

DOCKETED

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Organization:	Abengoa Solar
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Compliance Project Manager
Siting, Transmission, and Environmental Protection Division (STEP) Safety and Reliability
Branch Compliance Monitoring and Enforcement Unit
California Energy Commission
715 P Street, MS-2000, Sacramento, CA 95814

4/9/2025

RE: Petition to Amend the Mojave Solar Project (Docket No. 09-AFC-05): Mojave Solar Project, Overnight Solar Project Shared Facilities Petition to Amend, Data Requests Set 1

Dear Ms. Gutierrez:

Pursuant to the Mojave Solar Project (MSP) Shared Facilities Petition to Amend and the data requests set that have been received, questions are answered below by MSP.

1. **CEC Request:** What is the estimated number of workers required for construction of the transmission line? What is the estimated length of time required to complete construction of the transmission line?

MSP Response: 6 to 8 Person Crew for a duration of 38 Days.

2. **CEC Request:** What is the estimated number of truck trips generated by the construction of the transmission line? How many, if any, oversized trucks would be used for the construction of the transmission line?

MSP Response: There will be an Excavator, Crane, Semi-Flatbed Trailer, 2 EA. 120' Bucket Trucks, Cement Trucks, and light duty vehicles. There are going to be at least 4 setups at each work location with multiple trips in light duty vehicles for pulling wire. Total of vehicle trips is approximately 570, considering 15 trips / day.

3. **CEC Request:** Will any transmission line work take place outside of the existing fence line of the MSP facility?

MSP Response: As noted in Figure 2-1 of the Draft EIR for the Overnight Solar Project, the Overnight Solar substation will be located on the project boundary with the Mojave Solar project. Other than tapping the gen-tie into the substation on the Overnight Solar Project, there will be no work to install the gen-tie outside of the MSP boundary. All proposed ground disturbance to install the gen-tie are within MSP fenced property.

4. **CEC Request:** Will existing plant workers build the transmission line, or will a third-party contractor be required?

MSP Response: Overnight Solar will hire a third party contractor to construct the gen-tie, and OSP will ensure that the third party contractor adheres to all construction-related conditions of certification in the MSP decision.

5. **CEC Request:** Provide a schedule for the construction of the transmission line.

MSP Response: Gen Tie Construction Schedule (approximate):

Foundation works- Mar 2026 (16 days)

Frame all Structures - April 2026 (8 days)

Set and Ground All structures- April 2026 (8 days)

Wire Pull- May 2026 (4 days)

Final Connections - May 2026 (2 days)

Total days: 38

6. **CEC Request:** Provide a construction schedule for the substation and solar panels or other OSP site construction activities that require MSP groundwater.

MSP Response:

Solar Construction -Sept 2025 -Aug 2026

BESS Construction -Sept 2025 - Apr 2026

Substation Installation - Jan 2026- Jul 2026

Testing & Commissioning - May 2026 - December 2026

7. **CEC Request:** Provide a map of the MSP and OSP sites and include internal construction roadways required for the movement of groundwater from MSP to the OSP site.

MSP Response: See Attachment 01, Internal construction roadways for movement of groundwater.

8. **CEC Request:** Please provide a revised approval letter from MWA that includes: 1) A description of the construction and operational shared water use; 2) And an approval statement of the shared use and any subsequent concerns the MWA may have, if any.

MSP Response: Jeff Ruesch of MWA (jruesch@mojavewater.org) communicated via email on 3-28-2025 with a clarifying approval statement. See Attachment 02.

- 9. CEC Request:** Please provide copies of all substantive correspondence between MSP and the USFWS regarding the project, including letters and e-mails, related to the proposed installation of the OSP gen-tie line that would run east across MSP. This includes any coordination on the Biological Opinion for the MSP.

MSP Response: Attachment 03 of this letter is Richard Tung's edited version of the HCP document, which informs the USFWS ITP application. See paragraph 2 of Section 1.2.2 of the HCP. Pursuant to a meeting held between CEC and USFWS on 4-1-25, USFWS will also issue a letter (under separate cover) within 1-2 weeks to CEC that will verify coordination with the Biological Opinion for the MSP. The email verification of this is Attachment 04

- 10. CEC Request:** Please confirm that this work would fall under the Biological Opinion and compliance obligations for the MSP. In addition, please confirm that the USFWS considers that this work would be covered under the Biological Opinion and compliance requirements for MSP.

MSP Response: Construction of the OSP gen-tie is identical (except for being shorter) to the construction of the gen-tie line along Alpha East connecting to Beta, performed in 2012. The Alpha East gen-tie construction was covered by the original Biological Opinion, mentioned in CEC's data request. The entire MSP parcel has been cleared of Desert Tortoise, is completely fenced off with Desert Tortoise exclusion fencing, and holds an active ITP for Desert Tortoise. For these reasons, USFWS recommended OSP not include the area for the gen-tie in their HCP, and to utilize MSP's ITP for Desert Tortoise instead.

- 11. CEC Request:** Please provide clarification on whether the construction would be carried out by OSP or MSP workers or if third party workers provide who would be responsible for those workers.

MSP Response: All construction workers for the gentie will be contracted under OSP. OSP and its third-party contractors will be required to follow through with CEC requirements within MSPs operating permit during construction of the gen-tie.

- 12. CEC Request:** Please confirm whether OSP or MSP would be responsible for maintenance of the transmission line during operation.

MSP Response: All maintenance of the gentie is the responsibility of OSP. OSP may contract with MSP to perform the work.

- 13. CEC Request:** Please provide a figure with the dimensions and location of construction activities and location of any equipment and material staging.

MSP Response: No material staging of gen-tie equipment is anticipated on MSP. Material will be staged at OSP in the laydown area marked on the attached drawing. See Attachment 05 (Figure C-1.01)

- 14. CEC Request:** Please provide a discussion of how the existing conditions of certification (COCs) would reduce the proposed transmission line's risk of collisions for special-status and migratory birds. If the existing COCs would not reduce the risk of collision to less than significant, please include proposed mitigation measures to reduce bird strikes, including bird flight diverters, deterrents, or modifications to transmission line design.

MSP Response: For both Construction & Operations of the gentie, OSP and MSP (respectively) will coordinate and comply with BIO-7.5 of MSP's Biological Resources Mitigation, Implementation and Monitoring Plan (BRMIMP):

"Transmission lines and all electrical components shall be designed, installed, and maintained in accordance with the Avian Power Line Interaction Committee's (APLIC's) Suggested Practices for Avian Protection on Power Lines (APLIC 2006) and Mitigation Bird Collisions with Power Lines (APLIC 2004) to reduce the likelihood of bird electrocutions and collisions."

Since the COC includes implementation of BIO-7 including application of APLIC design measures, this substantially reduce risk of collision and we believe this should not be considered a significant impact. Additionally, the OSP FEIR will include APLIC guidelines in the Project Description and Biology Sections.

- 15. CEC Request:** If these impacts are discussed in the Draft Environmental Impact Report for the OSP, please provide a summary and the determination of significance of impacts.

MSP Response: There are mitigation measures in the BRMIMP for MSP. For the avoidance of doubt, OSP is including edits to the FEIR that match BIO-7.5 of MSP's BRMIMP. OSP's FEIR is being reviewed and finalized by San Bernardino County.

- 16. CEC Request:** Provide the locations and status of burrowing owl populations within the MSP site, including mapping of active and historical burrows within the project site.

MSP Response: We have completed burrowing owl surveys on the MSP site per the CEC's requests. Please see Attachment 06, MSP BUOW Status, in collaboration with Corvus Ecological (OSP Biologist) and Rowe Ecological (CEC-Designated MSP Biologist).

- 17. CEC Request:** Provide additional information regarding the potential impacts to burrowing owl from construction of the proposed facilities on the MSP site.

MSP Response: *(Based on OSP's completed ITP application)*

As noted in the ITP Application:

"Habitat Loss and Degradation

The project site contains suitable habitat for the western Burrowing Owl. The construction activities will result in the loss of foraging and nesting habitat for the species. This includes the permanent loss of up to 595.4 acres of habitat

Direct Impacts

Direct impacts to the western Burrowing Owl during construction may include:

- **Crushing by Vehicles or Equipment:** There is a risk of owls being crushed by passenger vehicles or heavy equipment on-site or on access roads
- **Entrapment in Excavations:** Owls may become trapped in pits, trenches, or building materials
- **Disturbance of Burrows:** Construction activities may disturb or destroy burrows used by the owls for nesting and shelter"

Mitigation measures are set forth in our response to Data Response 20.

- 18. CEC Request:** Clarify whether any proposed project activities may indirectly impact burrowing owl habitat within or adjacent to the MSP site.

MSP Response: *(Based on OSP's completed ITP application)*

Indirect Impacts

Indirect impacts to the western Burrowing Owl during construction may include:

- **Increased Predation:** Construction activities may attract predators such as ravens and coyotes, which can prey on the owls
- **Habitat Fragmentation:** The construction of infrastructure and exclusion fencing may fragment the habitat, reducing the availability of suitable nesting and foraging areas
- **Noise and Light Pollution:** Noise and artificial lighting from construction activities may disturb the owls and affect their behavior and breeding success

Mitigation measures are set forth in our response to Data Response 20.

- 19. CEC Request:** Confirm whether OSP will have coverage for incidental take for burrowing owl for the gen-tie line corridor on the MSP site as part of the requested OSP Incidental Take Permit (ITP).

MSP Response: Confirmed. OSP's ITP will be amended, pending CDFW's notification of necessity. Bio-survey along the gentie corridor + buffer for the burrowing owl is in progress. OSP's FEIR is being amended to include clarification that OSP's ITP covers the gen-tie construction.

20. CEC Request: If OSP is expecting incidental take coverage under the OSP ITP, submit a list of any expected avoidance, minimization, or mitigation measures for installation of the gen-tie line.

MSP Response: 1) Prior to project disturbance activities, a qualified biologist(s) familiar and experienced with western burrowing owl shall perform a take avoidance pre-construction clearance survey for burrowing owl occupation for this species in accordance with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. The surveys shall include 100 percent coverage of the Project site and proposed gen-tie within the Mojave Solar Facility, plus a 500-m buffer in adjacent habitat. A report summarizing the surveys including all requirements for survey reports shall be submitted to CDFW for review. If western burrowing owl are not detected during pre-construction surveys, and if no burrows or perch sites have active signs (tracks molted feathers, cast pellets, prey remains, eggshell fragments, decoration, or excrement or scat), then construction related activities may begin and no further action shall be required and no further mitigation under this measure is necessary.

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

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

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

21. CEC Request: Provide the OSP generation output in MW.

MSP Response: Total net capacity provided under the LGIA at high-side of main step-up transformer(s): 150.70 MW.

Total Interconnection Service Capacity provided under the LGIA at Point of Interconnection:

150.00 MW.

See Attachment 07: Appendix C of Interconnection details under the LGIA.

22. CEC Request: Provide one-line diagrams showing how the OSP 230 kV gen-tie line would be connected to the existing MSP gen-tie line at the Alpha Substation. Show possible interconnection points and bay arrangement. Show equipment ratings including breakers, disconnect switches and buses that would be required for interconnection of the OSP.

MSP Response: See Attachment 08: SingleLineDiagram_Overnight_PV and BESS REV_J.pdf

23. CEC Request: Provide the overhead 230 kV gen-tie conductor name, type, size, and rating.

MSP Response: Install a new collector system tie-line from the Large Generating Facility to Alba Substation consisting of a new 1.10 miles of 2B-477 kcmil ACSR, with normal (continuous) rating of 570 A and the emergency (four-hour) rating of 670 A. (iii) Utilize a position on the 220 kV bus at Alba Substation to terminate the new collector system tie-line.

24. CEC Request: Provide the pole structures and measurements.

MSP Response: See Attachment 09, Drawing S-1.03

25. CEC Request: Please provide California ISO approval for the Post-COD Modification. If SCE or California ISO has suggested any impacts and mitigations, please provide that information to staff.

MSP Response: Neither SCE nor CAISO has indicated any impacts or proposed any mitigation measures in the MSP LGIA. The interconnection facilities are covered by the Overnight Solar LGIA. Please see Attachment 10: Southern California Edison Company's (SCE) Conforming Agreement **SCE submits Overnight Solar LGIA (TOT981-SA No. 317)**, which was fully executed and made effective on 02/17/2024.

Yours faithfully,

Mahnaz Ghamati
Quality, Environmental & Compliance Manager
Atlantica Sustainable Infrastructure

Ghamati

ATTACHMENT 01:

Water Route Plan From MSP to OSP



Google Earth

Image © 2025 Airbus

ATTACHMENT 02:

CEC Request for Clarification of MWA_s DEIR Comment



CEC Request for Clarification of MWA's DEIR Comment

From Jeff Ruesch <jruesch@MojaveWater.org>

Date Fri 3/28/2025 8:24 AM

To Daniel Smith <daniel.smith@atlantica.com>

Cc Brian Biering <bbiering@b2energyllaw.com>; Ravneet Singh <ravneet.singh@atlantica.com>; Frederick Redell <frederick.redell@atlantica.com>; Andrew Fifer <andrew.fifer@atlantica.com>; Christy Huiner <CHuiner@MojaveWater.org>

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Daniel,

Mojave Solar, LLC (Mojave) is a stipulating Party to the Mojave Basin Area Adjudication, Barstow, et.al. v Adelanto, et.al. case no. CIV208568, Riverside Superior Court (Court). [Judgment](#) was entered on January 10, 1996 and Mojave stipulated on July 19, 2011. Mojave is in good standing with the Mojave Basin Area Watermaster (Watermaster) and the Mojave Water Agency (MWA).

Mojave currently holds 5,239 acre-feet of Base Annual Production (permanent right) in the Centro Subarea which is quantified annually to a Free Production Allowance (FPA) by the Court. Their FPA currently is 2,934 acre-feet for the 2024-25 Water Year and they have an unused FPA amount from the previous year of 2,882 acre-feet. Their Verified Production for the 2023-24 Water Year was 1,602 acre-feet, which is far below the amount that they could be pumping.

The additional pumping proposed by Mojave of 89 acre-feet per year for the two years of construction and the ongoing 11 acre-feet per year during operation (for ~30 years) is not of concern to Watermaster nor MWA. As a Stipulating Party to the Judgment, Mojave has the right to pump water for use in the Centro Subarea and furthermore, this additional pumping is well within the FPA amount that Mojave is allowed to pump free of any Replacement Obligations under the terms of the Judgment.

Please let me know if you have any questions or concerns.

