

## **8.0 PLAN IMPLEMENTATION**

The MSHCP will be implemented under a Section 10(a)(1)(B) permit issued by the USFWS to the Project Administrator. The permit term will be 35 years, and will encompass Covered Activities up to and including the decommissioning process of the solar facilities. This chapter presents an overview of how the MSHCP will be implemented, the phasing of solar development over the entire project site, and how compliance with the terms and conditions of the MSHCP will be achieved and enforced for all independent third party solar developers and their subcontractors (collectively, Developers) within the Maricopa Sun Solar Complex. Assurance of compliance with the MSHCP will be achieved through biological and Project monitoring carried out by a USFWS (and CDFW) approved, third-party biological monitor (Monitoring Agent). Project phasing is described in this chapter to elaborate on the process of establishing compensatory mitigation lands along with development of the solar facilities over the first 8-10 year period. To account for the long permit term, changed circumstances and unforeseen circumstances are discussed, followed by an explanation of potential modifications of the MSHCP. “Changed circumstances” (Section 8.3) are those circumstances that can reasonably be predicted to occur, and therefore will have established contingency plans to address the changes. “Unforeseen circumstances” (Section 8.4) cannot be predicted and so, under the "No Surprises Rule," the Project Administrator is not liable for substantial or adverse changes in the status of Covered Species. “Modification of the Plan” (Section 8.5) refers to the process of applying for an amendment to the MSHCP.

### **8.1 MSHCP Compliance**

The various Developers will adopt and implement the requirements of the MSHCP. The Project Administrator will administer compliance with the minimization, avoidance, and mitigation measures outlined in the MSHCP. Administration will be accomplished by contracting with a USFWS approved, third-party biological monitor (Monitoring Agent). The Monitoring Agent will provide compliance, effects, and effectiveness monitoring as outlined in this MSHCP, the Interim Habitat Management Plan (IHMP), and the LTHMP. In addition, the Developers will make financial commitments and assurances, paid directly to the Project Administrator, to ensure compliance with the MSHCP. The Project Administrator will not transfer any of its administrative responsibilities under the MSHCP, unless the MSHCP is amended in writing and approved by the USFWS (Section 8.5).

#### **8.1.1 EASEMENT AGREEMENT**

An Easement Agreement will be entered into by the titleholder(s) of the conservation lands (Appendix K) and solar project lands (Appendix L) for purposes of establishing conservation easements thereon. No such titleholder will have any liability associated with the MSHCP or solar development portion of the Project, including with respect to the USFWS (or other relevant governmental agency), Project Administrator, each Developer that develops a project on any of the acreage located within the Maricopa Sun Solar Complex, or the Monitoring Agent.

## 8.1.2 ENDOWMENT AGREEMENT

An Endowment Agreement will be entered into between the Project Administrator and a designated non-profit organization (Non-Profit Entity) to ensure management and conservation of the project lands in perpetuity. The Project Administrator will contribute funds on a phased basis as each solar facility is developed. In addition, the Endowment Agreement sets forth the mechanisms for distributing funds from the endowment to pay for agreed-upon long-term monitoring and maintenance services.

## 8.1.3 COMPLIANCE AGREEMENT

A Compliance Agreement will be entered into under which each Developer agrees to adopt and implement the requirements of the MSHCP. The primary purpose of the Compliance Agreement is to bind each Developer to the terms and conditions of the MSHCP by such Developer's adoption and implementation of the MSHCP requirements through contract. In addition, the Compliance Agreement will provide for financial and other security mechanisms to mitigate the risk of a Developer failing to perform. The Compliance Agreements will consist of various assurances, including the following:

### *MSHCP Adoption*

This component of Project implementation specifically includes compliance by each Developer with the minimization, avoidance, and mitigation measures specified in this MSHCP. Specifically, this assurance provides that: 1) each Developer will accept the implementation of construction and biological monitoring to ensure all construction activities are compliant with the MSHCP minimization, avoidance, and mitigation measures; and 2) each Developer will accept the implementation of all conservation management activities outlined in their respective HMPs (Interim and Long-term), which will be carried out during the 35-year MSHCP permit period and in perpetuity.

