation easement offsite habitat suitable for burrowing owl at a ratio of 15 acres per passively relocated burrowing owl pair **or individual bird**, not to exceed the size of the final Project footprint. **Artificial burrows shall be installed at a ratio of 1:1.** Land identified to mitigate for passive relocation of burrowing owl may be combined with other offsite mitigation requirements of the Project if the compensatory habitat is deemed suitable to support the species. The Applicant may purchase available burrowing owl conservation bank credits in lieu of placing offsite habitat into a conservation easement, if acceptable to CDFW." 4-6

d. Revise MM BIO-14

The prohibition of firearms should be included as a best management practice to reduce potential impacts to special-status species. 4-7

"**Workers shall be prohibited from bringing firearms to the project area."**

4. Desert Tortoise Connectivity

The DEIR identified the project site as a potential habitat linkage for DT for the USFWS identified critical habitat to the north and west of the Project. Despite the potential for DT to utilize the site for movements between critical habitats, there is no monitoring verification plan to ensure connectivity corridors remain functional. We recommend the inclusion of a monitoring plan and adaptive management to ensure connectivity to critical habitat is not lost. 4-8

[4] California Burrowing Owl Consortium. 1993. *Burrowing Owl Survey Protocol and Mitigation Guidelines*.

5. **Cumulative impact**

The ever-increasing large-scale renewable energy footprint within the California desert is significantly impacting biological resources in the region. This proposed Project is not an exception and would significantly contribute to the cumulative loss of the region's important and declining biological resources, including but not limited to BUOW, DT and MGS. The DEIR's cumulative analysis on biological resources is lacking as it fails to detail the potential impacts on the individual biological resource level and provide specific data on the loss of habitat. We request the analysis include a detailed map of all existing and planned development with the remaining habitat and connectivity for DT and MGS. 4-9

Furthermore, the biological resources cumulative impacts section states that habitat would only be temporarily disturbed or removed during the construction as vegetation would be reestablished during the lifetime of the project, allowing wildlife to continue inhabiting and foraging the project. The DEIR continues to state that after decommissioning, the site could return to its existing condition. This is not likely and should be revised to state that the Project will result in permanent habitat conversion. Given the infrastructure and surrounding utility-scale solar development, it is reasonable to assume the site will not revert to natural habitat and vegetation after the 30-year lifetime of the Project. Assuming the Project impacts are only temporary results in an inaccurate cumulative impacts analysis. Defenders recommends revising the impact analysis based on a permanent conversion of habitat.

Thank you once again for the opportunity to provide comments on the DEIR for the Desert Breeze Solar Project and for considering our comments. We look forward to reviewing the Final EIR for the Project and request to be notified when it is available. Please feel free to contact me with any questions. 4-10

Respectfully submitted,

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Senior California Representative
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Smarkowska@defenders.org

Comment Letter 5

State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

December 15, 2023
Sent via email

Jon Braginton, Planner
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Subject: Draft Environmental Impact Report
Desert Breeze Solar (Project)
State Clearinghouse No. 2022090646

Dear Mr. Braginton:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from San Bernardino County (Lead Agency) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. 5-1

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

Applicant: Desert Breeze Solar, LLC

Objective: Desert Breeze Solar, LLC proposes to develop the Desert Breeze Solar Project (Project), a utility-scale, solar photovoltaic (PV) electricity generation and energy storage facility that would produce up to 130 megawatts (MW) of solar power and include up to 2 gigawatt hours (GWh) of energy storage capacity rate in a battery energy storage system (BESS). The Project would be developed within an approximately 923-acre Project Site 5-2

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

comprised of an 813-acre solar array area and a 110-acred Shared Facilities Area (SFA). The Project has the following objectives:

- Locate photovoltaic (PV) solar power-generating facilities and energy storage systems near existing utility infrastructure, thereby achieving economies of scale to maximize shared operation and maintenance facilities with existing solar operations;
- Establish solar PV power-generating facilities and energy storage of sufficient size and configuration to produce and deliver reliable electricity in an economically feasible and commercially financeable manner that can be marketed to different power, utility and other offtake companies;
- Use proven and established solar PV and energy storage technology that is efficient and requires low maintenance;
- Assist California in meeting or exceeding its Renewable Portfolio Standard under Senate Bill 100;
- Promote the County's Renewable Energy and Conservation Element policies by siting a solar PV power-generating facility and energy storage in an area suited for utility oriented renewable energy generation projects;
- Develop a solar PV power generation and energy storage facility in San Bernardino County, which would support the economy by investing in the local community, creating local construction jobs, and increasing tax and fee revenue to the County.

5-2 cont.

Location: The proposed Project site is in unincorporated Hinkley, CA, approximately seven miles north of the intersection of Harper Lake Road and Mojave-Barstow Highway 58. The Project site consists of area within two parcels: County Assessor's Parcel Number (APN) 0490-223-33 which is currently vacant and recently approved under a Parcel Merger; and APN 0490-101-56, which contains existing shared infrastructure and support facilities for the adjacent solar facilities. The solar array area of the Project site is bordered on the south by the existing and approved solar facilities; Harper Lake Road to the east; Hoffman Road to the west; and Maltice Drive to the north.

Timeframe: Project construction is anticipated to be completed over a period of approximately 18 months, followed by an operational life of approximately 30 years. At the end of the Project's operational term, the Applicant may determine that the Project should be decommissioned and deconstructed, or it may seek an extension of its Conditional Use Permits.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency 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.

Project Description and Related Impact Shortcoming

Comment #1: Clarification of Project Footprint

5-3

DEIR Section 3, Page 3-1

Issue: The DEIR states that of the 813-acre solar array area, 638 acres would include solar arrays. The application that CDFW has received from the Applicant for a CESA incidental take permit describes the Project footprint area as covering approximately 677 acres.

Evidence impact would be significant: CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate Project description, the DEIR likely provides an incomplete assessment of Project-related impacts to biological resources.

CDFW Recommendations: The Final EIR should provide clarity regarding the Project development footprint to reflect the most up-to-date Project design and to be consistent with the permit applications that the Applicant has submitted to date.

Mitigation Measures and Related Impact Shortcoming

Comment #2 Designation of a Lead Biologist

DEIR Section 4.3 Page 59

Issue: An EIR must identify potentially feasible mitigation measures that avoid or reduce each significant impact to the extent feasible. Effective mitigation measures should be able to answer the following questions: who, what, where, when, why and how.

Specific impact: The DEIR includes a number of mitigation measures to reduce impacts to biological resources but lacks a measure to clarify who is responsible to ensure oversight of those measures and to provide communication with CDFW.

5-4

Recommended Potentially Feasible Mitigation Measure: CDFW appreciates the inclusion of Mitigation Measures BIO-1 through BIO-18, and recommends that the Final EIR add the following measure to specify that the Applicant will assign a Lead Biologist to implement all biological construction monitoring duties as described in the other measures:

Mitigation Measure BIO-xx Biological Monitoring: The Applicant shall assign a Lead Biologist as the primary point of contact for the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) regarding biological resources mitigation and compliance. For desert tortoise protection measures (Mitigation Measure BIO-3), the Lead Biologist will serve as the Field Contact Representative or Designated Representative. The Applicant shall provide the resume of the proposed Lead Biologist CDFW and USFWS for concurrence prior to onset of ground-disturbing activities. The Lead Biologist shall have demonstrated expertise with the biological resources within the Project area.

Comment #3 Nesting Birds

DEIR Section 4.3, Pages 23, 62 BIO-11

Issue: CDFW is concerned that the DEIR does not sufficiently ensure that impacts to nesting birds are mitigated to a level less than significant.

Specific impact: Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of desert scrub vegetation onsite. The DEIR (4.3 page 23) indicates that “the many scrubs located within the Survey Area provide nesting habitat for a limited number of bird species. For example, three active nests…were observed during biological resources surveys conducted for the Project”. The biggest threat to birds includes habitat loss and the conversion of natural vegetation into commercial, residential and industrial land uses.

