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California Department of Fish and Wildlife  
Inland Deserts Region  
3602 INLAND EMPIRE BLVD SUITE C-220  
ONTARIO, CA 91764

California Endangered Species Act  
Incidental Take Permit No. 2081-2018-038-06

INTERSTATE 40 MEDIAN REGRADE (PM 75.0-100.0) PROJECT

**Authority:** This California Endangered Species Act (CESA) incidental take permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take<sup>1</sup> of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.<sup>2</sup> CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

<b>Permittee:</b>	<b>California Department of Transportation</b>
<b>Principal Officer:</b>	<b>Craig Wentworth, Senior Environmental Planner</b>
<b>Contact Person:</b>	<b>Alisha Curtis (909) 388-2099</b>
<b>Mailing Address:</b>	<b>464 West 4<sup>th</sup> Street, 6<sup>th</sup> Floor, MS 822 San Bernardino, CA 92401-1400</b>

**Effective Date and Expiration Date of this ITP:**

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire **November 3, 2024**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.7 of this ITP.

<sup>1</sup>Pursuant to Fish and Game Code section 86, "'take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 [for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "'take' ... means to catch, capture or kill"].)

<sup>2</sup>"The definition of an endangered, threatened, and candidate species for purposes of CESA are found in Fish and Game Code sections 2062, 2067, and 2068, respectively.

## Project Location:

The Interstate 40 Median Regrade Project (PM 75.0-100.0) ( 'Project') is located in the median between the east and west-bound traffic lanes within a 25-mile stretch of highway, approximately 25 miles east of the town of Ludlow and 40 miles west of the City of Needles, in San Bernardino County; Lat/Long (NAD83): 34.7160000 -115.733548 and 34.800742 - 115.315821 (See Figure 1).

## Project Description:

The Project includes the grading of median cross slopes from the existing 6:1 or steeper gradients to 10:1 or flatter gradients. The Project also includes extending the existing culverts within the ephemeral stream and installing Rock Slope Protection (RSP), head walls, and wing walls; and establishing equipment staging and parking areas, water tank sites, borrow sites, and ingress/egress routes.

## Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

Name	CESA Status
1. Agassiz's Desert Tortoise ( <i>Gopherus agassizii</i> )	Threatened <sup>3</sup>

This species and only this species is the "Covered Species" for the purposes of this ITP.

## Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The Project activities described above expected to result in incidental take of individuals of the Covered Species include: vegetation clearing; grading, leveling, and compaction; excavation; installation of fencing or barriers; installation and/or construction of temporary Project facilities and structures; general operation of vehicles and heavy equipment; noise, vibration, and dust generating activities; and capture and relocation activities (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur

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<sup>3</sup>See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(4)(A).



as a result of Covered Activities such as: collision with, or crushing by, vehicles or heavy equipment; crushing or burial of individuals or eggs in burrows; destruction of burrows and refugia; and increased predation. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species from the collection or vandalism resulting from increased human presence while working in the area, as well as, capture and relocation activities. More specifically, relocation of desert tortoises to the translocation site may disrupt the behavior and social structure of resident individuals. Relocated adult desert tortoises may continue to disperse and never establish a territory, resulting in no reproductive effort and the loss of offspring to maintain population viability. The areas where authorized take of the Covered Species is expected to occur include the median between the east and west-bound traffic lanes within a 25-mile stretch of highway (collectively, the Project Area).

The Project is expected to cause the permanent loss of 208 acres of suitable habitat for the Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise and vibrations, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

#### **Incidental Take Authorization of Covered Species:**

This ITP authorizes incidental take of the Covered Species and only the Covered Species. With respect to incidental take of the Covered Species, CDFW authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Covered Activities, subject to the limitations described in this section and the Conditions of Approval identified below. This ITP does not authorize take of Covered Species from activities outside the scope of the Covered Activities, take of Covered Species outside of the Project Area, take of Covered Species resulting from violation of this ITP, or intentional take of Covered Species except for capture and relocation of Covered Species as authorized by this ITP.

#### **Conditions of Approval:**

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular ingress and egress, staging and parking, and noise and vibration generating activities that may/will cause take. CDFW's issuance of this ITP and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following Conditions of Approval:

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1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Mitigated Negative Declaration and Initial Study (SCH No. 2014121092) certified by California Department of Transportation on August 29, 2018 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No. 1600-2019-0020-R6) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Interstate-40 Regrade Median between Badger Wash and Essex Road Overcrossing United States Fish and Wildlife Service (USFWS) Consistency Letter (14BO216-18FO833) for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
5. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
6. **General Provisions:**
  - 6.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.

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- 6.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
- 6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.
- 6.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.
- 6.5. Construction Monitoring Notebook. The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.

- 6.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 6.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. If utilizing water for dust control, Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 6.8. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to fish and wildlife species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 6.9. Delineation of Project Boundaries. Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 6.10. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, rope or cord, and/or construction/safety fencing, as well as, place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 6.11. Project Access. Project-related personnel shall access the Project Area using existing routes and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.
- 6.12. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the



Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.11 of this ITP.

- 6.13. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 6.14. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.15. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

## **7. Notification, Monitoring and Reporting Provisions:**

### ***Notification Requirements***

Notifications listed within this ITP shall be submitted to the CDFW offices listed in the Notices section below and via email to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Ali Aghili (Ali.Aghili@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW if it determines that the Permittee is not in compliance with any Condition

of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.

