



RECEIVED  
OCT 29 2018  
HABITAT CONSERVATION  
PLANNING BRANCH

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. 2081-2017-072-06

**Authority:** This California Endangered Species Act (CESA) incidental take permit (ITP) is issued by the 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>San Bernardino County Transportation Authority</b>
<b>Principal Officer:</b>	<b>Paula Beauchamp</b>
<b>Contact Person:</b>	<b>Josh Jeffery, Associate Environmental Planner</b>
<b>Mailing Address:</b>	<b>San Bernardino County Transportation Authority 1170 West Third Street, 2nd Floor San Bernardino, California 92410</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 on **July 29, 2023**.

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:**

This Project is approximately 30 miles south of Kramer Junction on Hwy-395 and State Route (SR) 58, San Bernardino County, California.

The project occurs in the following:

United States Geological Survey 7.5 minute quadrangle	Township	Range	Sections
Adelanto	5 North	5 West	4, 9, 10, 15, 16, 21, 22
Adelanto	6 North	5 West	28, 33

**Project Description:**

The project will improve safety along Hwy-395 by widening approximately 28 feet in each direction along post-miles (PM) 11.2 to 16.6 on Hwy-395 (Project).

The Project consists of widening the existing facility (Hwy-395) from one to two lanes in each direction. The proposed projects will also provide two way left turn lanes, and standardize shoulders. The existing alignment will be widened approximately 28 feet (ft) in each direction to accommodate two 12 foot lanes, an 8 foot shoulder in each direction, and a 14 foot two way left turn lane in the median with rumble strips.

The existing Joshua Wash Bridge (Br No. 54-0524) will be replaced to accommodate the proposed roadway improvements. The bridge will replace an existing double box culvert with a larger double box culvert (10ft X4ft). Calculations were determined by allowing a 50ft perimeter around the bridge to allow machinery access for removing and replacing the structure.

The existing culverts will be modified or relocated to accommodate the new lanes. There are a total of 16 drainage systems that will require modification. Impacts due to the extension of roadside culverts are 1,183.6 linear feet. The total disturbance, due to the Project, to desert wash scrub is 32595.2 square feet (rounded up to 0.75 acres).

Installation of desert tortoise fencing along the Project (and part of the parent project) is part of the design of the project and is expected to avoid or minimize the potential for incidental take of Desert Tortoise substantially.

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631



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

This ITP covers the following species:

Name	CESA Status
1. Desert tortoise ( <i>Gopherus agassizii</i> )	Threatened <sup>3</sup>
2. Mohave ground squirrel ( <i>Xerospermophilus mohavensis</i> )	Threatened <sup>4</sup>

These species and only these species are 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 activities described above expected to result in incidental take of individuals of the Covered Species include clearing and grading, fence installation, and backfilling, cleanup, restoration, capture and relocation activities, and other activities described in the Project Description Section of this ITP (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality (“kill”) may occur as a result of Covered Activities such as loss of burrows, increase in predators due to human activities, accidental crushing by construction equipment. 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 capture or entrapment in holes or trenches, uncovering Covered Species through the excavation of burrows, by corralling the Covered Species into a confined area when barrier fencing is constructed, and relocation of Covered Species when required by this ITP. The areas where authorized take of the Covered Species is expected to occur include: within the Caltrans right-of-way (collectively, the Project Area).

The Project is expected to cause permanent loss of 21.45 acres of 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, capture and relocation, and long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, disturbance to burrows, removal and/or damage of vegetation comprising and increased vulnerability to predation.

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

<sup>4</sup> See *Id.*, § 670.5, subd. (b)(6)(A).

## **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:

- 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 Initial Study with Mitigated Negative Declaration for US 395 Widening (State Clearing House Number: 200908115) adopted by California Department of Transportation, June 30, 2010 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. 1600-2016-0106-06 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 Biological Opinion for the Widening of United States Route 395 (8-8-09-F-20) 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

---

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631



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 Attachment1 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.
- 6.2. Biological Monitor(s). Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a Biological Monitor(s) at least 30 days before starting Covered Activities or with change of personnel. Permittee shall ensure that the Biological Monitor(s) is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Biological Monitor(s) 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.
- 6.3. Authorized Biologist(s). Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information for biologists who, in addition to meeting the qualifications to be Biological Monitor(s) identified in Condition 6.2 above, possess a valid Memorandum of Understanding (MOU) with CDFW for handling the Covered Species. Only Authorized Biologist(s) shall be allowed to excavate burrows, handle, and relocate Covered Species.
- 6.4. Authorized Biologist(s) and Biological Monitor(s) Authority. To ensure compliance with the Conditions of Approval of this ITP, the Biological Monitor(s) and/or Authorized Biologist(s) shall have authority to immediately stop work if the activities do not comply with this ITP, after which they shall notify the onsite manager. Work shall not continue until the Authorized Biologist determines compliance with the ITP and provides that determination to the onsite manager. The Biological Monitor(s) and/or Authorized Biologist(s) shall order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631

- 6.5. 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 Biological Monitor(s) 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.
- 6.6. Construction Monitoring Notebook. The Biological Monitor(s) 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.
- 6.7. 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.
- 6.8. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Biological Monitor(s). Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.
- 6.9. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 6.10. Delineation of Property Boundaries. Before starting Covered Activities along each part of the route in active construction, 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.

