



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2024–0160; FXES11140800000–256–FF08ECAR00]

Incidental Take Permit Application for the Desert Tortoise; Draft Habitat

Conservation Plan and Draft Environmental Assessment; Overnight Solar Energy Project, San Bernardino County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Overnight Solar, LLC for an incidental take permit under the Endangered Species Act. The permit would authorize take of the federally threatened desert tortoise (*Gopherus agassizii*) incidental to otherwise lawful activities associated with construction, operation, maintenance, and decommissioning of the Overnight Solar Energy Project. We invite comments on the applicant’s draft habitat conservation plan and the draft environmental assessment, which we have prepared pursuant to the National Environmental Policy Act. We will take comments into consideration before deciding whether to issue an incidental take permit.

DATES: *Submitting Comments:* We must receive any written comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Obtaining Documents:* The application, application supporting materials, and any comments and other materials that we receive will be available for public inspection at <https://www.regulations.gov> in Docket No. FWS–R8–ES–2024–0160.

Submitting Written Comments: You may submit your written comments using one of the following methods:

- *Online:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2024–0160.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2024–0160; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Richard Tung, Fish and Wildlife Biologist, by email at richard_tung@fws.gov or via phone at 760–322–2070. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We have received an application from Overnight Solar, LLC (applicant) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential take of the federally threatened desert tortoise (*Gopherus agassizii*), incidental to otherwise lawful activities at the Overnight Solar Energy Project (project), as described in the applicant’s draft habitat conservation plan. The proposed project would be located north of the town of Hinkley in San Bernardino County, California.

Background

Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations promulgated pursuant to section 4(d) of the ESA (16 U.S.C. 1533) prohibit the take of endangered and threatened animals without special exemption. Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for endangered and threatened species are set forth in title

50 of the Code of Federal Regulations (CFR) at part 17, sections 17.22 and 17.32.

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) requires Federal agencies to analyze their proposed actions to determine whether the actions may significantly affect the human environment. In the NEPA analysis, the Federal agency will identify the effects, as well as possible mitigation for effects on environmental resources, that could occur with the implementation of the proposed action and alternatives. The Federal action in this case is the Service's proposed issuance of an incidental take permit for the federally threatened desert tortoise.

Permit Application

The applicant has submitted a draft habitat conservation plan that describes the activities proposed to be covered by the permit, such as the construction of a solar field. To minimize the risk of incidental take, the applicant would employ qualified biologists to translocate desert tortoises to a safe location off site. To mitigate the impact of the incidental take, the applicant proposes to fund the preservation of desert tortoise habitat through new acquisition of suitable habitat or purchase of applicable mitigation credits from a Service approved mitigation bank.

The draft conservation plan and the draft environmental assessment consider alternatives to the proposed action, including a no action alternative.

The Service prepared a draft environmental assessment to evaluate the impacts of issuing the proposed incidental take permit on the human environment, consistent with the purpose and goals of NEPA and pursuant to the Council on Environmental Quality's implementing NEPA regulations at 40 CFR parts 1500 through 1508. Additionally, the draft environmental assessment was prepared consistent with the Department of the Interior NEPA regulations (43 CFR part 46); longstanding Federal judicial and regulatory interpretations; and Administration priorities and policies, including Secretary's Order No. 3399.

Public Comments

If you wish to comment on the draft conservation plan and draft environmental assessment, you may submit comments by one of the methods in **ADDRESSES**.

Public Availability of Comments

All comments and materials we receive in response to this request will become part of the decision record associated with this action.

If you submit a comment at <https://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the website.

If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your hardcopy document to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500 through 1508 and 43 CFR part 46).

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