- 7.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Designated Biologist shall conduct compliance inspections a minimum of weekly during periods of inactivity and after clearing, grubbing, and grading are completed.
- 7.4. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is [Ali.Aghili@wildlife.ca.gov](mailto:Ali.Aghili@wildlife.ca.gov) and Headquarters CESA Program email is [CESA@wildlife.ca.gov](mailto:CESA@wildlife.ca.gov). CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.
- 7.5. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 7.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding,



minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.

- 7.6. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation
- 7.7. Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 7.8. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (909) 484-0523. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

## 8. Take Minimization Measures:

The following requirements are intended to ensure the minimization of incidental take of Covered Species in the Project Area during Covered Activities. Permittee shall implement and adhere to the following conditions to minimize take of Covered Species:

### ***General Minimization Measures***

- 8.1. Herbicides. Permittee shall only use herbicides within the Project Area containing a harmless dye and be registered and applied in accordance with regulations set with the California Department of Pesticide Regulation (DPR). All herbicides shall be used according to labeled instructions. Labeled instructions for the herbicide used shall be made available to CDFW upon request. No herbicide shall be applied when winds are greater than five (5) miles per hour.
- 8.2. Rodenticides and Insecticides. Permittee shall not use rodenticides (e.g., first-generation anticoagulant rodenticide such as diphacinone, chlorophacinone, and warfarin) and/or insecticides without prior written permission from CDFW and any second-generation anticoagulant rodenticide (e.g., brodifacoum, bromadiolone, difethialone, and difenacoum) within the Project Area.
- 8.3. Removal of Debris. Permittee shall remove all cement and other loose debris in areas that need to be cleared by slowly removing stored material starting from the top and working down to ground level, rather than scooping from the ground up. This method will minimize the possibility of harming a Covered Species using the debris as shelter and will allow them to escape.
- 8.4. Entrapment Inspections. Any pipes, culverts, or similar structures with a diameter greater than 3 inches and less than 8 inches aboveground shall be inspected by the Biological Monitor(s) or Designated Biologist(s) for Covered Species' before the material is moved, buried, or capped. The Biological Monitor(s) or Designated Biologist(s) shall inspect all open holes and trenches within Covered Species habitat at a minimum of twice a day and just prior to back-filling. At the end of each work day, Permittee shall place an escape ramp at each end of trenches to allow any animals that may have become trapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degrees. If any worker discovers that Covered Species have become trapped, they shall halt Covered Activities and notify the Designated Biologist(s) immediately. Project workers and the Biological Monitor(s) or Designated Biologist(s) shall allow the Covered Species to escape unimpeded if possible, or an



Designated Biologist(s) shall move the Covered Species out of harm's way before allowing work to continue.

### ***Desert Tortoise Minimization Measures***

- 8.5. Pre-Construction Clearance Surveys. No more than 30 calendar days prior to start of Covered Activities, the Designated Biologist(s) approved under this ITP shall conduct pre-construction clearance surveys for the Covered Species, using the methods described in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise (Mojave Population) Field Manual (hereinafter referred to as USFWS Field Manual). In addition to the guidance provided in the USFWS Field Manual, CDFW provides the following requirement(s):
- 8.5.1. *Pre-construction Survey Methods*. Pre-construction surveys shall cover 100 percent of the Project Area and a 50-foot buffer zone. The Designated Biologist(s) shall record all potential Covered Species and burrows within the pre-construction clearance survey area, using high-accuracy (<1 meter) global positioning system (GPS) technology. The Designated Biologist(s) shall provide the results of the pre-construction clearance survey (using the USFWS Protocol data sheet) to CDFW within 10 calendar days of completing the surveys. The use of specialized equipment (e.g., fiber optics) may be necessary to thoroughly inspect all burrows in preparation for collapsing them.
- 8.5.2. *Final Clearance Survey*. Twenty-four (24) hours prior to the start of Covered Activities, the Designated Biologist(s) shall conduct a final clearance survey of the Project Area. The use of specialized equipment (e.g., fiber optics) may be necessary to thoroughly inspect all burrows in preparation for collapsing them.
- 8.6. Construction Monitoring. Designated Biologist(s) shall be present at all times during Covered Activities outside Covered Species exclusionary fenced areas. Within Covered Species fenced areas the Designated Biologist(s) be present at all times to monitor Covered Activities.
- 8.7. Desert Tortoise Observations. If a Covered Species is observed during Covered Activities all work within 300 feet of the Covered Species shall immediately stop and the observation shall be immediately reported. Covered Activities shall not resume until the Designated Biologist(s) has verified the Covered Species has left the Project Area OR a Designated Biologist(s) approved under Condition of Approval 6.2 of this ITP relocates the Covered Species as described in this ITP (see Condition of Approval 8.9 and 8.10). The Designated Representative shall immediately notify CDFW of any

Covered Species observations within the Project Area. Notification shall occur as described in Condition of Approval 7.8 within 24 hours. Notification and the written report shall include the date, location, and circumstances of the observation, the name of the Designated Biologist(s) that relocated the individual, pictures, map and shapefiles with the location (including GPS coordinates) where the individual was moved as specified in the DTTP.

8.8. Excavating Burrows. Only Designated Biologist(s) approved by CDFW under Condition of Approval 6.2 of this ITP are authorized to conduct burrow excavation. Excavation of burrows shall follow the methods described the USFWS Field Manual. Desert tortoises found in burrows, especially during the species' less active period, shall be avoided to the extent practicable, as determined by the Authorized Biologist(s). If a desert tortoise (or desert tortoise and eggs) are found during burrow excavation, the Authorized Biologist(s) shall relocate them to an artificial or unoccupied natural burrow and monitor them until Covered Activities in the area are complete.