- 6.11. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 6.12. Project Access. Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description 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.
- 6.13. 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.
- 6.14. 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.
- 6.15. Firearms and Dogs. Permittee shall prohibit firearms and domestic dogs from the Project Area and site access routes during Covered Activities, except those in the possession of authorized security personnel or local, State, or federal law enforcement officials
- 6.16. 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.

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631

- 6.17. 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. Monitoring, Notification and Reporting Provisions:**

- 7.1. Notification before Commencement. The Designated Representative shall notify CDFW in writing 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 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 to CDFW within 24 hours.
- 7.3. Compliance Monitoring. The Authorized Biologist(s) shall be on-site daily. The Authorized Biologist(s) 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 Authorized Biologist(s) shall prepare daily written observation and inspection records summarizing: (1) oversight activities and compliance inspections; (2) observations of Covered Species and their sign; (3) survey results; and (4) monitoring activities required by this ITP.
- 7.4. Quarterly Compliance Report. The Biological Monitor(s) or Authorized Biologist(s) shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Quarterly 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. Quarterly Compliance Reports shall be submitted to CDFW's Regional Office at the address listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative. At the time of this ITP's approval, the CDFW Regional Representative is Heather Elder (Heather.Elder@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 Quarterly 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 Biological Monitor(s) shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Biological Monitor(s) shall include copies of the submitted forms with the next Quarterly 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 Biological Monitor(s) shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Quarterly 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 Authorized Biologist(s) and/or the Biological Monitor(s) 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 Biological Monitor(s) or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (909) 466-8462 and by notifying the CDFW Regional Representative Heather Elder

(Heather.Elder@wildlife.ca.gov). 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.

### **Desert Tortoise**

- 8.1. Pre-Construction Surveys. No more than seven (30) days prior to initiating Covered Activities, the Biological Monitor(s) or Authorized Biologist(s) shall conduct pre-construction surveys to determine potential presence of Covered Species within the Project Area. These surveys shall cover 100 percent of the Project Area and a 50-foot buffer zone. The Biological Monitor(s) or Authorized Biologist(s) shall follow the survey methodology in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise (Mojave Population) Field Manual (hereinafter referred to as USFWS Field Manual). The Biological Monitor(s) or Authorized Biologist(s) shall record all potential Covered Species burrows within the pre-construction survey area, using high-accuracy global positioning system (GPS) technology. The Biological Monitor(s) or Authorized Biologist(s) shall provide the results of the pre-construction survey (using the USFWS Protocol data sheet) to CDFW within 10 days of completing the surveys.
- 8.2. Pre-construction sweeps. The Authorized Biologist(s) shall conduct sweeps before construction, to ensure that desert tortoises are absent from the Project area. Additionally, the Authorized Biologist(s) shall be on site during construction of the desert tortoise exclusion fencing. Upon completion of construction of the desert tortoise exclusion fencing, a Biological Monitor(s) shall be on site for the remainder of the Cover Activities. If handling of a Covered Species is required the Biological Monitor(s) shall contact the on-call Authorized Biologist(s). Only an Authorized Biologist(s) shall be allowed to excavate burrows, handle, and relocate Covered Species.