Assurances of meeting MSHCP requirements will include the following:

- The Project Administrator, in consultation with the Monitoring Agent, will ensure that the final project design is compliant with the Project description and Covered Activities outlined in the MSHCP;
- The Developer will ensure that all employees, subcontractors, delivery drivers, and other personnel that may visit and/or work on site subject to that Developers solar project have completed and signed the Environmental Education Program (EEP) training (Chapter 2, Section 2.3.5);
- The Project Administrator and Monitoring Agent will enter into a Monitoring Agreement and the Developer will comply with the Monitoring Agreement. The Monitoring Agreement will establish implementation of the following monitoring activities:
  1. Compliance Monitoring: Monitoring of construction activities to ensure the implementation of minimization and avoidance measures during pre-construction,

construction, O&M, decommissioning, and conservation land enhancement activities within the Permit Area as outlined in Chapters 2 and 6;

2. Effects Monitoring: Monitoring the effects of implementation of this MSHCP on Covered Species within the Permit Area as detailed in Chapter 6; and
  3. Effectiveness Monitoring: Monitoring the progress of the conservation strategy in meeting the biological goals and objectives of the conservation program outlined in this MSHCP.
- The Monitoring Agent's primary responsibility under the Monitoring Agreement is to monitor the Developer's compliance with the MSHCP. Compliance with the MSHCP relates to development of solar facilities, compliance with all minimization, avoidance, and mitigation measures, and to monitoring of the Non-profit Entity's compliance with respect to carrying out the conservation program outlined in the MSHMP (Appendix C); and
  - The Project Administrator will enter into an agreement with a Non-profit Entity under which the Non-profit Entity adopts and implements all mitigation measures outlined in this MSHCP and pertaining to the HMPs (Interim and Long-term). Such plans will be carried out by the Non-profit Entity during the 35-year MSHCP permit period and in perpetuity.

#### ***Financial Assurance***

A financial agreement between the Project Administrator and the Developer will be established to guarantee reimbursement for monitoring, management, and endowment funding. This financial agreement will provide assurances for the following MSHCP requirements:

- Commitment from the Developer to pay for its proportionate share of monitoring, management, and administrative expenses. More specifically, the Project Administrator's and Monitoring Agent's fees will be paid via a combination of ongoing reimbursements to the Project Administrator from each Developer under the Compliance Agreements for obligations set forth in this MSHCP, and releases of funds under the Endowment Agreement for long-term conservation obligations;
- Commitment from each Developer to contribute its proportionate share of the endowment funding requirements under the Endowment Agreement; and
- Requirement for each Developer to either deposit with the Project Administrator cash in an agreed-upon amount or establish a letter of credit payable to the Project Administrator as security for its performance under the Compliance Agreement (or post other acceptable security).

#### ***Compliance***

This component of the Compliance Agreement provides the Project Administrator a right to intervene in the event that the Developer fails to comply with the terms and conditions of this

MSHCP, which it may do in consultation with the Monitoring Agent at the applicable Developer's expense. The following rights will be maintained:

- Grant of rights to Project Administrator to cure any Developer's failure to comply with the MSHCP;
- Grant of step-in rights to Project Administrator triggered by certain material defaults of Developer under this MSHCP; and
- Grant of a lien right to Project Administrator on agreed-upon assets of the Developer (subject to any subordination requirements of Developer's other creditors).

#### **8.1.4 TRANSFER OF RESPONSIBILITIES**

The Project Administrator will notify and receive approval from the USFWS of any transfer of responsibilities pertaining to administration of conservation easements or any other obligations under the MSHCP. Once the Project has been decommissioned, transfer of project administration responsibilities for the LTHMP tasks may occur upon approval by the USFWS. All responsibilities of the LTHMP will be assumed by the new management entity as outlined in this MSHCP for the Project Administrator. No other transfers of responsibility under the MSHCP will be considered.