8.9 Relocation of Desert Tortoise. To the maximum extent practicable, Permittee shall avoid disturbance to, and relocation of, desert tortoises. If any desert tortoises are at risk of harm as a result of Covered Activities, an Authorized Biologist shall move the individual(s) out of harm's way and release the individual(s) no more than 1,000 feet from the point of collection for adults and 300 feet for juveniles onto the Bureau of Land Management adjacent to the southern portion of the Project. The Authorized Biologist(s) shall not relocate tortoises to adjacent private property unless the Permittee obtains written permission from the property owner. Desert tortoises found above ground shall be allowed reasonable time to move out of harm's way on their own accord, and if relocated by the Authorized Biologist(s), shall be released above ground in suitable habitat and conditions.

8.10 Tortoise Handling. For any Covered Species proposed to be moved, Permittee shall follow the most current guidelines provided by USFWS and CDFW regarding desert tortoise handling. Where guidance differs between agencies, written direction provided by CDFW shall be required for this ITP.

8.10.1 *Cleaning and Disinfection Protocol*. Trifectant is the only product authorized under this ITP or its associated DTTP to be used as a disinfectant. This product is sold as a powder or tablet and is effective against viruses, bacteria (including mycoplasma), and fungi. It is also fairly resistant to inactivation by hard water and organic matter. Contact time for disinfection is 10 minutes and metal instruments should not be



soaked for more than ten minutes. A 1-2% solution should be mixed according to instructions on the packaging. Once mixed, the solution is stable for seven days, therefore, the mixture shall not be used if over seven days old.

Cleaning and Disinfection Protocol shall include the following:<sup>4</sup>

- Remove all grossly visible debris.
- Wash the area or item with water and mild detergent.
- Thoroughly rinse the cleaned area to remove any detergent residue.
- Allow the area to dry completely
- Apply Trifectant mixture.
- Allow the 10 minutes contact time.
- Thoroughly rinse away any residual disinfectant and allow the area or item to air dry.

8.10.2 *Ambient Air Temperature*. During all handling procedures, Covered Species shall be treated in a manner to ensure that they do not overheat or exhibit signs of overheating (e.g., gaping, foaming at the mouth, etc.), or are placed in a situation where they cannot maintain surface and core temperatures necessary to their well-being. Covered Species shall be kept shaded at all times until it is safe to release them. For the purposes of this permit, ambient air temperature shall be measured in the shade, protected from wind, at a height of 5 centimeters above the ground surface. For all Covered Activities no desert tortoise shall be captured, moved, transported, released, or purposefully caused to leave its burrow for whatever reason when the ambient air temperature is above 95° Fahrenheit (F) (35° Celsius (C)). No Covered Species shall be captured if the ambient air temperature is anticipated to exceed 95° F (35° C) before handling or processing can be completed. If the ambient air temperature exceeds 95° F (35° C) during handling or processing, Covered Species shall be kept shaded in an environment that does not exceed 95° F (35° C), and not released until ambient air temperature declines to below 95°F (35°C). Desert tortoises moved shall be monitored by the Designated Biologist(s) for at least two days after placement in the new burrows to ensure their safety. During relocation, the Designated Biologist(s) may hold a captured desert tortoise overnight and move them the following morning within these temperature constraints.

8.10.3 *Desert Tortoise Rehydration*. If a Covered Species voids its bladder as a result of

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<sup>4</sup> Brown, Mary. Cleaning and Disinfection Protocol. Department of Infectious Diseases and Pathology, College of Veterinary Medicine, Gainesville FL.

being handled, the Designated Biologist(s) shall rehydrate the animal(s). The Designated Biologist(s) shall rehydrate the Covered Species at the location where the animal(s) was or were captured, or the location where the animal(s) is or will be released. The Designated Biologist(s) shall rehydrate the Covered Species by placing it in a tub with a clean plastic disposable liner. The Designated Biologist(s) shall add water to the lined tub while ensuring that the water level is not higher than the lower jaw of the Covered Species. The Designated Biologist(s) shall rehydrate each Covered Species individually for a minimum of 10 to 20 minutes. The Designated Biologist(s) shall place the lined tub in a quiet protected area during rehydration.

8.10.4 *Desert Tortoise Handling Records*. The Designated Biologist(s) shall maintain a record of all Covered Species handled. This information shall include: (a) the locations (narrative and maps) and dates of observation, including whether the individual(s) was found above ground or in a burrow; (b) ambient temperature when handled and released; (c) general condition and health of the individual(s), including injuries, state of healing, and whether the individual(s) voided its bladders; (d) identified diagnostic markings (i.e., identification numbers or marked lateral scutes); (e) location moved from and location moved to (using GPS technology), including information on any burrow (natural or artificial) utilized; (f) whether any eggs were discovered and relocated; (g) digital photographs of any desert tortoises and eggs handled; and (h) results of ongoing monitoring. The Designated Representative(s) shall provide CDFW with the information listed above submitted in the monthly/quarterly reports.

8.11 Desert Tortoise Guards. The design of Covered Species guards shall include exit ramps and cleanout. The design shall be approved by CDFW 30 calendar days prior to starting Covered Activities.

8.12 Desert Tortoise Fencing and Maintenance. Temporary fencing shall be used adjacent to open habitat (e.g. ends of project; stockpile, water tank, and staging areas). Stakes shall be used 150 feet off the highway to present a visible marker for areas to be avoided around temporary project facilities. The temporary fence shall be constructed according to USFWS Field Manual. The temporary fence shall be inspected by the Designated Biologist during the Covered Activities at the end of each workday and during major rainfall events and within 24 hours to ensure Covered Species is prohibited from entering the Project Area. If the fence is compromised, repairs shall be completed immediately, and clearance protocol level surveys shall be conducted as described in Condition of Approval 8.5.