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631



- 8.3. Covered Species Observations. All personnel on the Project site shall immediately report all encounters with the Covered Species to the Biological Monitor(s) or Authorized Biologist(s). If a Covered Species is identified during Project activities, the Permittee shall immediately stop all work in the area and contact the Biological Monitor(s) or Authorized Biologist(s). The Biological Monitor(s) or Authorized Biologist(s) shall allow the Covered Species to escape unimpeded or the Authorized Biologist(s) may relocate the Covered Species as described in this ITP. Permittee shall not resume work until the Authorized Biologist(s) has relocated the animal or allowed it to move outside the Project Area on its own. The Field Contact Representative shall notify CDFW within 24 hours of any Covered Species observations. Notification to CDFW shall be via telephone and e-mail, followed by a written report. Notification and the written report shall include the date, location, and circumstances of the observation, the name of the Biological Monitor(s) or Authorized Biologist(s) notified, and any other pertinent information. If the Covered Species was handled and/or relocated, additional information, as specified in Condition of Approval 8.11, shall be provided.
- 8.4. Desert Tortoise Handling. In the event that individuals of the Covered Species, or Covered Species eggs, must be handled and/or relocated, the Authorized Biologist(s) shall follow all procedures/guidelines in the USFWS Field Manual, including, but not limited to, procedures to avoid transmission of diseases and parasites, guidelines for addressing temperature extremes, data collection requirements, and general measures to protect the well-being of the Covered Species. All instances of handling and relocation shall be documented and provided to CDFW as specified in Condition of Approval 8.9.
- 8.5. Desert Tortoise Fencing. Permittee shall install permanent desert tortoise exclusion fencing along the proposed Project length paralleling the Right of Way (ROW) prior to surface disturbance to prevent encounters with desert tortoise. Permittee shall tie the permanent desert tortoise fencing into the wildlife crossings, attach to the culverts, and then parallel the ROW again. The fence will allow wildlife to follow the fence line into the culvert for safe crossings and eliminates the possibility of desert tortoise entering the culverts that are not designed as wildlife crossings.
- 8.6. Desert Tortoise Fencing Maintenance. During the Covered Activities, the Authorized Biologist(s) shall inspect the fence at the end of each working day to ensure the Covered Species is prohibited from entering the site. If the fence is compromised, repairs shall be completed at that time. Once Covered Activities are finished, the Biological Monitor(s) shall inspect during and immediately after heavy rainfalls.

- 8.7. 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 Biological Monitor(s) and wait for the Covered Species to move unimpeded to a safe location OR the Authorized Biologist(s) shall translocate the Covered Species as described in Condition of Approval 8.10 and 8.11 of this ITP before moving vehicles and equipment.
- 8.8. Desert Tortoise Translocation Plan. Permittee shall submit a desert tortoise translocation plan to CDFW for review and approval, 60 days prior to initiating construction. Permittee shall include in the Translocation Plan a description of the flora and fauna of the entire planned translocation parcel as well as an estimated number of tortoises that occupy the translocation site. The Translocation Plan shall be approved before construction begins to ensure CDFW and the Applicant knows what to do if a tortoise is found on the project site.
- 8.9. Relocation of Desert Tortoise. To the maximum extent practicable, disturbance to, and relocation of, desert tortoises shall be avoided. If any desert tortoises are found to be at risk of harm as a result of Covered Activities, the individual(s) shall be moved out of harm's way using the methods described in the USFWS Field Manual and the approved translocation plan. The Authorized Biologist(s) shall capture, collect measurement and identification data, permanently mark, and relocate any desert tortoise found within the Project site to suitable, undisturbed CDFW-approved off-site habitat as specified in the translocation plan. The Authorized Biologist(s) shall relocate and/or move the desert tortoise far enough away from the proposed realignment so that toxins and other invasive species from vehicle pollution will not impact the tortoise. The Authorized Biologist(s) shall follow all excavation, capture, handling, and relocation procedures described in the USFWS Field Manual to protect the health and well-being of desert tortoise. If a desert tortoise is found above ground, the Authorized Biologist(s) shall release it above ground in suitable habitat and conditions. If a desert tortoise or its eggs are found during burrow excavation, the Authorized Biologist(s) shall relocate them to an unoccupied burrow of similar size. If no such burrow is available for relocating, the Authorized Biologist(s) shall construct an artificial burrow similar in size, depth, and orientation as the original burrow. The Authorized Biologist(s) shall follow all protocols for the construction of the artificial burrows found in the Chapter 7- Guidelines for Handling Desert Tortoises (USFWS Field Manual). The Authorized Biologist(s) shall record the location of all desert tortoise burrows, desert tortoises, and relocation sites using GPS technology. The Authorized Biologist(s) shall collapse all potential or actual desert tortoise burrows present within the work site after establishing that desert tortoise does not currently occupy them.
- 8.10. Ambient Air Temperature. The Authorized Biologist(s) shall ensure that desert



tortoises are not captured, moved, transported, released, or purposefully caused to leave their burrow for any reason when the ambient air temperature is above 95 degrees Fahrenheit (35 degrees Celsius). The Authorized Biologist(s) shall ensure that no desert tortoise is captured if the ambient air temperature is anticipated to exceed 95 degrees Fahrenheit before handling or processing can be completed. If the ambient air temperature exceeds 95 degrees Fahrenheit during handling or processing, the Authorized Biologist(s) shall ensure the desert tortoise is kept in a shaded environment with a temperature that does not exceed 95 degrees Fahrenheit, and that the individual is not released until ambient air temperature declines to below 95 degrees Fahrenheit. Desert tortoises moved during inactive periods shall be monitored by the Authorized Biologist(s) for at least 2 days after placement in the new burrows to ensure their safety. During relocation, the Authorized Biologist(s) may hold a captured desert tortoise overnight and move them the following morning within these temperature constraints.