### **8.2 Project Phasing**

Project phasing for the Maricopa Sun Solar Complex will occur such that all obligations for project mitigation will be met prior to development of the Solar Sites. Because of the uncertainty of the progress of solar development and because of the high cost of implementing the conservation program and associated management, implementation of the conservation program will be phased accordingly to coincide with development of solar facilities. Implementation of the conservation program, including establishing conservation easements on Solar Sites and Conservation Sites, establishing Movement Corridors, and performing enhancements on Conservation Sites and Movement Corridors, will be directly tied to the impacts of each individual solar facility development, and the phasing of conservation actions will be conducted in a manner that precedes and fully meets the requirements for individual site development. Conservation easements will be recorded on Conservation Sites in order of priority according to the conservation value of the land with respect to benefits to Covered Species (Table 8-1).

The Project will progress by six phases (Table 8-2), each incorporating additional solar development lands (onsite lands or Solar Sites) and conservation lands (offsite lands or Conservation Sites). Conservation Sites will be recorded with conservation easements at a final ratio of 0.5:1 of off-site Conservation Sites to Solar Sites. Each of the six phases will provide conservation lands at different ratios (ranging from 0.6:1 up to 0.9:1, with all conservation lands being encumbered prior to Phase 6). This phasing of the encumbrance of conservation lands ensures that the dedication of conservation easements coincides with solar facility development, and provides conservation lands in a manner that follows the priority value of the lands. There is

the added benefit of simplifying management and reducing costs by providing conservation lands in large contiguous blocks.

**Table 8-1**  
**Offsite Conservation Sites Ranking,**  
**Maricopa Sun Solar Complex, Kern County, California**

Property	Acreage
9-C	180.6
10-C	176.2
1-C	656.6
17-C	647.7
3-C	80.4
3-C2	152.9

**Table 8-2**  
**Phasing Plan for Conservation Easements,**  
**Maricopa Sun Solar Complex, Kern County, California**

Phase	Developed	Compensation		Conserved		Remaining	
		Onsite	Offsite	Onsite	Offsite	Onsite	Offsite
1	640	640	356.8	640	356.8	3158.2	1537.6
2	640	640	420	1280	776.8	2518.2	1117.6
3	640	640	380	1920	1156.8	1878.2	737.6
4	640	640	380	2560	1536.8	1238.2	357.6
5**	640	640	357.6	3200	1894.4	598.2	0
6**	598.2	598.2	0*	3798.2	0	0	

**Note:** Total off-site Compensation Land: 1,894.4, Total Developed Land: 3,798.2

\*All offsite conservation land placed under easement prior to Phase 5, resulting in no offsite compensation for Phase 6

\*\*Amount of offsite compensation and development land reduced in Phase 5 and 6 due to amount of remaining available land.

At the initiation of Phase 1, 356.8 acres of Conservation Site lands composed of Site 9-C and 10-C will be recorded with a conservation easement, and 640 acres of Solar Site lands will be made available for solar development. A conservation easement will be placed on each solar development project prior to the construction of each project, until all 640 acres of Solar Site lands within Phase I have been placed into easements. Therefore, phase 1 will involve recordation of conservation easements totaling 996.8 acres of Project lands.

Phase 2 will be initiated once all 640 acres of Phase 1 Solar Site lands have been developed and/or an individual solar developer anticipates the need for more land than was provided for in Phase 1 (i.e. once solar development is planned on the 641<sup>st</sup> acre). Phase 2 will involve the recordation of 420 acres of off-site Conservation Site lands and 640 acres of Solar Site lands, for a total of 776.8 acres of conservation easements. Thus, by the time Phase 2 is reached, a total of 2,056.8 acres of land will be in conservation easement (1,280 acres of solar land and 776.8 acres of off-site conservation land).