8.13 Vehicle Inspection. Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall contact the Designated Biologist(s) shall relocate the Covered Species as described in Condition of Approval 8.9 and 8.10 before moving vehicles and equipment.

8.14 Staging Area and Parking Area. The Permittee shall enclose all staging areas and parking areas with desert tortoise exclusion fencing. If parking areas have to occur outside desert tortoise fencing, then all parked vehicles outside of the Project Area shall be inspected prior to being moved. If a tortoise is found beneath a vehicle, the vehicle shall not be moved until the Covered Species leaves on its own accord. If the tortoise does not move out from underneath the vehicle on its own within a minimum of 20 minutes, the Designated Biologist shall be contacted to move the animal out of harm's way.

## **9. Habitat Management Land Acquisition:**

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall either purchase 372 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR provide for both the permanent protection and management of 372 acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

9.1. Cost Estimates. CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands as follows:

9.1.1. Land acquisition. Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$1458.00/acre for 372 acres: **\$542,376**. Land

acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;

- 9.1.2. *Start-up costs.* Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at \$290.00/acre for 372 acres: **\$107,880**;
  - 9.1.3. *Interim management.* Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at **\$184,760**;
  - 9.1.4. *Long-term management.* Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$1490.00/acre for 372 acres: **\$554,280**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
  - 9.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at **\$3,000**.
- 9.2. Covered Species Credits. Permittee shall purchase 372 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below.

OR:

- 9.3. Habitat Acquisition and Protection. To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:
- 9.3.1. *Fee Title/Conservation Easement.* Transfer fee title to the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a

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conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW does not hold the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e);

- 9.3.2. *HM Lands Approval.* Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, a formal Proposed Lands for Acquisition Form (see Attachment 2A) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;
- 9.3.3. *HM Lands Documentation.* Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (Attachment 2B). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;
- 9.3.4. *Land Manager.* Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified;
- 9.3.5. *Start-up Activities.* Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see: <http://www.dfg.ca.gov/habcon/conplan/mitbank/>); (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6)

conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;

9.3.6. *Interim Management (Initial and Capital)*. Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management. Permittee shall either (1) provide a security to CDFW for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense, (2) establish an escrow account with written instructions approved in advance in writing by CDFW to pay the land manager annually in advance, or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager.

9.4. Endowment Fund. If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 9.3, the Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 9.3.5. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their



conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.

- 9.4.1. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended. Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). Within 30 days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(4) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(4);
- 9.4.2. Calculate the Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.
- 9.4.2.1. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the PAR and adjust for any additional administrative, periodic, or annual fees;
- 9.4.2.2. Permittee shall include in PAR assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:

9.4.2.2.1. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.

9.4.2.2.2. The endowment shall be established assuming spending will not occur for the first three years after full funding.

9.4.2.2.3. For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.

9.4.3. *Transfer Long-term Endowment Funds.* Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

9.5. Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable expenses incurred by CDFW such as transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.

## **10. Performance Security**

The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 9 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

10.1. Security Amount. The Security shall be in the amount of **\$1,392,296**. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.

10.2. Security Form. The Security shall be in the form of an irrevocable letter of credit or

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another form of Security approved in advance in writing by CDFW's Office of the General Counsel.

10.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.

10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.

10.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (Attachment 3) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.

10.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.

10.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:

- Written documentation of the acquisition of the HM lands;
- Copies of all executed and recorded conservation easements;
- Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and
- Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

#### **Amendment:**

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable law. This ITP may be amended without the concurrence of the Permittee as required by law, including if CDFW determines that

continued implementation of the Project as authorized under this ITP would jeopardize the continued existence of the Covered Species or where Project changes or changed biological conditions necessitate an ITP amendment to ensure that all Project-related impacts of the taking to the Covered Species are minimized and fully mitigated.

#### **Stop-Work Order:**

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 Calendar days to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 25 additional days. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and any other applicable law. Neither the Designated Representative, Designated Biologist, Biological Monitor, nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

#### **Compliance with Other Laws:**

This ITP sets forth CDFW's requirements for the Permittee to implement the Project pursuant to CESA. This ITP does not necessarily create an entitlement to proceed with the Project. Permittee is responsible for complying with all other applicable federal, state, and local law.

#### **Notices:**

The Permittee shall deliver a fully executed duplicate original ITP by registered first class mail or overnight delivery to the following address:

Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program  
Post Office Box 944209  
Sacramento, CA 94244-2090

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2018-038-06) in a cover letter

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and on any other associated documents.

Original cover with attachment(s) to:

Leslie MacNair, Regional Manager  
California Department of Fish and Wildlife  
3602 Inland Empire Blvd., Suite C-220  
Ontario, CA 91764  
Telephone (909) 466-8462  
FAX (909) 948-4358

and a copy to:

Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program  
Post Office Box 944209  
Sacramento, CA 94244-2090

Unless Permittee is notified otherwise, CDFW's Regional Representative for purposes of addressing issues that arise during implementation of this ITP is:

Ali Aghili, Senior Environmental Scientist (Supervisor)  
California Department of Fish and Wildlife  
3602 Inland Empire Blvd. Suite C220  
Ontario, CA 91764  
Telephone (909) 900-4844  
Fax (909) 481-2945

### **Compliance with CEQA:**

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, California Department of Transportation. (See generally Pub. Resources Code, §§ 21067, 21069.) The California Department of Transportation's prior environmental review of the Project is set forth in the Interstate 40 Regrade Median Cross Slopes Project, for the Mitigated Negative Declaration (SCH No.: 2014121092) that the California Department of Transportation adopted on August 29, 2018. At the time the California Department of Transportation adopted the Mitigated Negative Declaration and approved the Project it also

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adopted various mitigation measures for the Covered Species as conditions of Project approval.