5-5

Evidence impact would be significant: It is the Applicant’s responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et. seq.). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code also afford protective measures as follows: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Recommended Potentially Feasible Mitigation Measures: The final EIR should include specific avoidance and minimization measures to ensure that impacts to nesting birds do not

occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise, sound walls, and buffers. The final EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. CDFW supports the inclusion of Mitigation Measure BIO-11, with minor edits (in ~~strikethrough~~ and **bold**) in the final EIR to avoid impacts to nesting birds:

Mitigation Measure BIO-11 – Project construction activities shall avoid being conducted during the nesting bird season (February 1 through August 31), if feasible. ~~If infeasible to avoid construction during the nesting season~~, **Regardless of the time of year,** prior to construction activities, including vegetation removal, a preconstruction nesting bird survey shall be conducted by a qualified biologist no more than ~~7~~ **three** days prior to any construction activities including vegetation removal **and shall include any potential habitat (including trees, shrubs, the ground, or nearby structures)**. Should nesting birds be found, an exclusionary buffer (depending upon the species) shall be established by the qualified biologist. The buffer shall be clearly marked in the field by construction personnel under guidance of the qualified biologist. A qualified biologist will continue to monitor active nests adjacent to active work areas to determine whether exclusionary buffers are sufficient to prevent stress or other negative behavioral changes to nesting birds. Exclusionary buffers may be adjusted at any time by a qualified biologist based on project activities and nesting bird behavior. **If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the no disturbance buffer shall be expanded.** No construction activities shall be allowed within the exclusionary buffer until the qualified biologist determines that the young have fledged or the nest is no longer active. **A nesting bird survey report shall be provided to CDFW. If an active nest is encountered during construction, construction shall stop immediately until a qualified biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws.**

5-5 cont.

CDFW also appreciates that the DEIR states that the Applicant will voluntarily develop and implement a Bird and Bat Conservation Plan (BBCP) to reduce impacts to birds and bats during Project operations (page 4.3-58). Please note, however, that while the DEIR states that “in the event of an injury or death of a listed species, CDFW and/or USFWS shall be contacted to consult on appropriate next steps”, any take of a listed species absent an ITP would be unauthorized. CDFW further recommends that a Mitigation Measure is included specifically to require a BBCP:

Mitigation Measure BIO-xx Bird and Bat Conservation Plan. **The Applicant shall prepare and implement a BBCP to avoid or minimize take of migratory birds that may nest on the site or may be vulnerable to collision with Project components. The BBCP shall identify potential hazards to birds during construction and operations and maintenance phases of the Project and specify measures to recognize, minimize, or avoid those hazards. The BBCP shall articulate the Applicant’s commitment to reduce risk to birds and bats. Over the course of construction and operations and maintenance, progress and challenges that are encountered may necessitate review or revision of the BBCP, on mutual agreement among the Applicant and the resource agencies. The initial goals of the BBCS are as follows:**

- **Assess potential risk to birds and bats based on the proposed activities**
- **Specify the adaptive management process that will be used to address potential adverse effects on avian and bat species**
- **Describe baseline conditions for bird species present within the Project site, including results of site-specific surveys**
- **Specify conservation measures that will be employed to avoid, minimize, and/or mitigate potential adverse effects to birds and bats**
- **Describe the incidental bird and bat monitoring and reporting that will take place during construction, if not described in the Nesting Bird Management Plan.**
- **Provide details for following systematic post-construction bird and bat monitoring and reporting.**

5-6

Comment #4 Burrowing Owl

DEIR Section 4.3, Page 55 and 62

Issue: CDFW is concerned that the DEIR does not sufficiently identify Project impacts to burrowing owl (*Athene cunicularia*) or ensure that impacts are mitigated to a level less than significant.