Regards,

Jeff

Jeffrey D. Ruesch
Watermaster Services Manager
Mojave Water Agency
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"I'm a great believer in luck, and I find that the harder I work, the more I have of it."—

Thomas Jefferson

ATTACHMENT 03:

Overnight Solar HCP Federal Register Approach



Overnight Solar HCP Federal Register Approach

From Tung, Richard D <richard_tung@fws.gov>

Date Mon 12/30/2024 1:33 PM

To daniel.smith@atlantica.com <daniel.smith@atlantica.com>; Brooks Hart <brooks@corvusecological.com>

1 attachment (3 MB)

Overnight Solar Draft HCP_clean.pdf;

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Hi Folks,

I have attached the version of the HCP that is going to the federal register soon. Some small changes have been made when referencing mitigation.

Generally we tried to make it clear that the originally proposed parcel to the west of the project is not finalized as mitigation but is more of an example of what mitigation could look like.

I apologize that no track changes version is available, I am having some version-itis with the pdfs amongst all the reviewing that was done.

If you want to look it over and make sure everything fits into your understanding of what your document should look like, now would be the time to do a final review before it goes to the public.

Thanks,

Richard Tung
Fish and Wildlife Biologist
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, CA 92008

2024

Overnight Solar Energy Project Draft Habitat Conservation Plan



Prepared by Corvus Ecological Consulting

On behalf of Overnight Solar, LLC
1553 W. Todd Dr.
Tempe AZ 85283

September 2024

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Acronyms and Abbreviations

AB	Authorized biologist
Applicant	Overnight Solar, LLC
APN	Assessor's parcel number
BESS	Battery energy storage system
BLM	Bureau of Land Management
BRTR	Biological resources technical report
CA	California
CDFW	California Department of Fish and Wildlife
CDNPA	California Desert Native Plants Protection Act
CI	Confidence interval
DC/AC	Direct current/Alternating current
DTM	Desert tortoise monitor
ESA	Endangered Species Act
FCR	Field contact representative
Gen-tie	Generation interconnect
HCP	Habitat conservation plan
ITP	Incidental take permit
kV	Kilovolts
MBTA	Migratory Bird Treaty Act
MCL	Midline carapace length
MDAQMD	Mojave Desert Air Quality Management District
MDT	Mojave Desert tortoise
MGS	Mohave ground squirrel
MSP	Mojave Solar Project
MW	Megawatts
MV	Medium-voltage
NMFS	National Marine Fisheries Service
O&M	Operations and maintenance

PCS	Power conversion system
POI	Point of interconnection
PRM	Permittee responsible mitigation
PV	Photovoltaic
RECE	Renewable energy conservation element
ROW	Right-of-way
SCADA	Supervisory control and data acquisition
SCE	Southern California Edison
SR	State route
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
WEAP	Worker environmental awareness program

1 Introduction

1.1 Overview

This Draft Habitat Conservation Plan (HCP) has been prepared by Corvus Ecological Consulting on behalf of Overnight Solar, LLC (applicant; Overnight Solar) in support of an application to the U.S. Fish and Wildlife Service (USFWS) seeking an incidental take permit (ITP) for the federally threatened Mojave desert tortoise (MDT; *Gopherus agassizii*). Incidental take of MDT could occur in association with the construction, operation, and decommissioning of the proposed Overnight Solar Energy Project (project) near Hinkley, California (CA) in San Bernardino County.

An HCP describes the proposed action and identifies potential adverse effects to federally listed species (e.g. Mojave desert tortoise); minimization measures to reduce risks to covered species; and proposed mitigation for adverse effects of the proposed action on covered species. This document follows the guidelines and regulations identified in Section 10 of the Endangered Species Act (ESA) and its implementing regulations, and USFWS's Habitat Conservation Planning and Incidental Take Permit Processing Handbook (USFWS, 2016).

Activities covered by this HCP will be completed by the applicant's employees and contractors. For purposes of this HCP, the applicant is requesting authorization for incidental take of MDT for 45 years and will assess the need to extend the ITP near the authorization period's end, or upon change of circumstances or conditions.

The applicant proposes to construct and operate a utility-scale, solar photovoltaic (PV) electricity generation facility with a battery energy storage system (BESS), to produce up to 150 megawatts (MW) of power and include up to 150 MW of battery storage capacity. The project will be built on approximately 595.4 acres of land, plus a generation interconnect (gen-tie) corridor approximately 1.1 miles in length and 80 feet in width, connecting the proposed facility to an existing gen-tie line associated with the Mojave Solar Facility (Figure 1). The Mojave Solar Facility is already enclosed within an existing solar facility where take of federally listed species (e.g., MDT) was addressed in a biological opinion issued by USFWS to the Department of Energy and Bureau of Land Management (BLM). (USFWS 2011). A gen-tie for the Mojave Solar Facility currently transmits electrical power output to the existing Southern California Edison (SCE) Sandlot Substation, which interconnects the 230 kilovolt (kV) SCE Kramer-Coolwater Transmission Line, and ties into the Kramer-Junction Substation at the point of interconnection (POI), where energy is delivered to the power grid. The project site consists of two parcels: Assessor's Parcel Number (APN) 0490-183-65, which will contain the proposed solar facility, BESS, and supporting infrastructure; and APN 0490-012-149, which will contain the proposed gen-tie line.

The applicant selected the project site based on its proximity to existing energy projects and electrical transmission infrastructure to limit new disturbances and minimize the need for new components required to connect to the power grid. These nearby developments include the existing solar thermal Mojave Solar Project (MSP) and Lockhart Solar. The project is also in proximity to several high-voltage substations and transmission lines owned by Southern California Edison (SCE) and the Los Angeles Department of Water and Power, and major highway and railroad infrastructure. The project site has historically been used for agriculture and there are preexisting environmental impacts that affect its habitat and biodiversity. The project is designed in accordance with San Bernardino County's Solar

Ordinance (an ordinance amending Development Code Chapter 84.29, Renewable Energy Generation Facilities) and the General Plan Renewable Energy and Conservation Element (RECE), which strives to preserve the character of the plan area and surrounding communities.

Power generated from the proposed facility will contribute to the Renewables Portfolio Standard identified in California's Clean Energy and Pollution Reduction Act of 2015 (Senate Bill 350), which requires 50 percent of all electricity sold in California to be generated from renewable energy sources by December 31, 2030. The power generated will be sold to California investor-owned utilities, municipalities, community choice aggregators, or other purchasers in furtherance of the goals of California's Renewables Portfolio Standard.

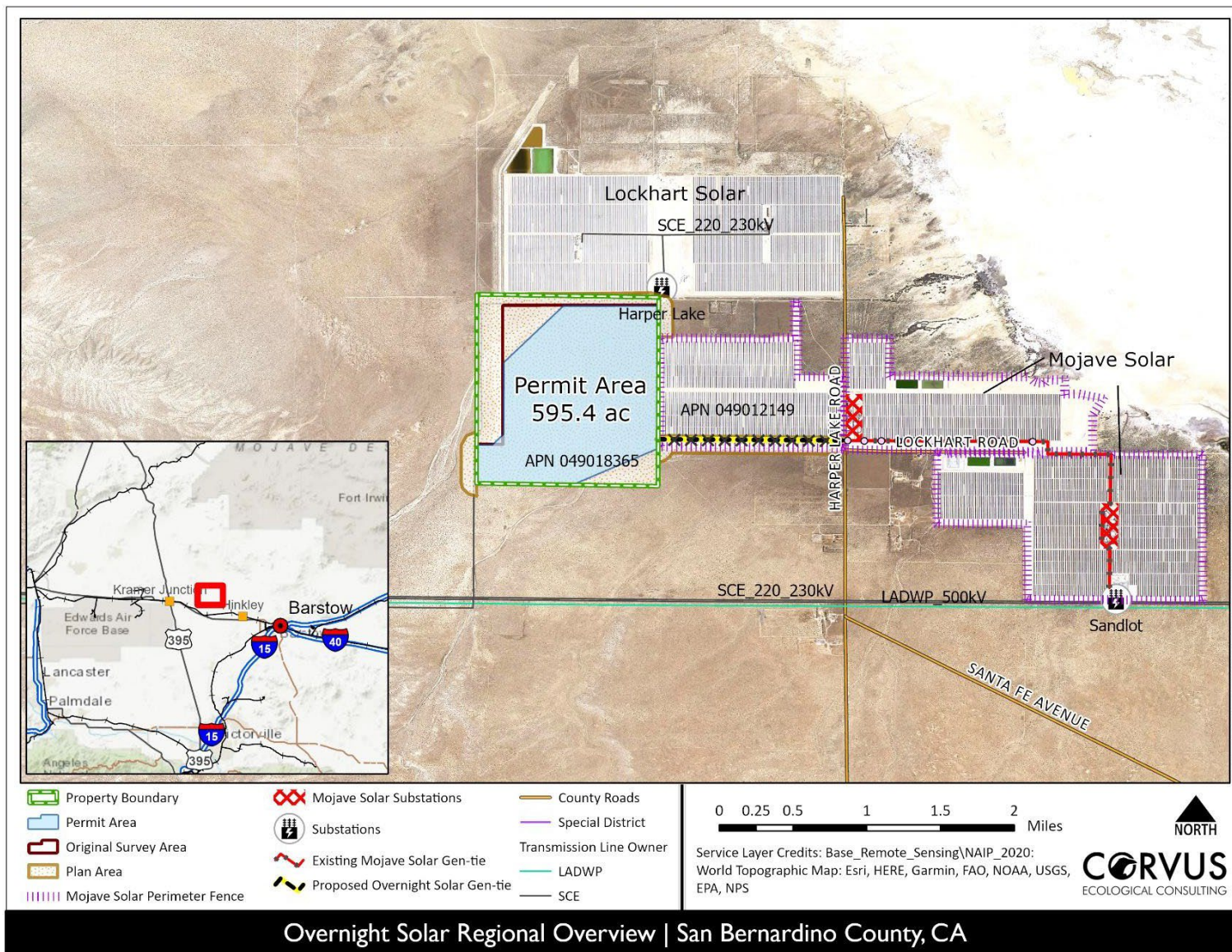


Figure 1. Overnight Solar Regional Overview

1.1.2 Project Term

The proposed facility and associated infrastructure have an anticipated operational life of up to 35 years. At the end of the operational term, an assessment of the validity of the facility and the infrastructure will determine whether it should be decommissioned and deconstructed or if an ITP renewal should be requested. Decommissioning will take place up to the remainder of the 45-year permit term. If any portion of the facility or infrastructure is decommissioned, it will be converted to other uses in accordance with the applicable land use regulations in effect at that time.

1.2 Plan Area

1.2.1 Plan Area Location

The plan area is within unincorporated Lockhart, CA, on primarily flat and undeveloped land. The area is in proximity to existing high-voltage electrical infrastructure and existing solar energy facilities, including the Lockhart Solar Facility to the north and Mojave Solar Facility to the east. Land to the south and west is vacant and undeveloped land. The project site is approximately 10 miles northwest of Hinkley, CA, approximately 10 miles east of Kramer Junction, CA, and approximately 6 miles north of the State Route (SR) 58 and Harper Lake Road junction. Vehicular access to the project site is from Lockhart Ranch Road extending eastward to Harper Lake Road via SR 58.

1.2.2 Plan Area Components

The plan area consists of all areas used for activities in the HCP, including covered activities and conservation programs (mitigation areas and translocation sites). The permit area describes the geographic area where the impacts of the proposed action will occur, and for which incidental take permit coverage is requested. In this case, the permit area is the 595.4-acre project footprint that will be developed into a solar PV electrical generating facility with a BESS (Figure 1). The facility will include a PV array with panels up to 20 feet high; a one-story control building to contain protective relays and communications infrastructure; an operations and maintenance (O&M) building; a 150-MW BESS; a 300 by 300-foot high-voltage substation; perimeter/interior site fencing; and potentially stormwater retention basins within the fenced permit area.

The plan area includes a new gen-tie, approximately 1.1 miles in length, to be constructed on the existing Mojave Solar Facility, which has a shared services agreement with the applicant (Figure 2). The gen-tie will connect the project with an existing gen-tie location near the Alpha Substation. No expansion of the existing Alpha or Sandlot substations' footprints is anticipated. The gen-tie line will be aligned along the north crest of the existing stormwater drainage canal. This new gen-tie line will be built on land where take of federally listed species (e.g., MDT) was already addressed in a biological opinion issued by USFWS. Therefore, the gen-tie is not included in the permit area for this project. The existing connections to the POI will remain as described above (Figure 1).

Original development plans included an additional 76 acres northwest and southeast of the project site that includes known MDT habitat and jurisdictional waters. After early consultations with USFWS and results from surveys, this land will not be developed as part of the project site. Instead, 156.65 acres of land to the northwest, and west of the current project footprint could serve as a MDT translocation area under the passive translocation approach described in this document (Figure 3). Individual MDTs would be translocated to suitable habitat directly adjacent to the project's northern and western boundary

within 300 feet of the perimeter fence. This area proposed for translocation is part of the plan area but not included in the permit area for this project.

Mitigation to offset project impacts to desert tortoise is still under consideration and will be completed within 18 months of permit issuance. If the mitigation is in part or in whole in the form of habitat acquisition, those mitigation lands will be included in the plan area once finalized. Any mitigation land would not be included in the permit area.