Phasing will continue in this fashion for Phases 3 to 6 according to the plan outlined in Table 8-2, eventually incorporating all Soar Site lands for solar development, and recording conservation easements on all Solar and Conservation Site lands (Table 8-2). Phase 5 incorporates lesser amount of Conservation Site lands (357.6) only because that constitutes the remainder of available compensation land, leaving no Conservation Site lands to be incorporated during Phase 6. Phase 6 incorporates only 598.2 acres of Solar Site lands, representing the remainder of available land for solar development. Based upon this type of phasing, all 5,692.6 acres of compensatory conservation lands would be encumbered prior to development of the final solar facility.

Initiation of Phase 1 is planned to begin immediately after procurement of all permits (including the subject MSHCP and state ITP) and approval of required plans. Construction of solar facilities on all Solar Sites is anticipated to be completed over an 8- to 10-year period from the commencement of the initial development. Unknown constraints, however, could extend development of all Project lands to a 10- to 15-year period. It is anticipated that complete development of each solar facility within the Project will take 9 to 18 months, depending on the acreage of the facility, weather conditions, labor and equipment availability, and time of year. There is a high potential for multiple solar developers to be installing solar facilities at various sites simultaneously. The operational life of each solar facility is anticipated to span a period of up to 25 years, during which routine operations and maintenance activities and repairs will be implemented. Decommissioning will occur prior to the expiration of federal and state take permit coverage.

Based on the lifespan of solar equipment and the anticipated phased development of the Solar Sites (yellow parcels, Figure 1-2), the duration of this MSHCP, and the associated take coverage to be issued by the USFWS, is 35 years. All sites that are developed within the Maricopa Sun Solar Complex will be subject to the terms and conditions of the MSHCP over the permit duration. A 35-year permit is needed to allow for the phased development of the project (build-out is anticipated to occur over a 10- to 15-year period), to allow for operation of the solar facilities (estimated at a productive life span of 25 years), and to allow for decommissioning of the solar facilities. The 35-year permit term will provide adequate time to implement the MSHCP and to achieve the benefits of its conservation program (USFWS, 1996).

Off site Conservation Sites will be managed for the benefit of Covered Species immediately upon recordation of the conservation easement on those lands. Solar Sites will be placed in conservation easements prior to the start of construction, but will not be managed for the benefit of Covered Species until after decommissioning of the solar facilities. During the 35-year life of the Project, Solar Site lands will be managed for the benefit of solar operations, but it is anticipated that some Covered Species will become established and derive benefits from these lands.

Management of the Conservation Sites will be conducted following the HMP (Appendix C). After the Project has been decommissioned and once all Success Criteria have been met, the conservation easements will need to be maintained in perpetuity. Routine maintenance on the conservation lands will involve:

- Vegetation density management to maintain suitable conditions for Covered Species;
- Noxious weed control to maintain habitat integrity; and
- Maintenance of fencing on an ongoing basis.

Phasing of the implementation of this conservation program and associated enhancements and management of lands will be monitored and reported as part of the MSHCP compliance monitoring and reporting effort (see Chapter 6). An example development plan, including Covered Activities specific to an individual Developer and the associated monitoring and reporting program, is provided in Appendix J.

### **8.3 Changed Circumstances**

Changed circumstances are defined by federal regulation (50 CFR § 17.3) as changes in circumstances affecting a species or geographic area covered by an HCP that can reasonably be anticipated by the Project Administrator and the USFWS, and for which contingency plans can be prepared. The No Surprises regulation requires that the Project Administrator response to changed circumstances through additional conservation or mitigation be limited to those measures that are defined in the MSHCP.

#### **8.3.1 IDENTIFICATION OF CHANGED CIRCUMSTANCES**

The occurrence of a changed circumstance may become apparent through data compiled during effectiveness monitoring. Additionally, changed circumstances may be recognized through scientific study or the application of technology, and by notification of another party. Upon identification or notification of a potential changed circumstance, the Project Administrator, in consultation with the Monitoring Agent, will take immediate actions to investigate and confirm the occurrence. If a changed circumstance is identified, the Project Administrator, through the Monitoring Agent, will immediately notify the USFWS to confirm the changed circumstance.