- 8.11. Desert Tortoise Re-hydration. If a desert tortoise voids its bladder as a result of being handled, the Authorized Biologist(s) shall rehydrate the individual(s). The Authorized Biologist(s) shall rehydrate the desert tortoise at the location where the individual(s) was or were captured, or the location where the individual(s) is or will be relocated. The Authorized Biologist(s) shall rehydrate the desert tortoise by placing it in a tub with a clean plastic disposable liner. The Authorized Biologist(s) shall add water to the lined tub while ensuring that the water level is not higher than the lower jaw of the desert tortoise. The Authorized Biologist(s) shall rehydrate each desert tortoise individually for a minimum of 10 to 20 minutes. The Authorized Biologist(s) shall place the lined tub in a quiet protected area during rehydration. After each tortoise is rehydrated the water shall be emptied and a new plastic disposable liner placed in the tub.

### **Mohave Ground Squirrel**

- 8.12. Mohave Ground Squirrel Burrow Excavation. The Authorized Biologist(s) shall fully excavate by hand all burrows OR scope each burrow within the Project Area that are suspected or known to be occupied by Mohave ground squirrels. The Authorized Biologist(s) shall allow Mohave ground squirrels encountered in the excavated burrows during their *active period* to escape out of harm's way. During the Mohave ground squirrel *dormant period*, the Authorized Biologist(s) shall collect and immediately relocate them to an artificial burrow at a protected off-site location approved in advance by CDFW's Regional Representative. The Mohave ground squirrel may only be relocated by the Authorized Biologist(s). The Authorized Biologist(s) shall prepare relocation burrows in the following manner: (1) A hole of at least two feet deep shall be dug; (2) install a nine-inch diameter non-collapsible plastic container, which shall be connected to a three-inch diameter non-collapsible plastic

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631

pipe that runs to the ground surface at a 45-degree angle; (3) The Authorized Biologist(s) shall place the Mohave ground squirrel in the artificial burrow and lightly plug the burrow mouth with soil in a manner that is similar to a natural Mohave ground squirrel burrow.

**Other Minimization Measure:**

- 8.13. Minimization of Vegetation Removal. Permittee shall minimize vegetation removal associated with construction activities to the fullest extent possible. Biological Monitor(s) shall review and approve or deny any grubbing or clearing of vegetation.
- 8.14. Trench Inspection. The Biological Monitor(s) shall inspect all open holes and trenches within the Project Area at the beginning, middle, and end of each day for trapped animals. To prevent inadvertent entrapment of Covered Species or any other animals, the Biological Monitor(s) shall oversee the covering of all excavated, steep-walled holes or trenches more than two feet deep, or of any depth if they contain water or other material, at the close of each working day by plywood or other barrier materials such that animals are unable to enter and become entrapped. Permittee shall provide escape ramps in holes greater than two feet deep that do not hold water or other material, to allow animals to escape. Before holes or trenches are filled, the Biological Monitor(s) shall thoroughly inspect them for trapped animals. If any worker discovers that Covered Species have become trapped, they shall halt Project-related activities and notify the Authorized Biologist(s) immediately. Project workers and the Biological Monitor(s) shall allow the Covered Species to escape unimpeded if possible, or the Authorized Biologist(s) shall move the Covered Species out of harm's way before allowing work to continue. The use of temporary fencing, around the perimeter of trenches or holes is an acceptable minimization measure.
- 8.15. Care of Injured Covered Species. If a Covered Species is injured or killed as a result of Project-related activities or if a Covered Species is otherwise found dead within the Project Area, Permittee shall immediately notify the Authorized Biologist(s) as described in Conditions of Approval 7.8. The Authorized Biologist(s) shall immediately take injured individuals to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility prior to the start of Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species.
- 8.16. Vehicular Traffic Restrictions. Permittee shall restrict Project-related vehicle traffic to established roads and the delineated Project Area; cross-country (off-road) vehicle travel is prohibited and signs shall be posted to this affect during maintenance activities. If a Covered Species is encountered, drivers shall stop, wait for the Covered Species to move off the road, and immediately notify the Biological Monitor(s) of the Covered Species location. If handling of a Covered Species is required the Biological

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631



Monitor(s) shall notify the Authorized Biologist(s) and shall halt Project-related activities and immediately.

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

CDFW has determined that acquisition, 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 25.44 acres (Table 1: Mitigation for Impacts to Desert Tortoise and Mohave Ground Squirrel Habitat) of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of 25.44 acres of occupied Covered Species 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.