Specific impact: The DEIR states that four live burrowing owls and 29 suitable burrowing owl burrows were observed during surveys conducted for the Project, and suitable foraging and nesting habitat occurs throughout the site. However, burrowing owl-focused surveys were not conducted. Absent such focused surveys CDFW is unable to determine the potential significance of Project impacts. The DEIR includes Mitigation Measure BIO-12 for burrowing owl; however, given the lack of information that would have been provided with burrowing owl-focused surveys, CDFW is concerned that the timing and scope of the measure is insufficient to ensure that impacts to burrowing owls are reduced to a level that is less than significant.

Evidence impact would be significant: Burrowing owl is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited bye sections 3503, 3503.5, and 3513. Fish and Game Code 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703. et. seq.).

Recommended Potentially Feasible Mitigation Measure: In areas where burrowing owl may be present, CDFW recommends that the Lead Agency follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (2012 Staff Report). The 2012 staff report specifies three steps for project impact evaluations: a habitat assessment; surveys; and an impact assessment. As stated in the *Staff Report*, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owl, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of the proposed Project activity. The biological surveys that were conducted for the Project is not sufficient to provide a complete analysis of potential impacts to burrowing owl. 5-7

Burrowing owl are susceptible to impacts year-round as their breeding season generally extends from February 1 to August 31 and their overwintering period generally from September 1 to January 31. In areas where burrowing owl may be present, ground disturbing activities should be avoided to the extent practicable. Solar development may be considered a high level of disturbance and an appropriate buffer should be determined to avoid take of the species. If burrowing owl are found within the Project area during pre-construction surveys or construction activities, and it is not possible to avoid active burrows, passive relocation and mitigation should be implemented.

Given that burrowing owl habitat and presence has been confirmed on the site, CDFW recommends that Mitigation Measure BIO-12 incorporate the following:

Focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report*. If burrowing owls are detected during the focused surveys, the qualified biologist and Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Plan shall include the number and locations of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat burrow cannot

be avoided, the Plan shall also describe relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated, as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Applicant shall implement the Plan following CDFW review and approval.

Preconstruction burrowing owl surveys shall be conducted by a qualified biologist no less than 14 days prior to the start of Project-related activities. If construction is delayed or suspended for more than 30 days after the survey, the area shall be resurveyed. A secondary survey must be conducted within 24 hours prior to ground-disturbance, in accordance with the *Staff Report*. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report*.

5-7 cont.

Comment #5 Desert Kit Fox (*Vulpes macrotis*) and American Badger (*Taxidea taxus*)

DEIR Section 4.3 page 56 and 63

Issue: The Project occurs within the range of desert kit fox and American badger, Species of Special Concern and protected species pursuant to Title 14 of the California Code of Regulations section 460, which prohibits the take of the species at any time.

Specific impact: Project construction and related activities may result in the injury or mortality of the two species.

Why impact may occur: The DEIR states that during surveys conducted for the Project, one live desert kit fox, one desert kit fox carcass, and 29 desert kit fox burrows were observed, along with five burrows displaying American badger sign. Suitable habitat for both species occurs throughout the Project site.

Evidence impact would be significant: Desert kit fox is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations section 460, and American badger is a CDFW Species of Special Concern. CEQA provides protection not only for CESA-listed species, but for any species including but not limited to Species of Special Concern which can be shown to meet the criteria for State listing.

5-8

Recommended potentially feasible mitigation measure: CDFW supports the inclusion of Mitigation Measure BIO-13 to minimize impacts to desert kit fox and American Badger with the following minor edits in ~~strikethrough~~ and **bold** recommended to ensure impacts are reduced to a level less than significant:

The Applicant shall prepare and implement a plan for desert kit fox and American badger. The plan shall be reviewed, and guidance provided by CDFW prior to the start of ground-disturbing activities. Pre-construction burrow clearance surveys shall be conducted by a qualified biologist to ensure that impacts to American badger and desert kit fox are avoided. The preconstruction survey shall be conducted 14-30 days and 24 hours prior to any vegetation removal or ground-disturbing activities consistent with pedestrian pre-construction survey protocols for the listed species. **Surveys shall also consider the potential presence of dens within 100 feet of the Project boundary.** As part of the survey, burrows observed shall be determined to be either inactive, **potentially active,** or active through the use of wildlife cameras, scope, and tracking substrate or similar. **Active dens shall be avoided between January 15 and July 1 (or when pups are independent) and a 500-foot (no vegetation removal) buffer will be established around the den. Depending on the location of the den, a 500-foot buffer of intact vegetation may need to be maintained all the way up to the fence line to allow cover for desert kit fox and/or American badger to get on and off the site before animals can be passively relocated. CDFW may agree to a reduction in the buffer distance in limited circumstances where site access is inhibited, and a buffer reduction would not adversely affect desert kit fox and/or American badger.** Inactive burrows may be

collapsed by hand or through the use of non-powered tools **and backfilled to prevent reuse** either by or in the presence of a qualified biologist. ~~If active burrows are identified, a non-disturbance buffer shall be implemented around the burrow as selected by a qualified biologist. Active burrows shall be avoided until they are confirmed inactive by a qualified biologist.~~

During the non-breeding/pupping season potentially active dens within the construction footprint shall be monitored by a Biological Monitor for 3 consecutive nights using a tracking medium such as diatomaceous medium or fire clay and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after 3 nights, the den shall be excavated and backfilled by hand. If tracks are observed, dens shall be fitted with one-way trap doors to encourage animals to move off site. After 48 hours post-installation, the den shall be excavated by hand and collapsed. Dens shall be collapsed prior to construction of the perimeter fence, to allow animals the opportunity to move off site without impediment. If an active natal den is detected on the site, CDFW shall be contacted within 24 hours. The course of action would depend on the age of the pups, location of the den site, status of the perimeter fence, and the pending construction activities proposed near the den. A 500-foot no disturbance buffer shall be maintained around all active dens. Additionally, the following measures are required to minimize the likelihood of distemper transmission:

- **Disinfection procedures for equipment and personnel will be followed during any activities related to kit fox on site. Any documented kit fox mortality shall be reported to CDFW within 24 hours of identification. If a dead kit fox is observed, it shall be retained and protected from scavengers until CDFW determines if the collection of necropsy samples is justified.**

5-8 cont.

Comment #6: California Endangered Species Act

Issue: CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. A CESA incidental take permit (ITP) is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 and 2085).

Specific impact: CESA-listed species that the Project will impact include desert tortoise (*Gopherus agassizii*; threatened, candidate for endangered) and Mohave ground squirrel (*Xerospermophilus mohavensis*; threatened).

CDFW recommendation: CDFW acknowledges and appreciates that the Applicant has been coordinating with CDFW to obtain an ITP to cover these two species. CDFW deemed the ITP application complete on August 23, 2023. Please note that final compensatory mitigation will be determined through the ITP process and will likely be higher than the proposed minimum of 1:1 in Mitigation Measures BIO-5 and BIO-9.

5-9

As with the general Project description, CDFW recommends that the Final EIR reconcile any discrepancies in the description of Project impacts to the species, as acreages described in the CESA ITP application are more refined than those in the DEIR.

Mohave ground squirrel: Because no protocol surveys were conducted for Mohave ground squirrel and the Applicant has already assumed presence and submitted their application for an ITP, with no indication that they intend to conduct protocol surveys, CDFW recommends that the Final EIR revise the language in Mitigation Measure Bio-9 (page 4.3-51 and 4.3-61) accordingly (i.e., remove references to conducting protocol surveys to determine absence/presence).