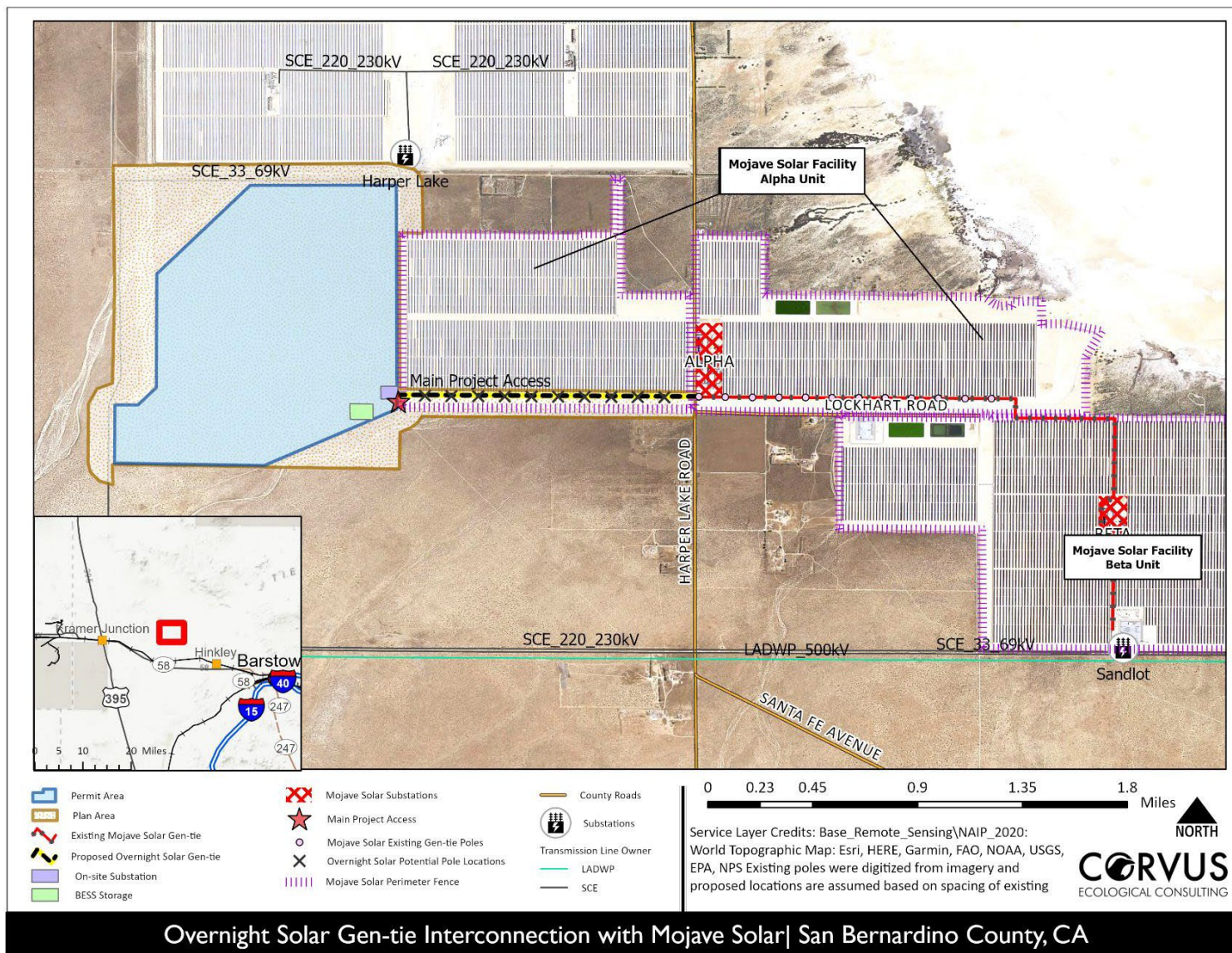


Figure 2. Overnight Solar Gen-tie Interconnection with Mojave Solar

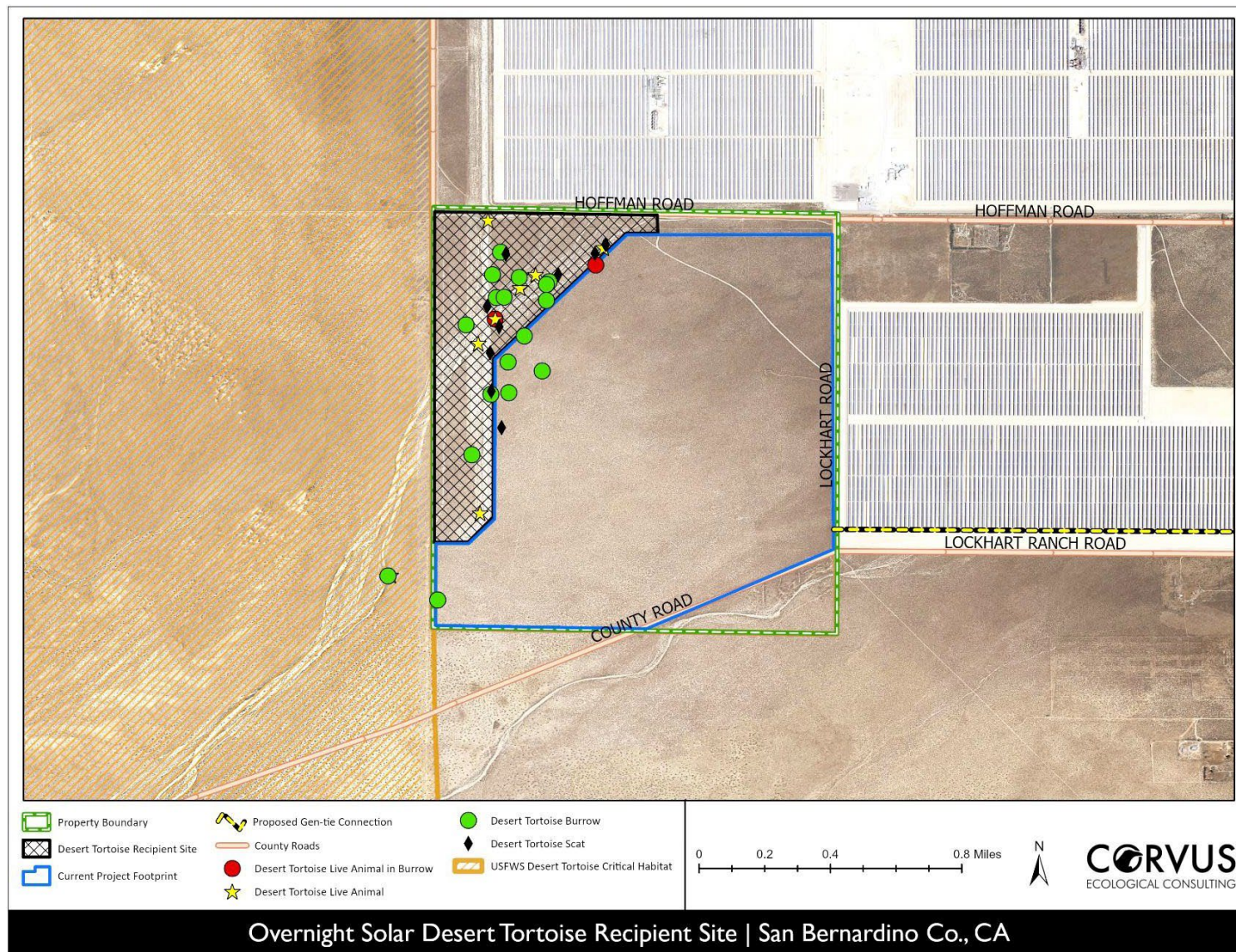


Figure 3. Overnight Solar Mojave Desert Tortoise Translocation Area

1.3 Species Proposed for Coverage

During April of 2023, Corvus Ecological Consulting assessed 672 acres of the plan area considered suitable for development to identify potential presence of sensitive species documented in the vicinity and/or whose habitat requirements are present within the site. As mentioned above, 76 acres of the original survey area was identified as active MDT habitat and based on consultation with USFWS will not be developed as part of the project site. Complete results of these desktop analyses and protocol level wildlife survey efforts are presented in the appended Overnight Solar Energy Biological Resources Technical Report (BRTR) (Corvus, 2024).

Based on the desktop analysis and survey results, MDT occur in the vicinity of the proposed Overnight Solar Energy Project and could be present within the project footprint. Despite excluding areas of occupied MDT habitat from the project site, incidental take of MDT is reasonably certain to occur as a result of covered activities. These impacts include but are not limited to habitat modifications, vegetation loss, loss of breeding territory, increased vehicle traffic, addition of artificial substrates and materials, potential increases in subsidized predators, reduced biodiversity, reduced foraging opportunities, physical obstacles to movement, compacted soils, environmental contamination, direct encounters with vehicles and humans, and reduced groundwater retention.

In addition to MDT, the literature review indicated that western snowy plover (*Charadrius alexandrinus nivosus*), an ESA-listed species, had potential to occur on the project; however, no suitable habitat for this species is available in any portion of the plan area, and no evidence of species' presence was detected during surveys. The listing rule covers all birds within 50-miles of the coast, which does not include the project site (USFWS, 2007). Project development plans do not create artificial habitat suitable for this species, and it is highly unlikely to be impacted by permitted activities. Details about sensitive species considered for potential impacts are included in the Overnight Solar Energy Project BRTR (Corvus, 2024).

The applicant is solely seeking federal incidental take coverage for MDT for the proposed action.

2. Proposed Action

This section describes activities proposed for coverage under this HCP. This section includes detailed descriptions of proposed actions and sub-activities that may impact the covered species, MDT, including figures showing the solar facility footprint and gen-tie components.

2.1 Description of Proposed Facilities and Covered Activities

2.1.1 Facilities and Components

Construction and operation of the combined facilities associated with the proposed action will be covered activities and include the following components:

Solar Array

Solar panels will be mounted on a single-axis tracking racking system or a fixed-tilt racking system that will be supported by driven piers (piles) or helical ground anchors directly embedded into the ground. Panels will be organized in rows in a uniform grid pattern, with each post row separated by approximately 10 to 20 feet. Panel height is proposed at a maximum of 20 feet.

Inverters and Switchgear

Individual PV panels will be electrically connected in series to create a “string” to carry direct current (DC) electricity. Strings of DC electricity will be routed to inverters, which will take the DC output and convert it to alternating current (AC) electricity.

The centralized inverters and transformers will be supported on concrete or steel equipment pads about 10 feet by up to 50 feet. Support piers may be used in lieu of equipment pads. The inverters and transformers will be 5 to 10 feet in height and placed to minimize shading on the array. The AC power from inverters/transformers will be collected and transported to an on-site substation via aboveground power lines where the AC will be further transformed to 230 kV.

Project Substation

The project will include one on-site substation holding high-voltage equipment (Figure 2), which will be unenclosed, occupy an area of approximately 300 feet by 300 feet, and be separately protected with security fences meeting the requirements of the 2023 National Electrical Safety Code 9. Within the substation fence, the electrical equipment could reach approximately 65 feet tall at the highest points, which meets the maximum allowable height for solar energy facilities pursuant to County Development Code Section 83.02.040(c)(2)(Q). A small one-story, rectangular control building, housing the communication and supervisory control and data acquisition (SCADA) equipment (if required), will also be in the substation footprint.

From the project substation, a gen-tie line will be constructed to connect the solar facility to its Inter-Tie location, which will be an existing gen-tie line approximately 1.1 miles east of the proposed solar facility, just south of the existing Alpha Substation.

Battery Storage

The 150-MW BESS is expected to be constructed adjacent to and just west of the on-site substation on approximately 4.2 acres (Figure 2). Key components of the BESS include:

Batteries. Individual lithium-ion cells form the core of the BESS. Cells are assembled into sealed battery modules connected either in series or parallel configuration. The modules would be installed in self-supporting racks electrically connected to one another.

BESS Enclosure and Controller. The BESS enclosure will house the batteries and the BESS controller. The BESS controller is a multilevel control system and includes the battery modules, power conversion system (PCS), and medium-voltage (MV) system where the BESS will connect to the project substation, and then connect to the electrical grid via the proposed gen-tie line and grid interconnection as described below. The BESS enclosure will also be equipped to house required heating, ventilation, and air conditioning, and fire protection/suppression systems.

DC/DC Converter. In a DC-coupled system, the DC/DC converter usually allows the connection of the BESS to the DC side of the PV inverter. The DC/DC converter manages the battery and PV bus voltage and provides proper protection for the PV inverter.

Power Conversion System – Inverter. The PCS typically consists of an inverter, protection equipment, circuit breakers, air filter equipment, equipment terminals, and cabling installed throughout the site. Electricity is transferred from the PV array to the project batteries during a battery charging cycle and from the project batteries to the power grid during a battery

discharge cycle through BESS connection with the project substation. This connection links the project to the power grid via the proposed gen-tie line. The inverter is bi-directional, with the ability to convert power from AC to DC when the energy is transferred from the grid to the battery and from DC to AC when the energy is transferred from the battery to the grid.

MV Transformer. A separate MV transformer may be present if not integrated into the inverter skid. This will be a pad-mounted transformer used to increase voltage on the AC side of the inverter from low to MV. MV transformers are used to increase the efficiency of power transmission by reducing resistive power losses at the higher voltage.

Gen-Tie Line and Interconnection

As described in Section 1, from the on-site project substation, the proposed gen-tie line will be constructed along property already owned, developed, and operated by the applicant, to connect the proposed solar facility's output to an Inter-Tie location. The Inter-Tie will be an existing gen-tie line within the developed and operational Mojave Solar Facility, 1.1 miles to the east, just south of the existing Alpha Substation (Figure 2). The new gen-tie line will be approximately 1.1 miles in length and will run within the perimeter fence of the existing Mojave Solar Facility, along the northern or southern side of an existing drainage canal. No easements or rights-of-way (ROW) will be needed. The gen-tie corridor will temporarily be 120 feet wide during construction and will ultimately be 80 feet wide once operational.

Approximately 10 gen-tie poles are expected to be up to 80 feet in height. The gen-tie line will be 230 kV to accommodate the electric circuit(s) necessary to interconnect the project substation with the existing gen-tie line just south of the Alpha Substation. The on-site substation tie-in pole will be up to 65 feet in height. The project will obtain a height variance for these poles, and the poles will be designed to meet all the latest requirements for high-voltage transmission lines.

No expansion of the existing Alpha or Sandlot Substations' footprints is expected. SCE will conduct a limited scope of work within and surrounding the existing substations, as needed, to connect the solar project to the SCE system. Installing underground telecommunications (telecom) facilities, both inside and outside the new on-site substation, and any existing substation fence line, will be performed by the applicant to meet SCE requirements.

Access Roads

On-site access roads, with a minimum width of 20 feet, may be constructed along the project's interior fence line. The maximum width of all on-site roads will be 26 feet. Lockhart Ranch Road will be the primary road used by the project. A main access point for equipment and personnel accessing the site will approximately be located at (35.012184, -117.348747) on Lockhart Ranch Road (Figure 4). All on-site roads will consist of compacted native soil following San Bernardino County Fire Department requirements. All roads will be stabilized with soil stabilization material, if necessary. Improvements to off-site access roads, including potential paving and widening, will be completed as needed according to County standards and in consultation with the County Department of Public Works and Land Development Division. The 1-mile stretch of Lockhart Ranch Road between the project site and Harper Lake Road will be paved after construction is complete (Figure 4).

Perimeter/Interior Fencing

Fencing is proposed along the permit area perimeter or set back at least 15 feet from the permit area boundary. The on-site substation will be separately fenced due to the presence of high voltage exposed electric equipment and will be constructed following safety requirements. Chain link fencing will be 6 feet in height with a 1-foot extension of three rows of barbed wire to give an overall fence height meeting the 7-foot safety requirement. MDT exclusion fencing will be attached to the lower 2 feet of perimeter fencing to prevent access. Gates will be installed at both entry points, at the main gated entry at the north turn of Lockhart Ranch Road and one smaller gated entry at the west end of the north border, utilizing the existing powerline easement road (Figure 4).