This ITP, along with CDFW's related CEQA findings, which are available as a separate document, provide evidence of CDFW's consideration of the lead agency's Mitigated Negative Declaration for the Project and the environmental effects related to issuance of this ITP (CEQA Guidelines, § 15096, subd. (f)). CDFW finds that issuance of this ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, and that adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. CDFW consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

### **Findings Pursuant to CESA:**

These findings are intended to document CDFW's compliance with the specific findings requirements set forth in CESA and related regulations. (Fish & G. Code § 2081, subs. (b)-(c); Cal. Code Regs., tit. 14, §§ 783.4, subds, (a)-(b), 783.5, subd. (c)(2).)

CDFW finds based on substantial evidence in the ITP application, Interstate 40 Regrade Median Cross Slopes Project Mitigated Negative Declaration, the results of site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat acquisition; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 372 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the

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Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

**Attachments:**

FIGURE 1	Map of Project Location
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2A	Proposed Lands for Acquisition Form
ATTACHMENT 2B	Habitat Management Lands Checklist
ATTACHMENT 3	Mitigation Payment Transmittal Form

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ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 6/25/19



Leslie MacNair,  
Regional Manager  
Inland Deserts Region

**ACKNOWLEDGMENT**

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of this ITP, and (3) agrees on behalf of the Permittee to comply with all terms and conditions.

By: Adam Compton Date: 06/26/2019

Printed Name: Adam Compton Title: Senior Environmental Planner

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## **Attachment 1**

### **CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) CALIFORNIA ENDANGERED SPECIES ACT**

**INCIDENTAL TAKE PERMIT NO. 2081-2018-038-06**

**PERMITTEE: California Department of Transportation**

**PROJECT: Interstate 40 Regrade Median Cross Slopes (Post  
Mile 75.0-100.0) Project**

#### **PURPOSE OF THE MMRP**

The purpose of the MMRP is to ensure that the impact minimization and mitigation measures required by the Department of Fish and Wildlife (CDFW) for the above-referenced Project are properly implemented, and thereby to ensure compliance with section 2081(b) of the Fish and Game Code and section 21081.6 of the Public Resources Code. A table summarizing the mitigation measures required by CDFW is attached. This table is a tool for use in monitoring and reporting on implementation of mitigation measures, but the descriptions in the table do not supersede the mitigation measures set forth in the California Incidental Take Permit (ITP) and in attachments to the ITP, and the omission of a permit requirement from the attached table does not relieve the Permittee of the obligation to ensure the requirement is performed.

#### **OBLIGATIONS OF PERMITTEE**

Mitigation measures must be implemented within the time periods indicated in the table that appears below. Permittee has the primary responsibility for monitoring compliance with all mitigation measures and for reporting to CDFW on the progress in implementing those measures. These monitoring and reporting requirements are set forth in the ITP itself and are summarized at the front of the attached table.

#### **VERIFICATION OF COMPLIANCE, EFFECTIVENESS**

CDFW may, at its sole discretion, verify compliance with any mitigation measure or independently assess the effectiveness of any mitigation measure.

## TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Source, Implementation Schedule, Responsible Party, and Status/Date/Initials. The Mitigation Measure column summarizes the mitigation requirements of the ITP. The Source column identifies the ITP condition that sets forth the mitigation measure. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure. The Status/Date/Initials column shall be completed by the Permittee during preparation of each Status Report and the Final Mitigation Report and must identify the implementation status of each mitigation measure, the date that status was determined, and the initials of the person determining the status.



	MITIGATION MEASURE	SOURCE	IMPLEMENTATION AGREEMENT	RESPONSIBLE PARTY	STATUS/DATE/ INITIALS
<b>ADMINISTRATIVE MEASURES AFTER 2081 PERMIT ISSUANCE</b>					
1	Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.	ITP Condition # 6.1	Before Start of Covered Activities	Permittee	
2	Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed.	ITP Condition # 6.2	Before Start of Covered Activities	Permittee	
3	The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.	ITP Condition # 7.1	14 Calendar Days Before Start of Covered Activities	Permittee/Designated Representative	
4	Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP within 24 hours.	ITP Condition # 7.2	During Construction Entire Project	Permittee/Designated Representative	
5	Designated Biologist shall be on-site daily when Covered Activities occur. Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. Designated Biologist shall conduct compliance inspections a minimum of weekly during periods of inactivity and after clearing, grubbing, and grading are completed.	ITP Condition # 7.3	During Construction Entire Project	Permittee/Designated Biologist	

	MITIGATION MEASURE	SOURCE	IMPLEMENTATION AGREEMENT	RESPONSIBLE PARTY	STATUS/DATE/ INITIALS
6	Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Monthly Compliance Report and submit it to CDFW along with a copy of this MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Ali.Aghili@wildlife.ca.gov and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.	ITP Condition # 7.4	During Construction  Entire Project	Permittee/Designated Representative or Biologist	
7	Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 7.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species..	ITP Condition # 7.5	During/Post Construction  Entire Project	Permittee	
8	The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.	ITP Condition # 7.6	During/Post Construction  Entire Project	Permittee/Designated Biologist	
9	Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.	ITP Condition # 7.7	No Later than 45 Days After Completion of All Mitigation Measures	Permittee/Designated Biologist	