Desert tortoise: CDFW appreciates the inclusion of Mitigation Measure BIO-3, and while the ITP will include additional more fully developed measures, CDFW recommends

incorporating the following language in the DEIR to clarify the intention to avoid unauthorized take: **No desert tortoise may be handled or relocated without authorization from U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW). Applicant shall obtain incidental take authorization from both agencies to address any potential take of desert tortoise, including authorization to handle or translocate desert tortoise. Desert tortoises would be handled or translocated according to a Desert Tortoise Relocation Plan, pending approval by both agencies.**

The Applicant shall employ an approved Authorized Biologist(s) who is qualified to handle desert tortoises and an approved Biological Monitor(s). Additionally, the Applicant shall designate a Lead Biologist as the Designated Representative for purposes of the desert tortoise protection measures identified in the ITP.

5-9 cont.

Comment #7 Lake and Streambed Alteration Program

Fish and Game Code section 1602 requires an 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. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

5-10

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to https://www.wildlife.ca.gov/Conservation/LSA/Forms.

CDFW acknowledges and appreciates that the Applicant has been coordinating with CDFW to obtain a 1600 Agreement for impacts to the identified 1602 resources on the Project site. The Applicant submitted a notification to CDFW on July 25, 2023, with a revised notification submitted on October 31, 2023 which CDFW subsequently deemed complete on November 7, 2023. Compensatory mitigation requirements will be determined through the LSA process and may be more than the proposed minimum of 1:1 in Mitigation Measure BIO-18.

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 (CNDDB). The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

5-11

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.) 5-12

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist San Bernardino County in identifying and mitigating Project impacts on biological resources. 5-13

Questions regarding this letter or further coordination should be directed to Rose Banks, Senior Environmental Scientist (Specialist) at (760) 218-0022 or Rose.Banks@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Alisa Ellsworth
84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

Attachments: Mitigation Monitoring and Reporting Program (MMRP) for CDFW-Proposed Mitigation Measures

ec: Office of Planning and Research
State Clearinghouse, Sacramento
State.Clearinghouse@opr.ca.gov

Attachment 1: 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**
Mitigation Measure BIO-xx Biological Monitoring: The Applicant shall assign a Lead Biologist as the primary point of contact for the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) regarding biological resources mitigation and compliance. For desert tortoise protection measures (Mitigation Measure BIO-3), the Lead Biologist will serve as the Field Contact Representative or Designated Representative. The Applicant shall provide the resume of the proposed Lead Biologist CDFW and USFWS for concurrence prior to onset of ground-disturbing activities. The Lead Biologist shall have demonstrated expertise with the biological resources within the Project area.	Prior to commencing vegetation clearing or ground-disturbing activities	Project Proponent
MM-BIO-3a (to be incorporated with BIO-3): No desert tortoise may be handled or relocated without authorization from U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW). Applicant shall obtain incidental take authorization from both agencies to address any potential take of desert tortoise, including authorization to handle or translocate desert tortoise. Desert tortoises would be handled or translocated according to a Desert Tortoise Relocation Plan, pending approval by both agencies. The Applicant shall employ an approved Authorized Biologist(s) who is qualified to handle desert tortoises and an approved Biological Monitor(s). Additionally, the Applicant shall designate a Lead Biologist as the Designated Representative for purposes of the desert tortoise protection measures identified in the ITP.	Prior to commencing vegetation clearing or ground-disturbing activities	Project Proponent
Mitigation Measure BIO-11: Project construction activities shall avoid being conducted during the nesting bird season (February 1 through August 31), if feasible. Regardless of the time of year, prior to construction activities, including vegetation removal, a preconstruction nesting bird survey shall be conducted by a qualified biologist no more than three days prior to any construction activities including vegetation removal and shall include any potential habitat (including trees, shrubs, the ground, or nearby structures). Should nesting birds be found, an exclusionary buffer (depending upon the species) shall be established by the qualified biologist. The buffer shall be clearly marked in the field by construction personnel under guidance of the qualified biologist. A qualified biologist will continue to monitor active nests adjacent to active work areas to determine whether exclusionary buffers are sufficient to prevent stress or other negative behavioral changes to nesting birds. Exclusionary buffers may be adjusted at any time by a qualified biologist based on project activities and nesting bird behavior. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the no disturbance buffer shall be expanded. No construction activities shall be allowed within the exclusionary	No more than three days prior to vegetation clearing or ground-disturbing activities	Project Proponent