Stormwater Facilities

Site drainage will be designed to follow natural drainage patterns. None of the on-site facilities, including fences and panel posts, will be expected to prevent stormwater flow. Long shallow strip retention basins are proposed to capture possible “100-year”, 24-hour increase in runoff volume resulting from clearing of vegetation, compacting of soil, and limited impervious (paved or structural) improvements.

Other Infrastructure

Telecommunications equipment, such as fiber-optic lines, a SCADA system, and auxiliary power, will be installed throughout the project site at each inverter equipment pad and the substation.

Telecommunications equipment will be brought to the project from existing telecommunications infrastructure in the project vicinity and may be co-located on aboveground structures, such as transmission lines. On-site trenching could be needed to install some of the telecommunication equipment.

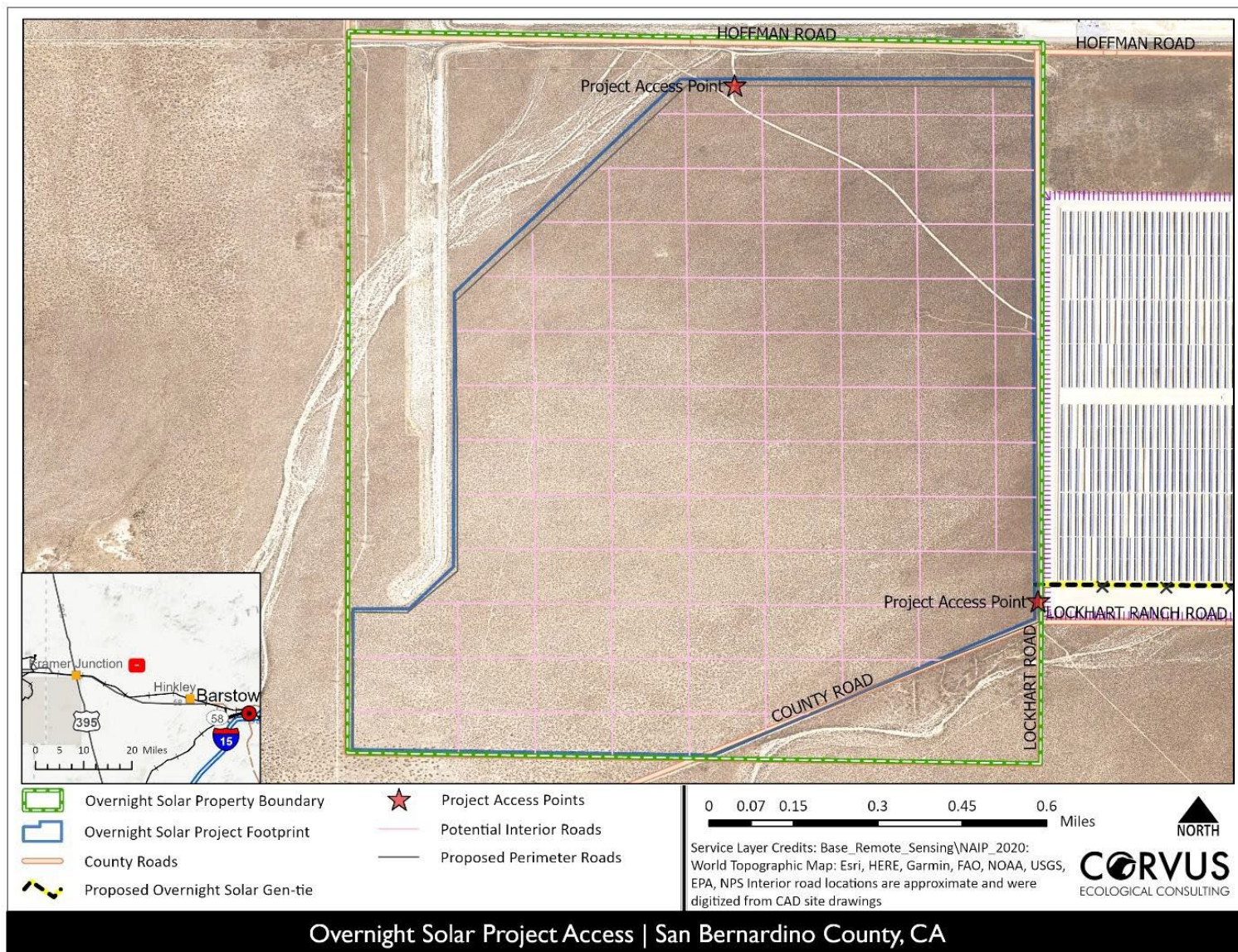


Figure 4. Overnight Solar Project Access

2.1.2 Construction Activities

Construction Activities, Timing, and Workforce

Construction of the project is expected to occur in one phase, over about 26 months, from approximately spring/summer 2025 until the end of fall/winter 2026 (Table 1). The project will be constructed in multiple overlapping stages including: 1) fencing, site preparation, and grading; 2) solar array installation (including the installation of solar array structural components including cables, piles, racking systems, inverters, modules, and panels); and 3) BESS construction (including BESS, commissioning, and testing). The order in which the project will be constructed is further described below:

1. Fencing, site preparation, grading, and preparation of construction staging areas and on-site access routes
2. Installation of the racking system, equipment pads, and foundations
3. Installation of solar panels and other electrical components
4. Installation of project substation equipment, the gen-tie line, and all other facilities including the BESS system
5. Interconnecting the project gen-tie line with the existing gen-tie at the Inter-Tie location

After the permit area is fenced and secured, equipment will be delivered to the various construction staging areas within the site. Delivery will typically be by flatbed or enclosed semi-trailer truck. The largest piece of equipment will be the transformer for installation within the on-site substation. This will not be delivered until near the end of construction as the lead time is typically 12 to 24 months from the date of order.

If a pile foundation is considered the best design instead of helical ground anchors, placement of solar panels will require driving piles 6 to 10 feet into the ground. In areas where geotechnical analysis has found piles may not be possible or cost effective, conventional foundations (such as isolated spread foundations, continuous footings, or ballasted racking, which uses concrete or other heavy material to stabilize the feature) may be used, but this is not expected. Alternatively, piles may need to be driven deeper based on further geotechnical analysis. During the installation of the foundation pilings, noise concerns may develop from the machines driving the piles into the ground. The nearest sensitive receptors are rural residences along Harper Lake Road, the closest being approximately 1 mile east of the proposed solar facility and 0.3 mile south of the proposed gen-tie line.

Other construction equipment may include pickup trucks, automobiles, cement trucks, water carriers, and the like. Equipment deliveries will occur during the daylight hours of 7 a.m. to 6 p.m. on weekdays. Deliveries outside these hours will be kept to a minimum.

An average of 150 workers may be on-site during each stage of construction, depending on the activities. The peak number of workers on the project site at any time is expected to be 300. The workforce will consist of laborers, craftspeople, supervisory personnel, and support personnel. On average, it is expected each worker will generate one round trip to the project site per workday.

Construction will generally occur during daylight hours, though exceptions may arise because of the need for nighttime work. Workers will reach the project site using Harper Lake Road to Lockhart Ranch Road. Portable toilet facilities will be installed on-site for use by construction workers. Waste disposal

will occur at a permitted off-site receiving facility. Domestic water for use by employees will be provided by the construction contractor through deliveries to the project site.

Table 1. Anticipated Construction Schedule, Trips, and Equipment

Construction Stage	Equipment Used			Daily Vehicle Trips
	Type	Number	Hours/Day	
Site Preparation/Grading Spring/Summer 2024 – Winter/Fall 2026	Tractors/Loaders/Backhoes	1	12	Assumed a maximum of 600 one-way worker trips for all stages at any time.
	Off-Highway Truck	1	12	
	Scrapers	1	12	
	Graders	2	12	
	Rubber-Tired Bulldozers	1	12	
Solar Array Construction Spring/Summer 2024 – Winter/Fall 2026	Cranes	1	12	No one-way vendor trips for all stages at any time.
	Forklifts	5	12	
	Trenchers	2	12	
	Skid Steer Loaders	2	12	50 one-way on-site haul truck trips for all stages at any time.
	Generator Sets	12	12	
	Bore/Drill Rigs	1	12	Assumed 2 miles of on-site truck travel for each stage.
	Aerial Lift	2	12	
	Tractors/Loaders/Backhoes	1	12	
	Welders	12	12	
BESS Construction Spring/Summer 2024 – Winter/Fall 2026	Cranes	2	12	Assumed a maximum of 600 one-way worker trips for all stages at any time.
	Forklifts	5	12	
	Off-Highway Truck	1	12	
	Generator Set	10	12	No one-way vendor trips for all stages at any time.
	Bore/Drill Rigs	1	12	
	Trenchers	2	12	50 one-way on-site haul truck trips for all stages at any time.
	Aerial Lifts	3	12	
	Skid Steer Loader	1	12	Assumed 2 miles of on-site truck travel for each stage.
	Tractors/Loaders/Backhoes	3	12	
	Welders	3	12	

Site Preparation and Grading

The majority of the site will be mowed/crushed. Limited grading will be necessary to satisfy San Bernardino County 100-year storm water retention requirements. The project site's cut and fill will balance and no importing or exporting of materials will be necessary. During construction, the project will use up to 200 acre-feet of water for construction. The project will buy water supplied by existing on-site wells at the adjacent Mojave Solar Facility.

Prior to any site preparation, security fencing and MDT exclusion fencing will be placed around the project site permit area. MDT exclusion fencing will prevent ingress and egress of MDT (see Section 2.1.5). These fences will also allow materials and equipment to be securely stored on-site and prevent theft and vandalism. Storage containers may be used to house tools and other construction equipment. In addition, security guards will regularly monitor the project site. Per Mojave Desert Air Quality Management District (MDAQMD) requirements, the project will develop a dust control plan that describes all applicable dust control measures to address and suppress construction-related dust. Components of the plan will likely include water trucks to spread water, as well as road stabilization with chemicals, gravel, or asphaltic pavement to mitigate visible fugitive dust from vehicular travel and wind erosion.

Construction Access Routes and Laydown Areas

Construction vehicles will access the project site from Lockhart Ranch Road, via Harper Lake Road and SR 58. The project will use the proposed BESS site, next to the proposed on-site substation, as the laydown area for project components and construction equipment.

Hazardous Materials

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

Hazardous Waste

Hazardous waste may be generated during project construction. This waste may include waste paint, spent construction solvents, waste cleaners, waste oil, oily rags, waste batteries, and spent welding materials. Workers will be trained to properly identify and manage hazardous materials. Hazardous waste will be either recycled or disposed of, as allowed by permit, at a permitted and licensed treatment and/or disposal facility.

2.1.3 Operations Activities

The project will generate solar electricity from the PV system during daylight hours and may discharge power for sale onto the power supply grid from the BESS at various times during the daytime and nighttime. In addition, project operations will be monitored remotely via the SCADA system, and the project site will not require the presence of full-time, on-site employees; however, occasional

operational and maintenance visits will occur. If unanticipated issues arise, staff will be available to respond and be on-site within 15 minutes.

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

Water will be needed for panel washing activities and general maintenance. Operational water demands will total approximately 11 acre-feet per year. The frequency of panel washing will be based on soiling of the PV panels and expected benefit from cleaning. However, panel washing will be needed at least once per year and potentially up to 4 times per year. Panel washing may require up to 12 employees with water trucks and will take approximately 20 days to complete. When cleaning is necessary, water will be sprayed on the PV panels to remove dust. This water will be obtained from existing wells at the adjacent Mojave Solar Facility. Temporary operations and maintenance employees will use the existing operations and maintenance facilities at the adjacent Mojave Solar Facility for domestic water and toilet facilities.

2.1.4 Decommissioning Activities

When operations at the project site are permanently terminated, the facility may be decommissioned.

Most components of the proposed system are recyclable or can be resold for scrap value.

Decommissioning will 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.

The battery modules included in the BESS eventually will be disposed of in accordance with the applicable hazardous waste requirements. These materials will be managed to prevent accidental release.

The average life of a PV plant is considered to be 35 years, after which decommissioning, and removal will be considered. Decommissioning will be determined by the PV plant owner, who will pay the costs for dismantling and having the materials transported off-site. After materials removal, the site will be made available for other purposes.

The decommissioning will be performed by the applicant or at such time by the successor owner of the PV plant per the County's RECE Goal RE-4 Environmental Compatibility Policy, specifically Policy RE-4.5, which governs the decommissioning requirements. A bond will be provided at the outset of construction to cover the agreed-upon costs of decommissioning and will be returned when decommissioning is satisfactorily accomplished.

2.1.5 Design Features

Mojave Desert Tortoise Security/Exclusion Fencing

Prior to ground-disturbance activities, MDT exclusion fencing will be installed around work areas according to the specifications provided by the USFWS Desert Tortoise Field Manual (2009). All entry points to the site will include gates with attachments at the bottom to exclude MDTs or turn-around fencing per USFWS guidance. Shade structures will be installed according to USFWS guidance (USFWS, 2018) along exterior of exclusion fence to supply cooling opportunities for MDTs that may pace the

fence. These structures will be checked by a biologist as part of the fence inspection. Following installation, fencing will be inspected for damage by a biologist daily during construction. During the O&M phase, the fence will be inspected by a trained employee or designated biologist monthly and immediately after major rainfall events. Temporary repairs to fencing will occur immediately; permanent repairs must be made within 3 days of observation. Inspections will occur for the life of the solar facility.

Security gates will be installed at the solar facility entrances and Overnight Solar will ensure gates remain closed except when vehicles enter or exit. Gates will be designed with minimal ground clearance and an add-on attachment, like carpet, will prevent ingress by wildlife, particularly MDT. Gates may be electronically activated to close after vehicles pass to prevent extended periods in the open position.

Site Preparation and Permanent Disturbance

Grading will be minimized to reduce unnecessary soil movement that may result in dust generation. Earthworks scrapers, excavators, dozers, water trucks, paddlewheels, haul vehicles, and graders may all be used in site preparation. Grading will be balanced on-site, with no need for the export or import of soil. A stormwater Pollution Prevention Plan and soil erosion control plan will be implemented per California Stormwater Quality Association's Best Management Practices Handbook (2023).

Native Plants & Weed Management

Overnight Solar will minimize vegetation loss and ground disturbance to the greatest extent possible. Soil stabilization and re-vegetation may be used as needed, utilizing native plant species and certified weed-free plants/hay/seed/erosion control. The project will be monitored for invasions of weeds, and patches will be eradicated using hand-pulling, mechanical, or herbicide treatments using the least-toxic means practical.

2.2 Mojave Desert Tortoise Translocation

The permit also authorizes take that may result from the HCP's required conservation and monitoring measures. These efforts are detailed below.