For the mapping of desert tortoise habitat suitability adjacent to the Project area, the following classifications were developed based on detailed aerial imagery from 2017 provided by the San Bernardino County Transportation Authority (SBCTA), Google Street View imagery, and in-person observations by Caltrans staff.

Medium Quality: Medium quality desert tortoise habitat was classified as those areas with either whole or partial native plant coverage; areas that do not appear disturbed by off-road vehicle activity; and areas adjacent to undeveloped land with suitable desert tortoise habitat.

Low Quality: Low quality desert tortoise habitat was classified as: dirt roads, areas that show signs of active maintenance, disturbance, and compaction including much of the eastern and western areas immediately adjacent US 395, areas where vegetation has been cleared in large part or entirely, areas with high concentrations of non-native invasive plant species, and areas that are adjacent to other urban development with more limited connections to undeveloped land with suitable desert tortoise habitat.

Table 1: Mitigation for Impacts to Desert Tortoise and Mohave Ground Squirrel Habitat

Suitability	Acres	Mitigation Ratio	Mitigation Acreage
Medium	3.99 ac	2:1	7.98 ac
Low	17.46 ac	1:1	17.46 ac
<b>Totals</b>	<b>21.45 ac</b>		<b>25.44 ac</b>

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 costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$1458.00/acre for 25.44 acres: **\$37,091.52**. 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 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 25.44 acres: **\$7,377.60**;

9.1.3. Interim management period funding as described in [Condition of Approval 9.3.6] below, estimated at **\$100,000.00**;

9.1.4. Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$1490.00/acre for 25.44 acres: **\$37,905.60**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management, plus the ten percent (\$3,790.56) contingency fee as described in Condition 9.4.2.2.1 for a total of **\$41,696.16**.

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 **\$3,000.00**.

9.2. Covered Species Credits. Permittee shall purchase 25.44 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:

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631



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 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 (Attachment 3B) 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 2A). 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. Capitalization Rate and Fees. 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. Endowment Buffers/Assumptions. 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. 10 Percent Contingency. 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. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.

9.4.2.2.3. Non-annualized Expenses. 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 **\$189,165.28**. 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 (Attachment 4) or 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 5) 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

---

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631

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 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 Biological Monitor(s) 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  
1416 Ninth Street, Suite 1260  
Sacramento, CA 95814

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 (2081-2017-072-06) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

---

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631



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

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

Heather Elder, Environmental Scientist  
California Department of Fish and Wildlife  
3602 Inland Empire Blvd. Suite C220  
Ontario, CA 91764  
Telephone (909) 980-8607  
Fax (909) 481-2945

**Compliance with California Environmental Quality Act (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, San Bernardino County Transportation Authority. (See generally Pub. Resources Code, §§ 21067, 21069.) The California Department of Transportation's prior environmental review of the Project is set forth in the US 395 Widening Project, (SCH No.: 2009081105) dated June 29, 2010 for the Mitigated Negative Declaration that the California Department of Transportation adopted on June 30, 2010. At the time the California Department Transportation adopted the Mitigated Negative Declaration and approved the Project it also 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.

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631

## **Findings Pursuant to California Endangered Species Act (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, US 395 Widening 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) Quarterly 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 1,599.94 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 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;

---

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631



- (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:**

ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2A	Habitat Management Lands Checklist
ATTACHMENT 2B	Proposed Lands for Acquisition Form
ATTACHMENT 3	Letter of Credit Form
ATTACHMENT 4	Mitigation Payment Transmittal Form

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on June 20, 2018

Leslie MacNair

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: Paula Beauchamp

Date: 10/17/18

Printed Name: Paula Beauchamp

Title: Director of Project  
Delivery and Toll Operations

Incidental Take Permit  
No. 2081-2017-072-06  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
HIGHWAY 395 (HWY-395) WIDENING 0F631