	MITIGATION MEASURE	SOURCE	IMPLEMENTATION AGREEMENT	RESPONSIBLE PARTY	STATUS/DATE/ INITIALS
10	Permittee shall purchase 372 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank or provide for the acquisition and perpetual protection and management of the HM lands prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided.	ITP Condition # 9.2 and 9.3	Prior to Covered Activities, or No Later than 18 Months from the Issuance of ITP if Security is Provided.	Permittee	
11	Transfer fee title to the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended	ITP Condition 9.3.1	During Construction  Entire Project	Permittee	
12	If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 9.3, the Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager, the conservation easement, and the final management plan approved by CDFW.	ITP Condition # 9.4	No Later than 18 Months from the Effective Date of ITP	Permittee	
13	Permittee shall reimburse CDFW for all reasonable expenses incurred by CDFW such as transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.	ITP Condition # 9.5	No Later than 18 Months from the Effective Date of ITP	Permittee	
14	Security for the cost of acquisition, protection, and perpetual management of the HM lands shall be provided in the form of an irrevocable letter of credit or another form of Security approved in advance in writing by CDFW's Office of the General Counsel. Security shall be in the amount of \$1,392,296. This amount is based on the preliminary cost estimates provided in Condition of Approval 9.1.	ITP Conditions # 10.1, 10.2, 10.3	Before Start of Covered Activities	Permittee	
15	The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW	ITP Condition #10.4	Before Start of Covered Activities	Permittee/CDFW	
16	If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 3) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other form	ITP Condition #10.5	Before Start of Covered Activities	Permittee	
17	The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by: Written documentation of the acquisition of the HM lands; Copies of all executed and recorded conservation easements; Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and Timely submission of all required reports	ITP Condition #10.7	Post Construction	Permittee/CDFW	

#### MINIMIZATION MEASURES BEFORE START OF COVERED ACTIVITIES

	MITIGATION MEASURE	SOURCE	IMPLEMENTATION AGREEMENT	RESPONSIBLE PARTY	STATUS/DATE/ INITIALS
18	Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided for any new workers before they perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.	ITP Condition # 6.4	Before Start of Covered Activities  Entire Project	Permittee/Designated Biologist	
19	Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in closed (animal-proof) containers and removed regularly (at least once a week) to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.	ITP Condition # 6.6	Before Start of Covered Activities  Entire Project	Permittee/Designated Biologist	
20	Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.	ITP Condition # 6.7	Before Start of Covered Activities  Entire Project	Permittee/Designated Biologist	
21	Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.	ITP Condition # 6.9	Before Start of Covered Activities  Entire Project	Permittee/Designated Biologist	
22	Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, rope or cord, and/or construction/safety fencing, as well as, place fencing as necessary to minimize the disturbance of Covered Species' habitat.	ITP Condition # 6.10	Before Start of Covered Activities  Entire Project	Permittee/Designated Biologist	
23	No more than 30 calendar days prior to start of Covered Activities, the Designated Biologist(s) approved under this ITP shall conduct pre-construction clearance surveys for the Covered Species, using the methods described in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise (Mojave Population) Field Manual (hereinafter referred to as USFWS Field Manual).	ITP Condition # 8.5	No More than 30 Calendar Days Prior to Start of Covered Activities  Entire Project	Permittee/Designated Biologist	
24	The design of Covered Species guards shall include exit ramps and cleanout. The design shall be approved by CDFW 30 calendar days prior to starting Covered Activities.	ITP Condition # 8.11	30 Calendar Days Prior to Start of Covered Activities  Entire Project	Permittee/CDFW	



	MITIGATION MEASURE	SOURCE	IMPLEMENTATION AGREEMENT	RESPONSIBLE PARTY	STATUS/DATE/ INITIALS
25	Temporary fencing shall be used adjacent to open habitat (e.g. ends of project; stockpile, water tank, and staging areas). Stakes shall be used 150 feet off the highway to present a visible marker for areas to be avoided around temporary project facilities. The temporary fence shall be constructed according to USFWS Field Manual.	ITP Condition # 8.12	Before Start of Covered Activities  Entire Project	Permittee/Designated Biologist	
<b>MINIMIZATION MEASURES DURING CONSTRUCTION</b>					
26	Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this ITP, and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species, or a state-listed species not covered by this ITP.	ITP Condition # 6.3	During Construction  Entire Project	Designated Biologist	
27	Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.	ITP Condition # 6.5	During Construction  Entire Project	Permittee/Designated Biologist	
28	Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as mono-filament netting (erosion control matting) or similar material, in potential Covered Species' habitat.	ITP Condition # 6.8	During Construction  Entire Project	Permittee	
29	Project-related personnel shall access the Project Area using established/designated routes and access roads and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 15 miles per hour to avoid the production of dust, which may result in take of the Covered Species. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP if additional take of Covered Species may result from Project modification.	ITP Condition # 6.11	During Construction  Entire Project	Permittee	
30	Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area.	ITP Condition # 6.12	During Construction  Entire Project	Permittee	
31	Permittee shall immediately stop and following pertinent state and federal statutes and regulations arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.	ITP Condition # 6.13	During Construction  Entire Project	Permittee	