2.2.1 Translocation Recipient Sites

Translocation of MDT to the approved recipient site is a covered activity of this HCP. In coordination with the USFWS and California Department of Fish and Wildlife (CDFW), MDT detected within the exclusion fence will be either allowed to exit the permit area on their own volition through sections of the perimeter fencing left open prior to a clearance survey and construction or if MDT are detected during clearance surveys they will be captured and moved onto adjoining land owned by the applicant (Figure 3). This proposed translocation area is 156.65 acres. To the extent possible, direct handling of MDTs will be avoided in favor of allowing MDT to exit the site on their own. This option offers lower impact and risk to the individual resident MDTs, as well as to the species, by avoiding handling, long-term tracking and transmitter hardware, and movement of animals to unfamiliar habitat.

Further details about the translocation areas and translocation of MDT from the project site will be provided in a Mojave Desert Tortoise Translocation Plan prepared for the project. The translocation plan will provide background information about resident onsite individuals based on the findings of project-specific studies conducted to-date for MDT within the plan area. The Mojave Desert Tortoise Translocation Plan will assess the suitability of the proposed translocation area and provide a framework and procedures for the movement of MDT from the permit area in support of the proposed action. The

translocation plan will be consistent with current USFWS guidelines and will be reviewed and approved prior by USFWS prior to any translocation activities.

2.2.2 Mitigation Lands

This section describes the compensatory mitigation to offset the permanent disturbance of MDT habitat resulting from the proposed action. The issuance criteria for an ITP under section 10(a)(2)(B) of the ESA include a requirement to mitigate the effects of incidental taking to the maximum extent practicable. Mitigation to offset the effects of the taking will be achieved through the permanent conservation of 595.4 acres of MDT habitat, which is equal to the area of permanent disturbance for the proposed permit area.

Within 18 months following permit issuance, the applicant will provide documentation to the Service that they have completed the mitigation requirements to conserve 595.4 acres of MDT habitat. This may be in the form of "permittee responsible mitigation" (PRM), purchase of credits at an approved conservation bank, or a combination of the two. In the case of PRM, the permittee would submit a Habitat Mitigation Lands Acceptance package for approval by USFWS and CDFW.

Future management activities within the properties set aside as mitigation for the proposed action would be provided in an Enhancement and Monitoring Plan prepared by the applicant and will be submitted to the USFWS for approval. The Enhancement and Monitoring Plan will identify the implementation of start-up activities, interim monitoring and management activities, and long-term monitoring and management activities funded by the non-wasting endowment set-up by the applicant for the proposed action. Possible considerations may include:

- Installation of fencing and vehicle barriers to prevent encroachment into sensitive areas (e.g., streams, washes, occupied habitat)
- Vertical mulching
- Species and vegetation monitoring
- Habitat enhancement (e.g., planting native plants to increase the ecological value and function of an area)
- Other activities determined by the USFWS that will benefit MDT

2.3 Minimization Measures

Every reasonable effort to avoid and minimize impacts to wildlife, including MDT, resulting from the proposed action will be included in this HCP. To avoid and minimize impacts to listed and other sensitive species, the applicant proposes the following minimization measures divided into two categories: (1) MDT-specific measures, which aim to further reduce impacts to MDTs during construction and operation, and (2) General measures that relate to all biological resources, including MDT.

2.3.1 Mojave Desert Tortoise Minimization Measures

DT-1: Authorized Biologists, Desert Tortoise Monitors, and Field Contact Representatives

The applicant will send the names and qualifications of all proposed authorized biologists (AB) to USFWS for review and approval at least 30 days prior to initiation of new ground-disturbing activities and pre-construction surveys. Use of ABs and desert tortoise monitors (DTMs) will follow current USFWS guidance and will be needed during construction, operation, or maintenance activities that may result in adverse effects to MDT.

ABs will lead the handling and translocation of MDT when necessary. DTMs will document compliance with the protection measures and perform biological tasks under the supervision of an AB. An AB will be present for all construction phase disturbance activities. Workers will immediately notify an AB or DTM of all MDT observations.

The AB will train at least one facility staff to serve as a field contact representative (FCR) who will be responsible for oversight of and reporting on the terms of the ITP during the O&M phase of the proposed action. The FCR will be trained to safely handle MDT and move them out of harm's way if found within the fenced solar facility during the O&M phase of the project. The name of trained FCRs will be sent to the USFWS at least 14 days before taking over this role. In lieu of an FCR, Overnight Solar may hire an on-call Designated Biologist to perform this role.

DT-2: Worker Environmental Awareness Program (WEAP)

Prior to construction activity, an AB will provide all workers on the project—including contractors, subcontractors, and regular delivery personnel—with an environmental briefing (WEAP), informing them of the potential sensitive biological resources on site and the required measures to avoid unnecessary impact or take of these resources or their habitat. The WEAP places special emphasis on protected species including MDT, MGS, Western burrowing owl (*Athene cunicularia*), nesting birds protected under the Migratory Bird Treaty Act (MBTA) and identified special status plants.

The program will include the following elements:

- A presentation discussing the sensitive biological resources with potential to occur on-site, explaining the reasons for protecting these resources, and penalties for non-compliance.
- Brochures or booklets containing written descriptions and photographs of protected species and a list of site rules pertaining to biological resources to be available to all WEAP participants.
- Contact information for the project ABs and DTMs and instructions to contact the monitor with questions regarding the WEAP presentation or encounters with sensitive species.
- An acknowledgment form to be signed by each worker indicating that they received WEAP training, are aware of the consequences of violating environmental protocols, and will abide by the site rules protecting biological resources. A log of all personnel who have taken WEAP training will be kept on-site and provided to USFWS if requested.
- Conspicuous stickers identifying the project and signifying WEAP completion to be distributed immediately following WEAP training and required on personnel hard hats.

During the O&M phase of the project, the FCR or Designated Biologist will assume the responsibilities of providing WEAP training to all on-site personnel.

DT-3: Pre-Disturbance Surveys

Within 7 days prior to vegetation removal or ground disturbance for installation of the MDT exclusion fence ABs will conduct a clearance survey along the fence alignment for MDT, including signs of presence and evidence of occupancy (e.g., scat, tracks, burrows, etc.). If DTMs are utilized for these surveys, they will be under the direct supervision of an AB.

Following clearance surveys, an AB or monitor will be present for fence installation to ensure marked burrows and MDT are avoided. Then, during the desert tortoise active season, following fence installation and prior to ground disturbing activities in the project area, qualified biologists will conduct a

protocol clearance survey (following USFWS guidance) within the fenced facility and translocate any desert tortoises out of the project area. Once the area within the perimeter fence is cleared, the project will proceed with construction activities.

Should MDT be encountered during the inactive season, or when weather conditions are not suitable for translocation, the applicant will seek agency input. MDT smaller than 180mm found during clearance surveys may be cryptic and challenging to monitor. Therefore, those MDT will be temporarily penned until nearby construction is complete to avoid potential harm. The Translocation Plan will provide details on the MDT clearance surveys and translocation

DT-4: Staging and Parking Areas

Staging areas for construction materials and equipment will be within areas previously fenced and cleared of MDT. All materials or equipment stored in uncleared and unfenced areas will not be moved until the area has been checked by a DTM. Parking will be limited to areas within MDT exclusion fencing to the degree possible. Workers will check under parked vehicles for MDT before operating them.

DT-5: Pitfalls, Trenches, and Open Excavations

During construction, all open holes with potential to trap MDT will be backfilled before leaving the project site. If backfilling is not possible (i.e., ongoing large excavations), wildlife escape ramps with 3:1 aspect ratio will be created at reasonable intervals and at both ends; or holes will be securely covered; or temporary MDT exclusion fencing will be installed around the excavation. All open excavations will be inspected by a DTM daily.

All pipes, tubing, and culverts with a diameter greater than 3 inches will be capped or covered to prevent wildlife from entering and becoming entrapped. If capping/covering is not possible, materials will be stored more than 8 inches off the ground and inspected before being moved.

DT-6: Dead or Injured Mojave Desert Tortoises

The applicant will report inadvertent deaths/injuries of all sensitive species in the monthly compliance reports. Species scientific name, common name, sex, age class, size, weight, and other pertinent information will be noted and reported to USFWS and CDFW. Fatalities and injuries to MDT will be reported to USFWS by telephone within 24 hours so the agency can determine if further measures are required to protect the species. After an injury, written follow-up notification will be submitted via email to the wildlife agencies within a week of the incident. If the wildlife agencies cannot be reached, the injured MDT will be taken to the nearest capable veterinary facility and any expenses will be covered by the applicant. If a MDT is killed during construction, O&M or decommissioning, USFWS will be contacted for disposal directions. A written report will be submitted to the wildlife agencies via email within two calendar days of the incident.

DT-7: Mojave Desert Tortoise Exclusion Fencing

Prior to ground-disturbing activities, MDT exclusion fencing will be installed around the project perimeter according to the specifications provided by the USFWS Desert Tortoise Field Manual (2009). All entry points to the site will include measures to prevent MDT from accessing the project site and will adhere to guidance from USFWS. Security gates will be installed at the solar facility entrances and Overnight Solar will ensure gates remain closed except when vehicles enter or exit. Gates will be designed with minimal ground clearance to prevent ingress by wildlife, particularly MDT, and may include a piece of carpet or similar attachment to eliminate space for an MDT to fit through. Gates may

be electronically activated to close after vehicles pass to prevent extended periods in the open position which may allow MDT to enter.

Following USFWS guidance (USFWS, 2018), shade structures will be installed along the exterior of exclusion fencing to provide shelter for MDT who may pace the fence. These structures will be checked as part of the fence inspection. Following installation, fencing will be inspected for damage by a biologist daily during construction. During the O&M phase, the fence will be inspected by a trained employee or designated biologist monthly and immediately after major rainfall events. Temporary repairs to fencing will occur immediately; permanent repairs must be made within 3 days of observation. Inspections of the MDT exclusion fencing will occur for the life of the solar facility.

DT-8: Reporting Requirements

Regular reports will be submitted to USFWS at all stages of the project, including post-clearance survey (once); post-translocation (once or bi-annually if ongoing monitoring); active construction (monthly); and O&M (annually). Details of reporting protocols for MDT translocation will be provided in the Overnight Solar Mojave Desert Tortoise Translocation Plan.

DT-9 Offsite Compensatory Mitigation

Within 18 months following permit issuance, the applicant will conserve 595.4 acres of MDT habitat to mitigate impacts to MDT resulting from development of the permit area. This may be in the form of PRM, the purchase of credits at an approved conservation bank, or a combination of the two.

2.3.2 General Minimization Measures

GM-1 Minimizing Vegetation Disturbance and Habitat Loss, Work Area Demarcation

Permanent and temporary disturbance areas will be delineated clearly with stakes/flagging, including access roads, parking areas, staging areas, active work zones, and limits of project components. When possible, construction activities will minimize soil and vegetation disturbance and avoid impacting areas not designated as work areas.

GM-2 Vehicle Speed Limits, Cellphones, and Escorting

During construction, all project personnel will follow the posted speed limit on Harper Lake Road. The speed limit within fenced areas that have been cleared of MDT and other wildlife will be 25 mph. The speed limit will be 15 mph within unfenced areas, uncleared areas, and on unpaved access roads. ABs and/ or DTMs will escort construction vehicles (or zone-monitor roads) and equipment within the project site and permit area until MDT clearance surveys have been completed. Cell phone use while driving will be hands-free, as per state law. Drivers of vehicles in uncleared habitat unaccompanied by a DTM will check under their vehicles prior to operating them to prevent crushing wildlife, particularly MDT.

GM-3 Hazardous Materials and Refueling

Overnight Solar will use road surfacing, sealants, soil bonding, and weighting agents that are not toxic to wildlife and plants on unpaved surfaces.

Refueling of vehicles and equipment will be performed away from watersheds and use secondary containment to prevent spills. Vehicles and equipment will be maintained and repaired if leaking hazardous materials (motor oil, antifreeze, hydraulic fluid, grease, etc.). Construction crews will have

access to spill kits to absorb and contain hazardous fluids if spilled. Hazardous spills will be cleaned immediately and disposed of at an appropriate facility.

GM-4 Non-native Species Control, Native Plant Restoration, and CDNPA Adherence

In compliance with the California Desert Native Plants Act (CDNPA), surveyors will mark all the silver cholla (*Cylindropuntia echinocarpa*) prior to ground-disturbing activities. All cacti and other plants protected by the CDNPA will be transplanted outside of a disturbance area whenever possible. Required permits will be obtained to allow for take and other impacts to CDNPA protected species.

The introduction of exotic plant species will be avoided and controlled where possible. Measures shall include vehicle and equipment cleaning and inspection prior to mobilization, and use of certified weed-free straw and soil when utilized.

GM-5 Predator Subsidy Management

Overnight Solar will implement the following features to reduce adverse effects to MDT due to common subsidized predators (e.g., Common Ravens, coyotes).

- All trash and food waste will be disposed of in secure, self-closing bins.
- Overnight Solar will collect and dispose of animals killed on the site or project access roads to reduce food subsidies.
- Water used for the project will be applied to avoid puddling.
- Overnight Solar will remove inactive Common Raven nests identified on the project site and will notify USFWS of active Common Raven nests for egg-oiling or other management measures.
- Overnight Solar will contribute to the Regional Raven Management Program in the amount of \$105/acre of disturbance.

GM-6 Artificial lighting

Facility lighting will be installed directionally with shields and used at the lowest intensity required for its purpose to prevent unnecessary impacts to wildlife. Construction activities will be confined to daylight hours though exceptions may arise because of the need for nighttime work. During these times work areas will be sufficiently lit to facilitate inspection of wildlife, specifically MDT.

Permanently installed outdoor lighting will adhere to San Bernardino County Ordinance No. 3900, which provides standards for glare and outdoor lighting to minimize light pollution and preserve night sky conditions. San Bernardino County Development Code Section 83.07.060 regulates outdoor lighting in the project area, requiring outdoor lighting to be fully shielded in order to preclude light pollution or light trespass in excess of the amounts set forth in subdivision (f) of this ordinance (San Bernardino County, 2024).

GM-7 Public safety and Firearms Policy

Apart from designated uniformed security personnel, Overnight Solar will prohibit use or possession of all firearms on the project site during the construction phase. Persons found in violation of this measure will be ineligible to return to the project site until the construction phase has concluded.

GM-8 Biological Monitors

Biological monitors will be assigned to conduct regular compliance activities associated with biological resources (e.g., mark sensitive biological resources, identify and remove inactive passerine nests, record logs of project activities and compliance concerns, maintain disturbance area perimeters, monitor

sensitive species activities, assess the site for risks to wildlife and sensitive species that may arise during construction activities, etc.). Monitors will be present for all ground-disturbing activities to ensure biological resources are avoided and disturbance is minimized to the extent possible. Biological monitors will report MDT associated detections to the Authorized Biologist(s) (DT-1).