buffer until the qualified biologist determines that the young have fledged or the nest is no longer active. A nesting bird survey report shall be provided to CDFW. If an active nest is encountered during construction, construction shall stop immediately until a qualified biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws		
Mitigation Measure BIO-xx: Bird and Bat Conservation Plan. The Applicant shall prepare and implement a BBCP to avoid or minimize take of migratory birds that may nest on the site or may be vulnerable to collision with Project components. The BBCP shall identify potential hazards to birds during construction and operations and maintenance phases of the Project and specify measures to recognize, minimize, or avoid those hazards. The BBCP shall articulate the Applicant's commitment to reduce risk to birds and bats. Over the course of construction and operations and maintenance, progress and challenges that are encountered may necessitate review or revision of the BBCP, on mutual agreement among the Applicant and the resource agencies. The initial goals of the BBCS are as follows: • Assess potential risk to birds and bats based on the proposed activities • Specify the adaptive management process that will be used to address potential adverse effects on avian and bat species • Describe baseline conditions for bird species present within the Project site, including results of site-specific surveys • Specify conservation measures that will be employed to avoid, minimize, and/or mitigate potential adverse effects to birds and bats • Describe the incidental bird and bat monitoring and reporting that will take place during construction, if not described in the Nesting Bird Management Plan. • Provide details for following systematic post-construction bird and bat monitoring and reporting.	Prior to commencing vegetation clearing or ground-disturbing activities	Project Proponent
Mitigation Measure BIO-12: Focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report*. If burrowing owls are detected during the focused surveys, the qualified biologist and Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Plan shall include the number and locations of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat burrow cannot be avoided, the Plan shall also describe relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated, as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The	Prior to commencing vegetation clearing or ground-disturbing activities	Project Proponent

Applicant shall implement the Plan following CDFW review and approval. Preconstruction burrowing owl surveys shall be conducted by a qualified biologist no less than 14 days prior to the start of Project-related activities. If construction is delayed or suspended for more than 30 days after the survey, the area shall be resurveyed. A secondary survey must be conducted within 24 hours prior to ground-disturbance, in accordance with the *Staff Report*. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report*.		
Mitigation Measure BIO-13: The Applicant shall prepare and implement a plan for desert kit fox and American badger. The plan shall be reviewed, and guidance provided by CDFW prior to the start of ground-disturbing activities. Pre-construction burrow clearance surveys shall be conducted by a qualified biologist to ensure that impacts to American badger and desert kit fox are avoided. The preconstruction survey shall be conducted 14-30 days and 24 hours prior to any vegetation removal or ground-disturbing activities consistent with pedestrian pre-construction survey protocols for the listed species. Surveys shall also consider the potential presence of dens within 100 feet of the Project boundary. As part of the survey, burrows observed shall be determined to be either inactive, potentially active, or active through the use of wildlife cameras, scope, and tracking substrate or similar. Active dens shall be avoided between January 15 and July 1 (or when pups are independent) and a 500-foot (no vegetation removal) buffer will be established around the den. Depending on the location of the den, a 500-foot buffer of intact vegetation may need to be maintained all the way up to the fence line to allow cover for desert kit fox and/or American badger to get on and off the site before animals can be passively relocated. CDFW may agree to a reduction in the buffer distance in limited circumstances where site access is inhibited, and a buffer reduction would not adversely affect desert kit fox and/or American badger. Inactive burrows may be collapsed by hand or through the use of non-powered tools and backfilled to prevent reuse either by or in the presence of a qualified biologist. During the non-breeding/pupping season potentially active dens within the construction footprint shall be monitored by a Biological Monitor for 3 consecutive nights using a tracking medium such as diatomaceous medium or fire clay and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after 3 nights, the den shall be excavated and backfilled by hand. If tracks are observed, dens shall be fitted with one-way trap doors to encourage animals to move off site. After 48 hours post-installation, the den shall be excavated by hand and collapsed. Dens shall be collapsed prior to construction of the perimeter fence, to allow animals the opportunity to move off site without impediment. If an active natal den is detected on the site, CDFW shall be contacted within 24 hours. The course of action would depend on the age of the pups, location of the den site, status of the perimeter fence, and the pending construction activities proposed near the den. A 500-foot no disturbance buffer shall be maintained around all active dens. Additionally,	Prior to commencing vegetation clearing or ground-disturbing activities	Project Proponent