## Attachment 1

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

**INCIDENTAL TAKE PERMIT NO. 2081-2017-072-06**

**PERMITTEE: San Bernardino County Transportation Authority**

**PROJECT: US Highway 395 Widening Project (0F631)**

#### **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 Schedule	Responsible Party	Status / Date / Initials
<b>BEFORE DISTURBING SOIL OR VEGETATION</b>					
1	Before starting Covered Activities, Permittee shall designate a representative responsible for communications with CDFW and overseeing compliance with the 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 the ITP.	ITP Condition # 6.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a Biological Monitor(s) at least 30 days before starting Covered Activities or with change of personnel. Permittee shall ensure that the Biological Monitor(s) is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Biological Monitor(s) 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.	ITP Condition # 6.2	Before commencing ground- or vegetation-disturbing activities  Entire Project	Permittee	
3	Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information for biologists who, in addition to meeting the qualifications to be Biological Monitor(s) identified above, possess a valid Memorandum of Understanding (MOU) with CDFW for handling the Covered Species. Only Authorized Biologist(s) shall be allowed to excavate burrows, handle, and relocate Covered Species.	ITP Condition # 6.3	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
4	To ensure compliance with the Conditions of Approval of the ITP, the Biological Monitor(s) and/or Authorized Biologist(s) shall have authority to immediately stop work if the activities do not comply with the ITP, and shall notify the onsite manager to stop work. Work shall not continue until the Authorized Biologist determines compliance with the ITP and provides that determination to the onsite manager. The Biological Monitor(s) and/or Authorized Biologist(s) shall order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.	ITP Condition # 6.4	Before commencing ground- or vegetation-disturbing activities / Entire Project	Biological Monitor(s) and/or Authorized Biologist(s)	
5	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 Biological Monitor(s) 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 the 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.	ITP Condition # 6.5	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
6	Before starting Covered Activities along each part of the route in active construction, 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.	ITP Condition # 6.10	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
7	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 construction	Designated Representative	
8	No more than seven (30) days prior to initiating Covered Activities, the Biological Monitor(s) or Authorized Biologist(s) shall conduct pre-construction surveys to determine potential presence of Covered Species within the Project Area. These surveys shall cover 100 percent of the Project Area and a 50-foot buffer zone. The Biological Monitor(s) or Authorized Biologist(s) shall follow the survey methodology in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise (Mojave Population) Field Manual (hereinafter referred to as USFWS Field Manual). The Biological Monitor(s) or Authorized Biologist(s) shall record all potential Covered Species burrows within the pre-construction survey area, using high-accuracy global positioning system (GPS) technology. The Biological Monitor(s) or Authorized Biologist(s) shall provide the results of the pre-construction survey (using the USFWS Protocol data sheet) to CDFW within 10 days of completing the surveys.	ITP Condition # 8.1	30 days prior to Covered Activities	Authorized Biologist(s)	
9	Permittee shall submit a desert tortoise translocation plan to CDFW for review and approval, 60 days prior to initiating construction. Permittee shall include in the Translocation Plan a description of the flora and fauna of the entire planned translocation parcel as well as an estimated number of tortoises that occupy the translocation site. The Translocation Plan shall be approved before construction begins to ensure CDFW and the Applicant knows what to do if a tortoise is found on the project site.	ITP Condition # 8.8	60 Days prior to initiating construction	Permittee	
10	The Biological Monitor(s) shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of the 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 # 6.6	Entire Project	Biological Monitor(s)	
11	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.	ITP Condition # 6.7	Entire Project	Permittee	
12	Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Biological Monitor(s). Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.	ITP Condition # 6.8	Entire Project	Permittee	
13	Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.	ITP Condition # 6.9	Entire Project	Permittee	
14	Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.	ITP Condition # 6.11	Entire Project	Permittee	



	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
15	Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description 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 the ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.	ITP Condition # 6.12	Entire Project	Permittee	
16	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 above.	ITP Condition # 6.13	Entire Project	Permittee	
17	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.	ITP Condition # 6.14	Entire Project	Permittee	
18	Permittee shall prohibit firearms and domestic dogs from the Project Area and site access routes during Covered Activities, except those in the possession of authorized security personnel or local, State, or federal law enforcement officials	ITP Condition # 6.15	Entire Project	Permittee	
19	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 the ITP.	ITP Condition # 6.16	Entire Project	Permittee	
20	The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of the ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in the ITP and/or the MMRP. The Designated Representative shall report any non-compliance with the ITP to CDFW within 24 hours.	ITP Condition # 7.2	Entire Project	Designated Representative	
21	The Authorized Biologist(s) shall be on-site daily when Covered Activities occur. The Authorized Biologist(s) 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 the 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 Authorized Biologist(s) shall prepare daily written observation and inspection records summarizing: (1) oversight activities and compliance inspections; (2) observations of Covered Species and their sign; (3) survey results; and (4) monitoring activities required by the ITP.	ITP Condition # 7.3	Entire Project	Authorized Biologist(s)	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
22	The Biological Monitor(s) or Authorized Biologist(s) shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Quarterly 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. Quarterly Compliance Reports shall be submitted to CDFW's Regional Office at the address listed in the Notices section of the ITP and via e-mail to CDFW's Regional Representative. At the time of the ITP's approval, the CDFW Regional Representative is Heather Elder (Heather.Elder@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	Entire Project/ Quarterly	Biological Monitor(s) or Authorized Biologist(s)	
23	The Biological Monitor(s) shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Biological Monitor(s) shall include copies of the submitted forms with the next Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation. <a href="https://www.wildlife.ca.gov/Data/CNDDDB">https://www.wildlife.ca.gov/Data/CNDDDB</a>	ITP Condition # 7.6	Entire Project	Biological Monitor(s)	
24	Permittee shall immediately notify the Authorized Biologist(s) and/or the Biological Monitor(s) 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 Biological Monitor(s) or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (909) 466-8462 and by notifying the CDFW Regional Representative Heather Elder (Heather.Elder@wildlife.ca.gov). 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.	ITP Condition # 7.8	Entire Project	Permittee	
25	The Authorized Biologist(s) shall conduct sweeps before construction, to ensure that desert tortoises are absent from the Project area. Additionally, the Authorized Biologist(s) shall be on site during construction of the desert tortoise exclusion fencing. Upon completion of construction of the desert tortoise exclusion fencing, a Biological Monitor(s) shall be on site for the remainder of the Cover Activities. If handling of a Covered Species is required the Biological Monitor(s) shall contact the on-call Authorized Biologist(s). Only an Authorized Biologist(s) shall be allowed to excavate burrows, handle, and relocate Covered Species.	ITP Condition # 8.2	Entire Project	Authorized Biologist(s)	