3. Alternatives Considered

Section 10 of the ESA and its implementing regulations require that an HCP describe the actions an applicant considered as alternatives to the take that would result from the proposed action and the reason why they are not using those alternatives. Alternatives should focus on significant differences in project design that would avoid or reduce take (USFWS and NMFS, 2016), Overnight Solar considered two alternatives to the proposed action; details of these alternatives and their potential effects on MDT are discussed below.

3.1 No Action

Under the no action alternative, USFWS would not approve the applicant's HCP and would not issue an ITP. As a result, the Overnight Solar Energy Project would not be constructed. The lands on which the solar facility and interconnections would be built would remain in their current state. Several uses could be permitted in the area, including solar power generation, single-family residential development, and various commercial and institutional uses. Failure to construct the solar facility and gen-tie would not preclude these and other uses from being proposed and implemented in the future. Further, under the no action alternative, the Overnight Solar Energy project would not be able to contribute to California's mandate of 100% zero-carbon energy for the state's electrical needs by the year 2045.

3.2 Development of Northwest Wash with Long-distance MDT Translocation Alternative

Under this alternative, 37 acres of occupied MDT habitat in the northwest corner of the parcel would be permanently developed with solar panels, as per the original site design. This would have an increased impact on MDT compared to the proposed action, as more individuals would be directly impacted, and the impacts would be more severe. MDT encountered during clearance surveys would be captured and translocated to a long-distance recipient site approved by USFWS and CDFW. MDT would be moved away from their current home ranges. This alternative would provide potential benefit to MDT, such as:

- being moved into areas managed specifically for this species, and
- being isolated from indirect construction impacts (e.g., dust, noise, traffic, trespass).

However, translocating MDT to a long-distance recipient site would be stressful to the animals being moved and to resident populations of MDT. In addition to being handled and moved into a new home range, translocated animals would be fitted with transmitters and tracked for extended periods. Translocated MDT would be moved into an unknown territory where they would have to locate critical resources and interact with resident individuals. Translocated MDT may have an increased risk of predation (Mack and Berry, 2023). Resident MDT at the recipient site may be exposed to disease and pathogens introduced by translocated individuals and they may have to defend territories and fight for resources.

4. Environmental Setting

The environmental setting of the proposed solar project and gen-tie portions of the plan area, as well as the status and occurrence of MDT, are presented in the appended Overnight Solar BRTR (Corvus, 2024) and are not described in detail here. The sections below provide a summary of relevant information included in the BRTR and the forthcoming Overnight Solar Mojave Desert Tortoise Translocation Plan, as they relate to this HCP and the ITP application.

4.1 Existing Land Use

The proposed permit area is primarily sited on a largely undisturbed privately-owned parcel. Historical industrial and agricultural impacts to the property have affected the natural communities over time. The vegetation community is alkali desert scrub, with very few cacti or large shrubs. Evidence of human impacts are widespread within the permit area, including historic grazing, evidence of commercial agriculture, signs of off-road recreational vehicle use, historic and recent recreational shooting, illegal dumping, trespass, and camping. To the west of the permit area is a patchwork of undeveloped Bureau of Land Management (BLM) lands, other privately held vacant parcels. Land immediately north and east of the permit area has been developed with utility-scale energy infrastructure. Land to the south of the permit area includes undeveloped private property and land that is currently being developed for commercial agriculture. Several rural residences are south and east of the project site along Harper Lake Road, the closest being approximately 1 mile east of the permit area and 0.3 miles south of the proposed gen-tie line.

4.2. Solar Field and Gen-tie Physical Conditions

Elevation within the permit area ranges from about 2,100 feet to 2,150 feet, sloping gently upwards from northeast to southwest. The plan area is in the United States Geological Survey (USGS) Hydrologic Unit Code 180902071110, Schweitzer Well-Harper Lake. Located in the west Mojave Desert, the Schweitzer Well-Harper Lake sub-watershed is a close basin of 44,237 square acres. Harper Valley is drained by numerous ephemeral streams towards Harper Dry Lake. Floodwater from Grass Valley occasionally flows into Harper Valley via Black Canyon on the eastern side of the valley. Harper Dry Lake is an endorheic basin that once contained water and a natural marsh into the early 20th century but began to disappear once agricultural development began to deplete the groundwater that sustained its level. The lake eventually became dry in the late 1990s. An existing drainage diversion feature also exists within the western portion of the plan area, running from north to south. Specifically, this drainage diversion feature is along the outside of the westernmost boundary of the permit area and gently slopes downwards from east to west, away from the proposed solar facility. The permit area does not include this existing drainage diversion feature.

The Soil Survey for the San Bernardino County, CA identifies three soil series types expected within the plan area. Historical industrial and agricultural use of the land has impacted the natural soil communities over time. Currently much of the plan area is composed of 112 Cajon Sand. Other soil types have a very limited distribution within the plan area, including: 137 Kimberlina Loamy Fine Sand, and 113 Cajon Sand. None of the soil series within the plan area or the permit area are identified as hydric.

4.3 Vegetation Communities and Land Cover

The plan area is in the Mojave Desert geographical region (Sawyer, 2009). A single terrestrial vegetation community was identified within the permit area during field surveys: Alkali Desert Scrub. This

community is dominated by low-growing shrubs, grasses, and herbaceous plants able to withstand heavily salty soils. Vegetation across most of the permit area is sparse, resulting from historic land use practices including commercial agricultural and grazing.

Two dryland episodic streams were identified within the plan area: a 24.26-acre abandoned waterway consisting of complex braided channels and floodplains in the northwest corner and a 5.5-acre single-thread channel in the southeast portion of the site. These areas provide the greatest diversity of vegetation and the highest percent cover of the plan area, though the wash in the northwest has been non-flowing since 1990 when a diversion levee was built on the western edge to protect other solar facilities to the east. These waterways will not be developed as part of the project and are excluded from the permit area.

4.4. Federally Listed Species with the Potential to Occur

A desktop analysis and focused MDT survey confirmed suitable habitat for federally protected MDT within the plan area. Surveys were conducted in accordance with the protocols described in the USFWS's 2019 updated guidance, *"Preparing for Any Action That May Occur Within the Range of The Mojave Desert Tortoise (Gopherus agassizii)." Per USFWS protocols, a survey with 100 percent visual coverage over the anticipated action area was performed by two surveyors walking 10-meter parallel transects, providing sufficient coverage to locate signs of MDT occupancy and site use (e.g., live MDTs, scat, burrows, tracks, carcasses, courtship rings, drinking depressions). Guidance provided in the USFWS 2009 Field Manual was followed to assess the quality and condition of sign. Corvus Ecological Consulting biologists made 7 detections of live MDT within the plan area during April and May 2023. One of the MDT detections was a juvenile (i.e., <180 mm mid-line carapace length). Three detections were made during focused 10-meter protocol level baseline surveys, and 4 additional detections were incidental, made by biologists working on other tasks within the plan area. Based on size differences and other distinguishing characteristics, it is believed that 5 distinct individuals were encountered during spring 2023.*

Because MDT spend much of their time in well-hidden burrows and are often difficult to locate above ground, it is unlikely the surveys detected all MDTs within the original survey area. Three MDT detections made during focused 10-meter transect surveys can be used to estimate MDT densities (USFWS, 2019). Following the USFWS estimation algorithm, there are an estimated 5.6 individuals within the original survey area (1.47 – 20.79, 95% CI). This comes to 2.0 individuals per square kilometer, which is lower than the estimated average density of 2.8 per square kilometer within the West Mojave Recovery Unit (USFWS, 2014).

The proposed action includes modification of the original project footprint in an effort to avoid and minimize impacts to MDT. The current project footprint is the same as the permit area and excludes all locations of the live MDT detections from protocol surveys (Figure 5). Other MDT sign recorded during surveys included Class 2 and Class 3 burrows, recent scat, and four carcasses older than four years. No other federally listed species were identified as being likely to occur.

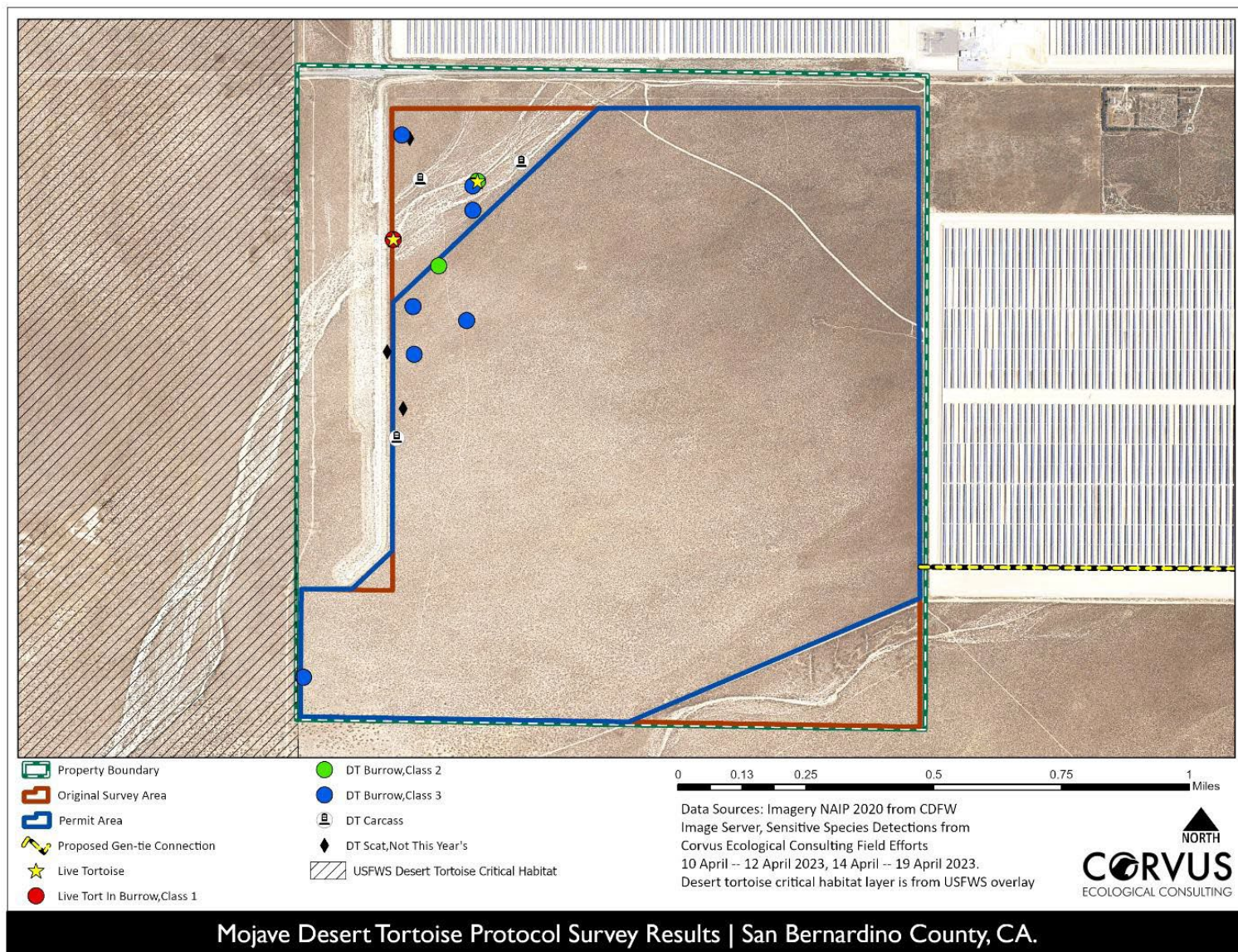


Figure 5. Mojave Desert Tortoise Protocol Survey Results

5. Effects and Incidental Take Assessment

This section describes the potential effects on MDT resulting Construction, O&M, and decommissioning of the solar facility and Translocation of MDT from the project site. We assessed the likelihood and magnitude of effects on MDT for each covered activity along with consideration of the minimization measures that will be implemented as part of the conservation strategy described by this HCP (Table 2). This included assessing mechanisms of MDT ‘take’ for each activity; take is defined under the ESA as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”.

5.1 Construction, Operation, Maintenance, and Decommissioning of the Overnight Solar Energy Project

The proposed action will result in impacts to MDT from activities associated with construction, O&M, and decommissioning phases of the solar facility. Activities that will potentially affect MDT include the installation of security/MDT exclusion fencing, translocation of MDT, grubbing and removal of native vegetation, transport and installation of solar panels, construction of ancillary facilities (e.g., office buildings, security gates, gen-tie and substations), maintenance and repairs, and removal of old infrastructure during decommissioning. The following are expected impacts associated with each component of the proposed action:

5.1.1 Impacts Associated with Solar Facility Construction

Facility construction includes multiple phases, beginning with installation of the perimeter/ MDT exclusion fencing and ground-clearing activities (Table 1). These initial activities pose the greatest risk of injury and mortality to MDT. After this stage, the threat of mortality is anticipated to be low, as all detected MDT will have been removed from the permit area during clearance surveys. However, juvenile MDT may not be detected during clearance surveys and may be injured or killed in “cleared” areas. Injury and mortality of adult MDT may occur during construction of the solar facility due to crushing by passenger vehicles or heavy equipment, entrapment in excavations or building materials, entombment in undetected burrows during ground-disturbing activities, and other scenarios where an individual MDT was not detected during clearance or monitoring efforts. During the installation of the foundation pilings, noise from the machines driving the piles into the ground may adversely impact MDT. The gen-tie will be constructed in a developed area already within MDT exclusion fencing, so it is not likely to result in MDT take. Furthermore, the area within the existing Mojave Solar facility where the gen-tie will be constructed is already covered under an existing take permit.

Construction of the Overnight Solar facility will result in the loss of 595.4 acres of MDT habitat, including suitable breeding and foraging habitat and known burrow locations. Project construction may result in an increase in local predators (e.g., Common Ravens, coyotes) due to an increase in food, water, and perching/ nest site subsidies. There may be diminished mating opportunities for MDT as habitat is fragmented by infrastructure and exclusion fencing. These impacts are expected to last beyond the permit period. Other likely impacts to MDT include noise pollution during all stages of construction, changes in groundwater quality and availability due to run off or diversion, ground disturbances caused by vibrations from heavy equipment and solar panel installation, and changes in artificial night lighting

levels. Impacts during construction will be minimized through the measures included in this HCP (Table 2).