the following measures are required to minimize the likelihood of distemper transmission: • Disinfection procedures for equipment and personnel will be followed during any activities related to kit fox on site. Any documented kit fox mortality shall be reported to CDFW within 24 hours of identification. If a dead kit fox is observed, it shall be retained and protected from scavengers until CDFW determines if the collection of necropsy samples is justified.		

Appendix B

Desert Breeze Agency Consultation Memorandum

Kimley»Horn

Stantec Consulting Services Inc.
2250 Douglas Boulevard, Suite 260
Roseville CA 95661-4207

December 15, 2023

Click or tap here to enter text.

Kevin Butler
Desert Breeze Solar, LLC

Dear Mr. Butler,

Reference: Desert Breeze Agency Consultation

The purpose of this letter is to document the consultation history Desert Breeze Solar, LLC has had with the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) to obtain environmental permits for the incidental take of desert tortoise and Mojave ground squirrel related to construction and operational activities at the Desert Breeze Solar Project (Project).

Desert Breeze Solar, LLC initiated formal Section 10 consultation with the USFWS in July 2022 to discuss the Project, expected species impacts, Habitat Conservation Plan (HCP) permitting timeline, and potential mitigation strategies. CDFW was subsequently contacted in August 2022 to consult on obtaining an Incidental Take Permit (ITP) under Section 2081 of the California Fish and Game Code. Since that time, Desert Breeze Solar, LLC has coordinated with both USFWS and CDFW regarding permitting requirements, Project updates, and mitigation strategy for both desert tortoise and Mojave ground squirrel. During these meetings, USFWS and CDFW staff provided input on Project mitigation measures, including predator attraction and species translocation plan requirements, which was later incorporated into the HCP and ITP permit applications. Specific to predator attraction, USFWS has provided a dollar per acre amount required for Desert Breeze Solar, LLC to contribute to the interagency Raven Monitoring and Management Program to offset potential effects on predator populations in the region resulting from the Project.

Desert Breeze Solar, LLC coordinated draft language and content in good faith with USFWS and CDFW until an HCP and an ITP application were submitted to the USFWS and CDFW, respectively, in May 2023. Following an initial review period, and the submittal of additional information, both permit applications were deemed complete in August 2023. As a result, the amount and extent of take for both desert tortoise and Mojave ground squirrel quantified in the permit applications have been reviewed by both agencies and are considered appropriate based on the Project description. Mitigation ratios have not been finalized for the Project, but will be included in final permits issued by the agencies.

Prior to Project implementation, and in accordance with mandatory conditions of approval under the USFWS and CDFW permits, a draft Desert Tortoise Translocation Plan, which is based on agency guidance, will be submitted to both the USFWS and CDFW for review. This plan will identify suitable translocation sites, handling and transport procedures, and monitoring requirements, which will adhere to the standards set by the agencies during the formal permit consultation process. Work at the Project site will not commence until this plan is approved by the USFWS and CDFW. In addition to obtaining agency approval of the translocation plan, the HCP and ITP will also require formal agency approval of proposed compensatory mitigation sites within a set time following the initiation of Project activities. This approval process includes an agency review of biological resources present at the mitigation sites (including species

Reference: Desert Breeze Agency Consultation

mitigation banks), management plans, endowment funding for long-term maintenance to ensure the mitigation adequately offsets impacts at the Project site.

Sincerely,

STANTEC CONSULTING SERVICES INC.

Mark Noyes
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Michelle Tovar
Sr. Principal Biologist – Practice Leader
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