	MITIGATION MEASURE	SOURCE	IMPLEMENTATION AGREEMENT	RESPONSIBLE PARTY	STATUS/DATE/ INITIALS
31	Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in the ITP.	ITP Condition # 6.14	During Construction Entire Project	Permittee	
32	Permittee shall immediately notify the Designated Biologist if a Covered Species is taken by a Project-related activity, or if a Covered Species is otherwise found dead within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (909) 484-0459. The initial notification to CDFW shall include information regarding the location, species, number of individuals taken and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within 2 calendar days. The report shall include the date and time of the finding or incident, location of the individual taken, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.	ITP Condition # 7.8	During Construction Entire Project	Permittee/Designated Biologist	
33	Designated Biologist(s) shall be present at all times during Covered Activities outside Covered Species exclusionary fenced areas. Within Covered Species fenced areas the Designated Biologist(s) be present at all times to monitor Covered Activities.	ITP Condition # 8.6	During Construction Entire Project	Permittee/Designated Biologist	
34	If a Covered Species is observed during Covered Activities all work within 300 feet of the Covered Species shall immediately stop and the observation shall be immediately reported. Covered Activities shall not resume until the Designated Biologist(s) has verified the Covered Species has left the Project Area OR a Designated Biologist(s) approved under Condition of Approval 6.2 of this ITP relocates the Covered Species as described in this ITP (see Condition of Approval 8.9 and 8.10). The Designated Representative shall immediately notify CDFW of any Covered Species observations within the Project Area. Notification shall occur as described in Condition of Approval 7.8 within 24 hours. Notification and the written report shall include the date, location, and circumstances of the observation, the name of the Designated Biologist(s) that relocated the individual, pictures, map and shapefiles with the location (including GPS coordinates) where the individual was moved as specified in the DTTP.	ITP Condition # 8.7	During Construction Entire Project	Permittee/Designated Biologist	
35	Only Designated Biologist(s) approved by CDFW under Condition of Approval 6.2 of the ITP are authorized to conduct burrow excavation. Excavation of burrows shall follow the methods described the USFWS Field Manual. Desert tortoises found in burrows, especially during the species' less active period, shall be avoided to the extent practicable, as determined by the Authorized Biologist(s). If a desert tortoise (or desert tortoise and eggs) are found during burrow excavation, the Authorized Biologist(s) shall relocate them to an artificial or unoccupied natural burrow and monitor them until Covered Activities in the area are complete.	ITP Condition # 8.8	During Construction Entire Project	Permittee/Designated Biologist	



	MITIGATION MEASURE	SOURCE	IMPLEMENTATION AGREEMENT	RESPONSIBLE PARTY	STATUS/DATE/ INITIALS
36	To the maximum extent practicable, Permittee shall avoid disturbance to, and relocation of, desert tortoises. If any desert tortoises are at risk of harm as a result of Covered Activities, an Authorized Biologist shall move the individual(s) out of harm's way and release the individual(s) no more than 1,000 feet from the point of collection for adults and 300 feet for juveniles onto the Bureau of Land Management adjacent to the southern portion of the Project. The Authorized Biologist(s) shall not relocate tortoises to adjacent private property unless the Permittee obtains written permission from the property owner. Desert tortoises found above ground shall be allowed reasonable time to move out of harm's way on their own accord, and if relocated by the Authorized Biologist(s), shall be released above ground in suitable habitat and conditions.	ITP Condition # 8.9	During Construction  Entire Project	Permittee/Designated Biologist	
37	For any Covered Species proposed to be moved, Permittee shall follow the most current guidelines provided by USFWS and CDFW regarding desert tortoise handling.	ITP Condition # 8.10	During Construction  Entire Project	Permittee/Designated Biologist	
38	The temporary fence shall be inspected by the Designated Biologist during the Covered Activities at the end of each workday and during major rainfall events and within 24 hours to ensure Covered Species is prohibited from entering the Project Area. If the fence is compromised, repairs shall be completed immediately, and clearance protocol level surveys shall be conducted as described in Condition of Approval 8.5.	ITP Condition # 8.12	During Construction  Entire Project	Permittee/Designated Biologist	
39	Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall contact the Designated Biologist(s) shall relocate the Covered Species as described in Condition of Approval 8.9 and 8.10 before moving vehicles and equipment.	ITP Condition # 8.13	During Construction  Entire Project	Permittee/Designated Biologist	
40	The Permittee shall enclose all staging areas and parking areas with desert tortoise exclusion fencing. If parking areas have to occur outside desert tortoise fencing, then all parked vehicles outside of the Project Area shall be inspected prior to being moved. If a tortoise is found beneath a vehicle, the vehicle shall not be moved until the Covered Species leaves on its own accord. If the tortoise does not move out from underneath the vehicle on its own within a minimum of 20 minutes, the Designated Biologist shall be contacted to move the animal out of harm's way.	ITP Condition # 8.14	During Construction  Entire Project	Permittee/Designated Biologist	
41					
<b>MINIMIZATION MEASURES POST CONSTRUCTION</b>					
42	Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.	ITP Condition # 6.15	Post Construction	Permittee	

ATTACHMENT 2A  
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE (CDFW)  
HABITAT MANAGEMENT LAND ACQUISITION PACKAGE CHECKLIST FOR THIRD PARTY  
BENEFICIARY (TPB) PROJECT APPLICANTS

The following checklist is provided to inform you of documents necessary to expedite the CDFW processing of your Habitat Management Land acquisition proposal. Any land acquisition processing requests which are incomplete when received, will be returned. The Region contact will review and approve the document package and forward it to the Habitat Conservation Planning Branch Senior Land Agent with a request to review the real estate documents.