5.1.2 Impacts Associated with O&M Activities.

MDT exclusion fencing will surround the perimeter of the Overnight Solar facility and gen-tie for the duration of the permit, including the entire O&M period. MDT exclusion fencing will prevent MDT from entering the project site. Regular fence and entrance inspections are minimization measures included in this HCP. Although possible, O&M activities are unlikely to result in MDT injuries or mortalities within the project site.

During O&M, routine activities could provide food, water, and habitat subsidies to MDT predators, such as coyotes and Common Ravens. This HCP includes measures aimed at minimizing subsidies such as this, and management actions to deter the presence of predators (Table 2).

5.1.3 Impacts Associated with Decommissioning

Decommissioning of the proposed action will involve removal of all components and restoration of the solar facility portions of the permit area. Potential impacts at this stage are minimal until perimeter fencing is removed. Removing exclusion fencing will put construction crews in direct contact with open MDT habitat and resident populations of MDTs outside the perimeter fence. These animals may be at risk of being crushed by passenger vehicles or heavy equipment; entrapment in excavations or building materials, and entombment in undetected burrows during fence removal activities.

Access to food and water subsidies (e.g., roadkill animals, food trash, perches, pooled water) during decommissioning may also sustain increased populations of local predators such as coyotes and Common Ravens.

During decommissioning, the quality of adjacent MDT habitat may be impacted by noise pollution, changes in ground water quality and availability due to run off or diversion, ground disturbances caused by vibrations from heavy equipment and panel/concrete removal, and changes in artificial night light levels. Minimization measures included in this HCP will reduce potential impacts to MDT during project decommissioning (Table 2).

5.1.4 Summary of Impacts

In summary, the proposed action is reasonably certain to impact MDT in the permit area; take is most likely to occur during construction and is increasingly unlikely during O&M. Impacts to MDT, including take, are likely to increase during project decommissioning. The final stages of decommissioning resume a higher risk of impact, as the removal of MDT exclusion fence may place MDT in direct contact with heavy equipment and work crews. However, the take of MDT at all project stages will be minimized through the implementation of the measures and design features incorporated into this HCP (Table 2).

Table 2. Adverse Effects on Mojave Desert Tortoise by Covered Activity and Minimization Measures

Covered Activity	Potential Adverse Effects to DT	Applicable Minimization Measures
Mobilization, Pre-Construction, Fence Installation	Habitat loss/degradation; Crushing by vehicles/equipment; Entombment/Entrapment; Increased predation; Noise & vibration; Spills & Contamination; Invasive plant introduction	DT-1, DT-2, DT-3, DT-4, DT-5, DT-6, DT-7, DT-8, DT-9, GM-1, GM-3, GM-4, GM-5, GM-6, GM-10
Solar Site Construction	Habitat loss/degradation; Crushing by vehicles/equipment; Entombment/Entrapment; Increased predation; Noise & vibration; Spills & Contamination; Invasive plant introduction	DT-1, DT-2, DT-3, DT-4, DT-5, DT-6, DT-7, DT-8, DT-9, GM-1, GM-3, GM-4, GM-5, GM-6, GM-10
Gen-Tie Construction	Increased predation; Noise; Increased predation; Noise & vibration; Spills & Contamination; Invasive plant introduction	DT-1, DT-2, DT-3, DT-4, DT-5, DT-6, DT-8, GM-3, GM-4, GM-5, GM-6, GM-10
Operations & Maintenance	Increased predation; Spills & Contamination	DT-1, DT-2, DT-6, DT-7, DT-8, GM-4, GM-6, GM-7
Decommissioning	Crushing by vehicles/equipment; Entombment/Entrapment; Increased predation; Noise & vibration; Spills & Contamination; Invasive plant introduction	DT-1, DT-2, DT-3, DT-4, DT-5, DT-6, DT-8, GM-1, GM-4, GM-5, GM-6, GM-10

5.2 Capture and Translocation of Mojave Desert Tortoises

After the installation of MDT exclusion fencing and prior to additional construction activities, ABs and DTMs will conduct clearance surveys within the fenced solar facility in accordance with the most recent USFWS guidelines and per the Overnight Solar Mojave Desert Tortoise Translocation Plan. This translocation plan will be reviewed and approved by USFWS prior to translocation activities.

Some MDT may need to be translocated outside of the fenced project site (see Section 5.2). Even though all detections of live MDT have been outside the current project footprint and the permit area, MDT home ranges likely overlap with these areas (as evidenced by the presence of burrows and scat within the permit area). The translocation areas where MDT would be moved to are directly adjacent to the project's northwest and western boundary (Figure 3). MDT would be allowed the opportunity to move to these translocation areas on their own before they are picked up and released to suitable habitat within 300 feet of the fenced project boundary. ABs will conduct or directly supervise these activities. MDT inhabiting the translocation areas are not expected to be negatively affected by overcrowding because individuals found within the fenced project site presumably belong to the same resident population as the recipient site. The potential for MDT injury or death during translocation will be minimized by following USFWS translocation guidance (USFWS, 2020) and through adherence to a project-specific agency approved translocation plan.

5.3 Incidental Take

The applicant is requesting an ITP for the proposed action's covered activities. The covered activities are those activities associated with the construction, O&M, and decommissioning of the proposed action, translocation of MDT, and proposed conservation efforts associated with these activities.

Take has potential to occur in the forms of capturing and unintentionally killing or wounding MDT. The goal is to locate, capture, and translocate all individuals within the permit area, which is the same as the solar facility project footprint.

Three MDT detections were made during focused 10-meter protocol level surveys (USFWS 2019). These survey results were used to estimate MDT densities using the provided estimator (USFWS, 2019). The estimator calculated 4.9 adult individuals within or directly adjacent to the permit area (1.39 – 17.32, 95% Confidence Interval). Adult MDT includes any individual with a midline carapace length (MCL) of 180mm or larger. The estimator also calculated 25.5 MDT with a MCL less than 180mm; accounting for eggs, hatchlings, juvenile and immature MDTs. The estimate for adult MDT comes out to 2.0 individuals per square kilometer, which is lower than the estimated average density of 2.6 per square kilometer within the Fremont-Kramer Tortoise Conservation Area (USFWS, 2022).

All MDT detections were near the northwest corner of the plan area, outside the permit area, in proximity to a dry wash (Figure 5). Other MDT sign recorded in the permit area included Class 2 and Class 3 burrows, scat, and carcasses. MDT smaller than 180mm MCL are more difficult to detect than adult MDT because they are small and cryptic and spend much of their time sheltering underground or under shrubs. MDT eggs and hatchlings are similarly difficult to detect. Even adult MDT may not be detected in some cases. Some animals detected during surveys may have left the plan area since spring 2023, and others may have moved into the permit area. Although clearance surveys will be conducted, and MDT will be translocated from the permit area, there is the chance some will go undetected. Undetected MDT are likely to be killed or wounded during implementation of the proposed action.

Based on this information, the applicant requests the following forms and amount of take for the covered activities:

5.3.1 Adult MDT (≥ 180 mm MCL) Incidental Take Request

Based on the number of MDT encountered during protocol level surveys and other site visits, the applicant requests the ITP to allow for the incidental take of 3 adult MDT due to injury and mortality and an unlimited number for capture and release purposes, including active translocation. Due to the project's design excluding known MDT, and proximity of the recipient site to the permit area, the effects of relocating MDT have been minimized. Passive translocation would result in animals being excluded from the permit area, but they would remain in their home ranges. If animals are actively removed from the permit area, they would be released a short distance from the perimeter fence, and within their current home range. An ITP that allows for unlimited capture/ release for translocation purposes will allow for all adult MDT to be excluded or removed from the permit area. This ITP will also cover the applicant should any MDT be injured or killed. Minimization measures described in this plan will minimize the potential for injury and mortality to MDT but there is still the potential for unforeseeable circumstances. This ITP would cover injury or mortality of up to 3 adult MDT over the life of the permit.

5.3.2 Juvenile, Eggs, and Hatchling MDT (<180mm MCL) Incidental Take Request

Although every effort will be made to locate, capture, and translocate MDT hatchlings, immature, and eggs, their small size and cryptic coloration make them exceedingly difficult to detect. Smaller MDTs are particularly difficult to locate when they are sheltering in shrubs or burrows. MDT can lay up to 7 eggs in a clutch and they can have more than one clutch in a season (Rostal et al., 1994). Adult male and female MDT were detected within the plan area adjacent to the permit area, and there are known burrows with potential nests within the permit area. Based on these circumstances, and with respect to the results of the USFWS estimator, we are requesting the incidental take of 25 MDT, including eggs, under 180mm MCL; although we do not anticipate take to be this high.

5.3.3 Total Requested Incidental Take

The total requested allowable incidental take of MDT associated with the proposed action, including construction, operation and maintenance, and decommissioning of this proposed solar facility is:

- 3 adult MDT for injury or mortality
- Unlimited adult MDT for handling/ translocation purposes
- 25 MDT hatchlings, immature, and eggs for all forms of take

The applicant and their associated biological contractors will transport any wounded MDT found at the project to the closest qualified veterinary or rehabilitation facility for immediate treatment. The applicant will fund the veterinary care if it is determined that the MDT was injured as a result of project activities. If the MDT can be rehabilitated and released into the wild, the individual will be considered taken in the form of capture. If it is unable to be released because of wounds resulting from project actions, the take will be considered a kill. The applicant will contact the USFWS for guidance regarding final disposition of all injured animals.

The applicant requests the ITP to allow for capture, translocation, injury, and mortality of MDT associated with the permit area, including the solar facility, for the life of the permit. If the number of MDT found within the permit area exceeds 10 individuals of any size, the applicant will coordinate with USFWS and CDFW to discuss the merits of considering an additional recipient site for future translocation of additional MDT.

6. Conservation Program

The concepts informing the biological goals and objectives of this HCP's Conservation Program are consistent with the recovery goals identified in the USFWS desert tortoise recovery plan (USFWS, 2011) and guidance in the HCP handbook (USFWS and NMFS, 2016). Specifically, minimization measures and mitigation will be implemented to reduce the potential for adverse effects on MDT and offset impacts associated with the proposed action.

6.1 Biological Goals and Objectives

As described in the USFWS's HCP Handbook (USFWS and NMFS, 2016), the biological goals of an HCP provide a framework for achieving conservation objectives using specific measurable objectives. The handbook describes biological objectives as the incremental steps taken to achieve a goal; they derive

from the biological goals and provide a foundation for determining conservation measures, monitoring direction, and evaluating effectiveness of the conservation strategy. In consultation with the USFWS, Overnight Solar has identified the following goals and objectives for this HCP.

Table 3. Overnight Solar HCP Biological Goals and Objectives

Goal	Objective
Goal 1: Avoid the impact through project design	<p>Objective 1: Identify any federally protected species that might be impacted by the proposed action.</p> <p>Objective 2: To the maximum practicable, design the project to avoid impacts to MDT.</p>
Goal 2: Minimize the impact of the proposed action to the maximum extent practicable	<p>Objective 1: Use qualified biologists to perform surveys and translocate MDT from the permit area prior to ground-disturbing activities.</p> <p>Objective 2: Implement best management practices and minimization measures during construction, O&M, and decommissioning of the project to protect MDT in adjacent areas</p>
Goal 3: Mitigate, to the maximum extent practicable, the effects of the proposed action and incidental take of MDT during construction, O&M, and decommissioning	<p>Objective 1: Preservation and management of mitigation lands acquired within the Western Mojave Recovery Unit comparable in quality and size to the habitat being impacted by the proposed action.</p> <p>Objective 2: Translocate MDT from the permit area to conserved lands adjacent to the property and within suitable habitat for this species.</p> <p>Objective 3: Participate in the USFWS's California desert-wide management program for common ravens to off-set the subsidies (e.g., potential nesting/perching areas, water, prey items, etc.) the proposed action would provide for common ravens and other predators.</p>

The concepts informing the biological goals and objectives of this HCP are consistent with the recovery goals identified in the USFWS desert tortoise recovery plan (USFWS, 2011), 5-year review (2022), and guidance in the HCP handbook (USFWS and NMFS, 2016). Following project design and avoidance measures, minimization and mitigation measures will be implemented to reduce the potential of adverse effects on MDT and mitigate impacts associated with the proposed action.

7. Monitoring, Adaptive Management, Reporting and Implementation

7.1 Monitoring

The USFWS's HCP Handbook (USFWS and NMFS, 2016) identifies that an HCP monitoring program should provide information to determine whether: 1) the permittee is compliant with permit requirements; 2) progress is being made towards biological goals and objectives; 3) the HCP's

conservation program is effective at minimizing and mitigating impacts, and 4) the measures to implement the conservation strategy need adjustment. Monitoring and reporting consist of effects monitoring, effectiveness monitoring to support ongoing conservation decisions through the identification of which management actions are most effective in meeting HCP goals, and permit compliance monitoring. For this HCP, the applicant or their contractor will ensure monitoring data are collected, compiled, and reported to the USFWS for the proposed action. To streamline reporting requirements for the monitoring plan, a single annual report summarizing the three monitoring efforts (i.e., effects monitoring, effectiveness monitoring, and compliance monitoring) outlined herein will be prepared and submitted to USFWS.

7.1.1 Effects Monitoring

Effects monitoring will quantify the number of MDT found during clearance surveys and incidentally within the permit area and translocated. In addition to translocation, effects monitoring will also quantify the number of MDT that were injured or killed, and the amount of suitable MDT habitat affected from implementation of the covered activities. Effects to suitable habitat will be calculated using final engineering plans. The ABs or the FCRs will be responsible for documenting the number of MDT translocated and any incidental take (e.g., capture for translocation, injury, or mortality) of the species during implementation of covered activities.

7.1.2 Effectiveness Monitoring

The applicant will monitor the effectiveness of minimization measures using information collected during compliance monitoring efforts and will review the results of implementing minimization measures to determine if modifications are necessary to minimize effects on MDT.

Within 18 months of permit issuance, the applicant will provide mitigation to cover the 595.4 acres disturbed by the project. The mitigation will involve the preservation of 595.4 acres of MDT habitat either through permittee responsible mitigation and/or purchase of credits from a conservation bank approved by USFWS.

7.1.3 Compliance Monitoring

Compliance monitoring for the HCP will consist of monitoring the implementation of the minimization measures and compensatory mitigation actions. For the minimization measure implementation, the applicant will designate an AB to oversee construction monitoring activities and track implementation of minimization measures, FCRs will be designated for monitoring activities and implementation and minimization measures during the O&M phase of the proposed action. Compliance with the measures will be summarized in the scheduled reports from the AB or FCR.

7.2 Adaptive Management Strategy

The purpose of the adaptive management strategy is to identify and address uncertainties, integrate a monitoring program to detect necessary information, and incorporate a feedback loop that links implementation and monitoring to a decision-making process that results in appropriate changes in management. Monitoring and reporting, as described above, will provide the basis for determining when adaptive management strategies should be discussed or implemented.