	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
26	All personnel on the Project site shall immediately report all encounters with the Covered Species to the Biological Monitor(s) or Authorized Biologist(s). If a Covered Species is identified during Project activities, the Permittee shall immediately stop all work in the area and contact the Biological Monitor(s) or Authorized Biologist(s). The Biological Monitor(s) or Authorized Biologist(s) shall allow the Covered Species to escape unimpeded or the Authorized Biologist(s) may relocate the Covered Species as described in the ITP. Permittee shall not resume work until the Authorized Biologist(s) has relocated the animal or allowed it to move outside the Project Area on its own. The Field Contact Representative shall notify CDFW within 24 hours of any Covered Species observations. Notification to CDFW shall be via telephone and e-mail, followed by a written report. Notification and the written report shall include the date, location, and circumstances of the observation, the name of the Biological Monitor(s) or Authorized Biologist(s) notified, and any other pertinent information. If the Covered Species was handled and/or relocated, additional information, as specified in Condition of Approval 8.11, shall be provided.	ITP Condition # 8.3	Entire Project	All personnel	
27	In the event that individuals of the Covered Species, or Covered Species eggs, must be handled and/or relocated, the Authorized Biologist(s) shall follow all procedures/guidelines in the USFWS Field Manual, including, but not limited to, procedures to avoid transmission of diseases and parasites, guidelines for addressing temperature extremes, data collection requirements, and general measures to protect the well-being of the Covered Species. All instances of handling and relocation shall be documented and provided to CDFW as specified in Condition of Approval 8.9.	ITP Condition # 8.4	Entire Project	Authorized Biologist(s)	
29	Permittee shall install permanent desert tortoise exclusion fencing along the proposed Project length paralleling the Right of Way (ROW) prior to surface disturbance to prevent encounters with desert tortoise. Permittee shall tie the permanent desert tortoise fencing into the wildlife crossings, attach to the culverts, and then parallel the ROW again. The fence will allow wildlife to follow the fence line into the culvert for safe crossings and eliminates the possibility of desert tortoise entering the culverts that are not designed as wildlife crossings.	ITP Condition # 8.5	Entire Project	Permittee	
30	During the Covered Activities, the Authorized Biologist(s) shall inspect the fence at the end of each working day to ensure the Covered Species is prohibited from entering the site. If the fence is compromised, repairs shall be completed at that time. Once Covered Activities are finished, the Biological Monitor(s) shall inspect during and immediately after heavy rainfalls.	ITP Condition # 8.6	Entire Project	Biological Monitor(s) or Authorized Biologist(s)	
31	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 Biological Monitor(s) and wait for the Covered Species to move unimpeded to a safe location OR the Authorized Biologist(s) shall translocate the Covered Species as described in Condition of Approval 8.10 and 8.11 of the ITP before moving vehicles and equipment.	ITP Condition # 8.7	Entire Project	All Personnel	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
32	To the maximum extent practicable, disturbance to, and relocation of, desert tortoises shall be avoided. If any desert tortoises are found to be at risk of harm as a result of Covered Activities, the individual(s) shall be moved out of harm's way using the methods described in the USFWS Field Manual and the approved translocation plan. The Authorized Biologist(s) shall capture, collect measurement and identification data, permanently mark, and relocate any desert tortoise found within the Project site to suitable, undisturbed CDFW-approved off-site habitat as specified in the translocation plan. The Authorized Biologist(s) shall relocate and/or move the desert tortoise far enough away from the proposed realignment so that toxins and other invasive species from vehicle pollution will not impact the tortoise. The Authorized Biologist(s) shall follow all excavation, capture, handling, and relocation procedures described in the USFWS Field Manual to protect the health and well-being of desert tortoise. If a desert tortoise is found above ground, the Authorized Biologist(s) shall release it above ground in suitable habitat and conditions. If a desert tortoise or its eggs are found during burrow excavation, the Authorized Biologist(s) shall relocate them to an unoccupied burrow of similar size. If no such burrow is available for relocating, the Authorized Biologist(s) shall construct an artificial burrow similar in size, depth, and orientation as the original burrow. The Authorized Biologist(s) shall follow all protocols for the construction of the artificial burrows found in the Chapter 7- Guidelines for Handling Desert Tortoises (USFWS Field Manual). The Authorized Biologist(s) shall record the location of all desert tortoise burrows, desert tortoises, and relocation sites using GPS technology. The Authorized Biologist(s) shall collapse all potential or actual desert tortoise burrows present within the work site after establishing that desert tortoise does not currently occupy them..	ITP Condition # 8.9	Entire Project	Authorized Biologist(s)	
33	The Authorized Biologist(s) shall ensure that desert tortoises are not captured, moved, transported, released, or purposefully caused to leave their burrow for any reason when the ambient air temperature is above 95 degrees Fahrenheit (35 degrees Celsius). The Authorized Biologist(s) shall ensure that no desert tortoise is captured if the ambient air temperature is anticipated to exceed 95 degrees Fahrenheit before handling or processing can be completed. If the ambient air temperature exceeds 95 degrees Fahrenheit during handling or processing, the Authorized Biologist(s) shall ensure the desert tortoise is kept in a shaded environment with a temperature that does not exceed 95 degrees Fahrenheit, and that the individual is not released until ambient air temperature declines to below 95 degrees Fahrenheit. Desert tortoises moved during inactive periods shall be monitored by the Authorized Biologist(s) for at least 2 days after placement in the new burrows to ensure their safety. During relocation, the Authorized Biologist(s) may hold a captured desert tortoise overnight and move them the following morning within these temperature constraints	ITP Condition # 8.10	Entire Project	Authorized Biologist(s)	
34	If a desert tortoise voids its bladder as a result of being handled, the Authorized Biologist(s) shall rehydrate the individual(s). The Authorized Biologist(s) shall rehydrate the desert tortoise at the location where the individual(s) was or were captured, or the location where the individual(s) is or will be relocated. The Authorized Biologist(s) shall rehydrate the desert tortoise by placing it in a tub with a clean plastic disposable liner. The Authorized Biologist(s) shall add water to the lined tub while ensuring that the water level is not higher than the lower jaw of the desert tortoise. The Authorized Biologist(s) shall rehydrate each desert tortoise individually for a minimum of 10 to 20 minutes. The Authorized Biologist(s) shall place the lined tub in a quiet protected area during rehydration. After each tortoise is rehydrated the water shall be emptied and a new plastic disposable liner placed in the tub.	ITP Condition # 8.11	Entire Project	Authorized Biologist(s)	