To: \_\_\_\_\_  
Regional Manager, Region Name

From: \_\_\_\_\_  
Project Applicant

Phone: \_\_\_\_\_

Tracking #: \_\_\_\_\_  
CDFW assigned permit or agreement #

Project Name: \_\_\_\_\_

Enclosed is the complete package for the ☐ TPB Conservation Easement

Documents in this package include:

- ☐ Draft TPB Conservation Easement Deed with legal description stamped by a licensed surveyor, if applicable.
- ☐ Proposed Lands for Acquisition Form (PLFAF)
- ☐ Phase I Environmental Site Assessment Report    Date on report: \_\_\_\_\_  
(An existing report may be used, but it should be less than two years old.)
- ☐ Mineral Assessment Report, if applicable.
- ☐ Preliminary Title Report(s) for subject property is enclosed and has been reviewed for  
Encumbrances, including severed mineral estates, and other easements. The title report must be less than one year old  
when final processing is conducted.

Included are additional documents:

- ☐ document(s) to support title exceptions
- ☐ document(s) to explain title encumbrances
- ☐ a plot or map of easements/encumbrances on the property
- ☐ Copy of Grantor's Policy of Title Insurance when proposed mitigation land was purchased, if available.
- ☐ County Assessor Parcel Map(s) for subject property
- ☐ Vicinity or Site Location Map
- ☐ Final Permit or Agreement (or other appropriate instrument)  
Type of agreement: ☐ Bank Agreement    ☐ Mitigation Agreement  
☐ Permit \_\_\_\_\_ Other: \_\_\_\_\_  
(write in type of permit)
- ☐ Final Management Plan (if required prior to finalizing permit or agreement)
- ☐ Biological Resources Report, if applicable.
- ☐ Copy of NGO or Grantee's due diligence approval letter from CDFW.



PROPOSED LANDS FOR ACQUISITION FORM ("PLFAF")

Date: \_\_\_\_\_

TO: Regional Representative

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile:

FROM: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Applicant proposes that the following parcel of land be considered for approval by the CDFW as suitable for purposes of habitat management lands to replace the adverse environmental impacts of the Project:

<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Number of Acres</u>
_____	_____	_____	_____

Current Legal Owner(s), of the surface and mineral estates, include Assessor's Parcel Number(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

General Description of Location of Parcel(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Land value: \$ \_\_\_\_\_

For Region Use only

APPROVED \_\_\_\_\_

REJECTED \_\_\_\_\_

By: \_\_\_\_\_

Regional Manager's signature

DATE: \_\_\_\_\_

Explanation: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

State of California - Department of Fish and Wildlife  
**MITIGATION PAYMENT TRANSMITTAL FORM**  
DFW 1057 (NEW 07/28/17)

**Project Applicant Instructions:** Please fill out and attach this form to payment. For conservation banks, also attach the Bill(s) of Sale for credits sold. One form may be used for multiple transactions, **BUT YOU MUST USE A SEPARATE FORM FOR EACH CHECK YOU TRANSMIT.** Make sure to include Project Name, Project Tracking Number, and ASB Mitigation Tracking Number (if available) on the attached payment type.

<b>1. DATE:</b> _____  <b>TO:</b> _____ Regional Manager _____ Region Office Address	<b>2. FROM:</b> _____ Name _____ Mailing Address _____ City, State, Zip _____ Telephone Number/FAX Number
<b>3. RE:</b> _____ Project Name as appears on permit/agreement	

<b>4. AGREEMENT/ACCOUNT INFORMATION:</b> (check the applicable type)  <input type="checkbox"/> 2081 Permit <input type="checkbox"/> Conservation Bank <input type="checkbox"/> 2835 NCCP <input type="checkbox"/> 1802 Agreement <input type="checkbox"/> 1600 Agreement <input type="checkbox"/> Other _____  Project Tracking Number _____
--

**5. PAYMENT TYPE** (One check per form only): The following funds are being remitted in connection with the above referenced project:

Check information:

Total \$ \_\_\_\_\_ Check No. \_\_\_\_\_

Account No. \_\_\_\_\_ Bank Routing No. \_\_\_\_\_

a. Endowment: for Long-Term Management Subtotal \$ \_\_\_\_\_

b. Habitat Enhancement Subtotal \$ \_\_\_\_\_

c. Security:

1. Cash Refundable Security Deposit Subtotal \$ \_\_\_\_\_

2. Letter of Credit Subtotal \$ \_\_\_\_\_

1. Financial Institution: \_\_\_\_\_

2. Letter of Credit Number: \_\_\_\_\_

3. Date of Expiration: \_\_\_\_\_

<b>ACCOUNTING OFFICE USE ONLY</b>	
Description	FI\$Cal Coding
Speedchart (Project, Program, Reference, Fund)	
Reporting Structure	
Category	
Date Established: _____ By: _____	





CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
PROPOSED LANDS FOR ACQUISITION FORM ("PLFAF")

Date: \_\_\_\_\_

TO: Regional Representative

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile:

FROM: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Applicant proposes that the following parcel(s) of land be considered for approval by the California Department of Fish and Wildlife as suitable for purposes of habitat management lands to compensate the adverse environmental impacts of the Project:

<u>Section(s)</u>	<u>Township</u>	<u>Range</u>	<u>County</u>	<u>Acres</u>
_____	_____	_____	_____	_____

Current Legal Owner(s), of the surface and mineral estates, include Assessor's Parcel Number(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

General Description of Location of Parcel(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Land Value: \$

For Region Use Only

APPROVED \_\_\_\_

By: \_\_\_\_\_  
Regional Manager's Signature

DATE: \_\_\_\_\_

REJECTED \_\_\_\_

Region: \_\_\_\_\_

Explanation: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_