As described above, the implementation and effectiveness of minimization measures will be monitored by the designated ABs and FCRs. Implementation of minimization measures will be reviewed at least annually to evaluate when and where measures are being implemented and their effectiveness at

reducing effects on MDT. As necessary, the applicant will coordinate with the USFWS to identify alternative strategies to address shortcomings of minimization measures (e.g., conflicting permit requirements, physical location of covered activity, or safety concerns). Adjusting implementation of minimization measures will mean the measures continue to be implementable and effectively minimize effects on MDT. Minimization measures will continue to be implemented unless data clearly demonstrate that removing a measure will not increase take of MDT; removal of a minimization measure (e.g., reducing or eliminating ongoing monitoring on all or part of the plan area) may only occur after coordination with and approval from USFWS.

7.3 Reporting

Reports during the proposed action will be prepared documenting the implementation of covered activities and results of monitoring efforts (i.e., baseline, compliance, and effectiveness). All reports will be prepared and submitted to USFWS throughout the term of the permit. Reports will be prepared during the following phases of the proposed action: post clearance surveys, construction, O&M, decommissioning, and mitigation actions and are further described below. A schedule for reporting the results of annual surveys of compensatory mitigation land will be included in a Long Term Management Plan (LTMP).

7.3.1 Post Clearance Survey Reporting

Following clearance surveys within the security fence and MDT exclusion fence boundary, Overnight Solar will prepare a report that documents the survey methods used, surveyor name(s), timing, weather, handling methods, capture and release locations of all MDT found, individual MDT data, and other relevant information. This report will be submitted to USFWS within 30 calendar days of completing clearance surveys.

7.3.2 Construction Reporting

During construction activities Overnight Solar will prepare a monthly report for the USFWS when activities occur outside of the exclusion and security fencing, or if the fencing is damaged or opened and may have allowed MDT to enter. The report will describe the effectiveness and practicality of the minimization measures and recommendations for modifying the measures to enhance MDT protection if needed. The report will also provide information on the overall biological-resources-related activities conducted, including the WEAP training, clearance or pre-activity surveys, monitoring activities, and all observed MDT, including injuries and fatalities.

7.3.3 O&M Reporting

Reporting during the O&M phase of the proposed action will occur annually unless 1) an opening or breach in the permanent exclusion and security fencing occurs and may have allowed MDT back into the solar facility area; or 2) MDT(s) are discovered during O&M activities within the solar facility. Like the construction report, Overnight Solar will prepare a brief report for submittal to the USFWS. This report will include a summary of the O&M WEAP trainings (a signed log will be made available upon request from USFWS), describe occurrences or sightings of MDT, the effectiveness and practicality of the minimization measures, recommendations for modifying the measures to enhance MDT protection if needed, and changes in AB or FCR contact information.

7.4 Implementation

This section describes implementation of this HCP and associated funding requirements. In addition to seeking an ITP from the USFWS for take of MDT, the applicant will obtain a Section 2081 ITP from CDFW to cover potential impacts on state-listed species (e.g., MDT and Mohave ground squirrel) resulting from implementation of the proposed action. Implementation of this HCP will be coordinated with Section 2081 ITP requirements as much as necessary and feasible.

7.4.1 Changed and Unforeseen Circumstances

Section 10 permit regulations (50 CFR 17.32[b][1] through 17.32[b][8]; 50 CFR 17.22[b][1] through 17.22[b][8]) require that an HCP specify the procedures to be used for dealing with changed circumstances that might arise during the implementation of an HCP. Changed circumstances are defined as changes in circumstances affecting a species or geographic area covered by an HCP that can reasonably be anticipated and planned for (50 CFR 17.3).

This section identifies potentially changed circumstances that may arise during the term of this HCP. Such changed circumstances include listing of a new species, vandalism, wildfire, and invasion of nonnative species. Each of these potentially changed circumstances is discussed in detail below and includes proposed remedial actions. As necessary, the applicant will implement measures specified in this HCP to respond to the changed circumstances. Additional minimization measures (i.e., measures not identified in this HCP) to respond to changed circumstances will only be implemented with consent or approval of the applicant and USFWS, assuming that the HCP is being properly implemented (i.e., the provisions of the HCP and ITP have been or are being fully implemented by the applicant). The monitoring program as described above will be designed to detect changes in circumstances that may occur during the 45-year permit term.

Listing of a New Species or Designation of New Critical Habitat

The applicant and USFWS will coordinate to determine if consultation is necessary if a newly-listed species that is not covered by this HCP, but that may be affected by covered activities, becomes a candidate for listing, is proposed for listing, or is listed under the ESA during the permit term. The applicant, with assistance from USFWS, will evaluate the potential effects of covered activities on the newly listed species. If the covered activities are reasonably certain to result in take of individuals of such a species, the applicant will implement measures identified by USFWS to avoid take of newly listed, non-covered species, as described in the HCP Handbook (USFWS and NMFS, 2016). These interim measures will be implemented until the HCP and ITP are amended to include such species and measures, or until USFWS provides notice that such measures are no longer needed to avoid the likelihood of take to the newly listed non-covered species. The applicant may negotiate with USFWS regarding necessary changes to this HCP, if any, to revise or amend the ITP to cover the newly listed species. If coverage of the newly listed species under this HCP is pursued, USFWS and the applicant will coordinate to identify appropriate modifications to this HCP that will be necessary to revise or modify the ITP to cover the newly listed species.

Wildfire

Covered activities have the potential to trigger wildfires within the plan area and vicinity. Because habitats in the Mojave Desert are not adapted to fire and fire has not played a role in their evolution, it is reasonable to predict that a wildfire could result in long-term damage to MDT habitat on mitigation lands and surrounding the plan area.

Within 18 months of permit issuance, the applicant will provide mitigation to cover the 595.4 acres disturbed by the project. The mitigation will involve the preservation of 595.4 acres of MDT habitat either through permittee responsible mitigation and/or purchase of credits from a conservation bank approved by USFWS. The applicant will implement measures to reduce the likelihood of wildfire occurring because of activities within the solar facility and gen-tie portions of the plan area. Additionally, if the mitigation program includes acquisition of lands for conservation the land manager will manage and monitor mitigation lands to minimize the introduction and proliferation of non-native plant species which will minimize potential to fuel fires and optimize the potential for a natural recovery of the desert scrub community. If fire occurs in the plan area, the USFWS will be notified within 24 hours of the wildfire being observed. The applicant will coordinate with USFWS to determine the cause (if necessary) and appropriate course of action to remediate the effects of wildfire on MDT. In some instances, larger fires may ignite outside the plan area and burn through the area despite efforts to minimize wildfire potential. In these cases, the applicant will not be held responsible for remedial actions in excess of current management efforts.

Invasive or Non-Native Species

The applicant will conduct weed management in and around the solar facility and gen-tie portions of the plan area to minimize the spread of invasive weeds following construction of the proposed action. If the mitigation program includes acquisition of lands for conservation and a new non-native plant or animal infestation occurs within the mitigation lands, the land manager will develop a plan to control and eradicate (if possible) the infestation. This changed circumstance does not include non-native plant and animal species that currently exist on or in the vicinity of the mitigation lands, since these invasive species constitute circumstances typical of the area.

Unforeseen Circumstances

The “No Surprises Rule”, as defined at 50 C.F.R Sections 17.22(b)(5) and (6) and 17.32(b)(5) and (6), provides assurances to entities participating in HCPs under the ESA that no additional land restrictions or financial compensation will be required for species adequately covered by a properly implemented HCP for unforeseen circumstances without the consent of the permittee. For the purposes of this HCP, changes in circumstances not described above that will substantially alter the status of MDT are considered unforeseen circumstances, as defined by the “No Surprised Rule” regulations. Upon issuance of the ITP, regulatory assurances pursuant to the “No Surprises Rule” regulations will be in place for the proposed action. Pursuant to those regulations, if this HCP and the ITP are being properly implemented, USFWS will not require additional minimization measures or mitigations that involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of this HCP without the consent of the permittee.

In case of an unforeseen event, the applicant will notify USFWS within 24 hours of identifying the unforeseen event. In determining whether such an event constitutes an unforeseen circumstance, the applicant and USFWS will determine if the event will substantially change the level of take anticipated by this HCP.

7.4.2 Amendments

Changes that do not affect the scope of the HCP’s impact and conservation strategy, change amount of take, add new species, or significantly change the boundaries of the permit area identified in the HCP include mapping errors or changes in the amount of habitat affected based on as-built acreages; in such cases, the applicant will extend the existing protective measures to the changed activity to achieve the same level of protection for MDT that is described in this HCP. Such changes will be accomplished

through an exchange of letters (including electronic communication) between the applicant and the Palm Springs USFWS Field Office. Additional examples include such actions as a change in the materials or methods of maintaining the security/exclusion fencing or removal of the fence if the surrounding area becomes highly developed. Changes occurring inside the security/exclusion fencing surrounding the solar field (e.g., change in solar technology) would not require the applicant to contact USFWS unless the applicant determines the change would result in additional take not currently described in this HCP.

The applicant will request an amendment to the ITP to cover a newly listed species or if the amount of take of MDT is likely to increase. Amendments may require USFWS to conduct an additional public review and to re-evaluate its decision documents.

7.4.3 Suspension/Revocation

The USFWS may suspend or revoke its permit for the applicant if the HCP is not managed per the terms and conditions of the ITP, or should suspension or revocation be otherwise required by law. The USFWS will hold the applicant responsible for implementing the HCP in accord with the ITP. The USFWS may suspend or revoke the ITP for cause per the laws and regulations in force at the time of such suspension or revocation (see Title 5, Part 558 of the U.S. Code [5 USC 558]; 50 CFR 13.27 through 13.29; 15 CFR 904). The exception is that USFWS may revoke the ITP based on a determination that continuing covered activities will likely jeopardize the continued existence of MDT only if USFWS has not been successful in remedying the situation in a timely fashion through other means as provided in the “No Surprises Rule” (50 CFR 17.22[b][5] and 50 CFR 17.32[b][5]). Such suspension or revocation may apply to the entire ITP, only to specified areas within the plan area, or to certain covered activities. In the event of suspension or revocation, the applicant’s obligations under the HCP will continue until USFWS determines that all take of MDT that occurred under the ITP has been mitigated to the maximum extent practicable in accordance with the HCP.

7.4.4 Permit Transfer and Renewal

Permit Transfer

Due to various market forces inherent in the energy generation field, the applicant may sell the Overnight Solar Energy Project to one or more parties following the USFWS issuance of the ITP. The permittee will remain responsible for implementing the terms and conditions of the ITP and the measures identified in this HCP for the 45-year permit term. The permittee may also sell or transfer ownership during the permit term, and if such an event were to occur, the ITP will need to be transferred to the new owner(s).

Prior to the sale or transfer of ownership, the following will be submitted to the USFWS by the new owner(s): written documentation providing assurances pursuant to 50 CFR §13.25 (b)(2) that the new owner will provide sufficient funding for the HCP and will implement the relevant terms and conditions of the ITP, including any outstanding minimization and mitigation. The new owner(s) will commit to all requirements regarding the take authorization and mitigation obligations of this HCP unless otherwise specified in writing and agreed to in advance by the USFWS.

Permit Renewal

If the proposed action continues to operate beyond the permit term, the ITP may need to be renewed. If renewal is sought, an ITP amendment would be necessary to address potential changes in biological

circumstances and other pertinent factors affecting MDT. To renew the ITP, the future landowner(s) will submit the following information to the USFWS:

- A request to renew the ITP with reference to the original permit number
- Certification that all statements and information provided in this HCP and ITP application, together with approved HCP amendments, are still true and correct, and inclusion of a list of changes
- A description of all take that has occurred under the existing ITP
- A description of which activities under the original ITP the renewal is intended to cover

If the USFWS concurs with the information provided in the request, it will renew the ITP consistent with permit renewal procedures required under federal regulations (i.e., 50 CFR §13.22). If the applicant files a renewal request and the request is on file with the issuing USFWS office at least 30 calendar days prior to the ITP's expiration, the permit shall remain valid while the renewal is being processed. However, the applicant may not take MDT beyond the quantity authorized by the original ITP. If the applicant fails to file a renewal request within 30 calendar days prior to ITP expiration, the permit shall become invalid upon expiration.

8. Funding

The applicant has sufficient financial assets to implement the terms of this HCP and will provide financial assurances, described below in the following sections, to guarantee that an adequate level of funding is available to implement all aspects of the proposed action. Costs associated with implementation of the HCP include, but are not limited to:

- Administration and training
- Acquisition of mitigation lands to be preserved and managed in perpetuity or purchase of mitigation credits from a conservation bank
- Implementation of minimization measures
- Implementation of maintenance, monitoring, and adaptive management
- Implementation of remedial actions for changed circumstances

8.1 Endowment fund

The applicant has sufficient financial assets to implement the terms of this HCP and will provide financial assurances, described below in the following sections, to guarantee that an adequate level of funding is available to implement all aspects of the proposed action. Costs associated with implementation of the HCP include, but are not limited to: If the applicant chooses to complete their permit mitigation requirements through the acquisition and preservation of MDT habitat (i.e., permittee responsible mitigation) then prior to construction, the applicant will provide an approved third-party entity with a permanent capital endowment in the amount determined through a property analysis record or similar. This analysis will estimate costs associated with land acquisition and management expenses (e.g., fencing, trash removal), accounting for inflation. Interest from this account will be reinvested into the principal and used for long-term operation, management, and protection of the mitigation lands. This fund will provide for reasonable administrative overhead, biological monitoring, and any other action designed to protect or improve the habitat values of the mitigation lands. The endowment principal shall not be drawn upon unless such withdrawal is deemed necessary by the involved agencies (USFWS, CDFW) to ensure continued viability of the MDT within the mitigation land.

8.2 Security Deposit

The applicant may proceed with ground-disturbance activities before fully performing its duties and

obligations as set forth above only if financial assurance is provided by Overnight Solar in the form of an irrevocable letter of credit, a pledged savings account, or another form of security approved by the USFWS and CDFW providing administrative proof of funding necessary to cover initial protection and enhancement of the mitigation lands. If a security deposit is provided to allow the commencement of construction prior to completion of mitigation actions, Overnight Solar or an approved third-party entity must complete the required actions no later than 18 months after permit issuance. If all actions for mitigation lands described above are not completed within 18 months of permit issuance, Overnight Solar will consult with the USFWS and CDFW to develop an alternate mitigation land proposals subject to the above requirements. The applicant would promptly notify USFWS and CDFW of any material change in their financial ability to fulfill the obligations and commitments of this HCP.

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