After establishing that a changed circumstance has occurred, the Project Administrator, in consultation with the Monitoring Agent, will coordinate with the USFWS to determine remedial actions that are consistent with the conservation program, and goals and objectives described in Chapter 5 of this MSHCP. For actions implemented through the adaptive management program (Chapters 5 and 6), the decision-making process therein described will be used. Remedial actions implemented as a result of changed circumstances will be monitored in accordance with the effectiveness monitoring program described in Chapter 6, and reported as described in Chapter 7.

#### **8.3.2 CHANGED CIRCUMSTANCES ADDRESSED IN THIS HABITAT CONSERVATION PLAN**

Circumstances that may occur during the life of the permit and that may cause the conservation program to be adjusted through the use of adaptive management are:

- *Introduction of non-native or invasive species*

The Project Administrator, through the adaptive management process described in Chapters 5 and 6, will identify and implement measures to reduce, avoid and/or control the effects of non-

native species on the beneficial functions provided by habitat restoration under the MSHCP. If methods used to reduce and/or control adverse effects of non-native species are not effective, the Project Administrator will identify alternate design, implementation and management approaches to reduce, avoid and/or control the effects of non-native species on the beneficial functions provided by habitat.

- *Global climate change*

During the life of the MSHCP, scientific information may determine that the effects of global climate change on Covered Species and their habitat may be of greater significance or magnitude than anticipated in this MSHCP and as identified in the conservation strategies implemented. These changes have the potential to yield conservation strategies described in Chapter 5 to be ineffective.

In the event of changed circumstances due to global climate change, actions described in the adaptive management program would be undertaken; however, should these identified actions be determined by the Monitoring Agent to be ineffective in avoiding and/or reducing the amount of take, the Project Administrator, in consultation with the Monitoring Agent, will coordinate with the USFWS to determine remedial actions that are consistent with Conservation Actions described in Chapter 5.

- *Fire, Drought, Flooding and/or Other Weather Events*

Changed circumstances relating to fire, drought, flooding and/or other weather events will be determined accord to a historical threshold for such events over the past 35 years. A weather event occurring within expected historical thresholds during the 35-year term of the permit will be deemed a changed circumstance and will require action from the Project Administrator. For example, fire could occur in the Project area due to the generally dry climate and conditions; drought or flooding could occur due to the high variability in rainfall patterns in the area. Outbreak of fire, drought or flooding, and subsequent loss of vegetation and soil erosion could alter the habitat in such a way that the Project area becomes less suitable for Covered Species. Additionally, on-site mitigation/restoration actions could be damaged or destroyed. In the event of such changes, the Project Administrator, in consultation with the Monitoring Agent, would restore vegetation, stabilize and control erosion, and repair damage to the artificial berms, dens, perches, or other habitat components constructed on the property in accordance with habitat enhancement measures outlined in this MSHCP (Chapter 5) and the HMPs (Appendix C). The Project Administrator would implement these actions as soon as possible. Therefore, these changes are provided for in this MSHCP and do not constitute unforeseen circumstances or require the amending this MSHCP.

### **8.3.3 FUNDING OF ACTIONS NECESSARY DUE TO CHANGED CIRCUMSTANCES**

In the event that changed circumstances are encountered during the life of the MSHCP, the Project Administrator will have in place means to address additional incurred costs. Costs incurred by the Project Administrator associated with a particular Developer will be passed on to the Developer through agreements arranged between the Project Administrator and the

Developer. Changed circumstances resulting in additional costs in habitat management requirements (Appendix C) will be covered with the conservation easement endowment. Specific details of Project funding are covered in Chapter 10.

#### **8.4 Unforeseen Circumstances**

Unforeseen circumstances are defined by federal regulation (50 CFR § 17.3) as changes in circumstances that affect a species or geographic area covered by an HCP that could not reasonably be anticipated by Developers and USFWS at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in status of the Covered Species. Unforeseen circumstances include, for example, severe weather events during the 35-year term of the HCP permit that are above the 35-year historical threshold for the region. The No Surprises rule provides assurances to non-federal landowners participating in habitat conservation planning under the FESA that no additional land restrictions or financial compensation will be required for species adequately covered by a properly implemented HCP, in light of unforeseen circumstances, without the consent of the Project Administrator.

In case of an unforeseen event, the Project Administrator, through the Monitoring Agent, will immediately notify the USFWS staff member who functions as the principal contact for the Project. In determining whether such an event constitutes an unforeseen circumstance, the USFWS will consider, but not be limited to, the following factors: size of the current range of the affected species; percentage of range adversely affected by the MSHCP; percentage of range conserved by the MSHCP; ecological significance of that portion of the range affected by the MSHCP; level of knowledge about the affected species and the degree of specificity of the species' conservation program under the MSHCP; and whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

If the USFWS determines that additional conservation and mitigation measures are necessary to respond to the unforeseen circumstances where the MSHCP is being properly implemented, the additional measures required of the Project Administrator must be as close as possible to the terms of the original MSHCP. Additional conservation and mitigation measures that involve the commitment of additional financial compensation or restrictions on the use of land or other natural resources otherwise available for development or use under original terms of the MSHCP will occur only with the consent of the Project Administrator.

#### **8.5 Modifications to the Plan**

Amendment of a section 10(a)(1)(B) permit is required when significant modifications are made to a project, activity, or conservation program as described in the original HCP. All amendments to an HCP require that the HCP be submitted to the USFWS in writing. The USFWS must subsequently review and approve the amendments and respond to the applicant in writing. Amendments may be defined in scope as "minor" or "major" as described below.

### **8.5.1 MINOR MODIFICATIONS**

Minor modifications are changes that do not affect the scope of the HCP's impact and conservation strategy, change amount of take, add new species, or change significantly the boundaries of the HCP. Examples of minor amendments include correction of spelling errors or minor corrections in boundary descriptions. The minor amendment process will be accomplished through an exchange of letters between the Project Administrator and the USFWS's Field Office.

### **8.5.2 AMENDMENTS**

Amendments are changes to the HCP that may affect the impact analysis or conservation strategy in the HCP. Amendments to the HCP and the incidental take permits including, for example, changes to the Project Administrator, Covered Species, covered project lands, or extensions to the permit to cover operations and maintenance activities beyond the 35 year permit term, will result in the need for a formal major amendment to the Section 10(a)(1)(B) permit.

Should a species not covered by the MSHCP be listed, proposed, or petitioned for listing, the Project Administrator may pursue an amendment and request that the USFWS add the species to the Section 10(a)(1)(B) permit. In determining whether or not to seek incidental take coverage for the species, the Project Administrator, in consultation with the Monitoring Agent, will consider whether the species is present in the Permit Area and if otherwise lawful activities could result in incidental take of the species. If incidental take coverage is needed, the MSHCP and permits could be amended. Alternatively, the Project Administrator could apply for new and separate permits.

To amend the permit, the Project Administrator will submit a formal application to the USFWS. This application must include a revised HCP, a permit application form, any required fees, and the required compliance document under NEPA. The appropriate NEPA compliance process and document will depend on the nature of the amendment being proposed. A new scoping process may be required, dependent upon the nature of the amendment. If additional scoping is deemed appropriate and necessary, the USFWS will publish a Notice of Intent in the Federal Register to initiate the scoping process. Upon submission of a completed application package, the USFWS will publish a notice of the proposed application in the Federal Register, initiating the NEPA and HCP amendment review process. After public comment, the USFWS may approve or deny the permit amendment application.