	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
35	The Authorized Biologist(s) shall fully excavate by hand all burrows OR scope each burrow within the Project Area that are suspected or known to be occupied by Mohave ground squirrels. The Authorized Biologist(s) shall allow Mohave ground squirrels encountered in the excavated burrows during their active period to escape out of harm's way. During the Mohave ground squirrel dormant period, the Authorized Biologist(s) shall collect and immediately relocate them to an artificial burrow at a protected off-site location approved in advance by CDFW's Regional Representative. The Mohave ground squirrel may only be relocated by the Authorized Biologist(s). The Authorized Biologist(s) shall prepare relocation burrows in the following manner: (1) A hole of at least two feet deep shall be dug; (2) install a nine-inch diameter non-collapsible plastic container, which shall be connected to a three-inch diameter non-collapsible plastic pipe that runs to the ground surface at a 45-degree angle; (3) The Authorized Biologist(s) shall place the Mohave ground squirrel in the artificial burrow and lightly plug the burrow mouth with soil in a manner that is similar to a natural Mohave ground squirrel burrow.	ITP Condition # 8.12	Entire Project	Authorized Biologist(s)	
36	Permittee shall minimize vegetation removal associated with construction activities to the fullest extent possible. Biological Monitor(s) shall review and approve or deny any grubbing or clearing of vegetation	ITP Condition # 8.13	Entire Project	Permittee	
37	The Biological Monitor(s) shall inspect all open holes and trenches within the Project Area at the beginning, middle, and end of each day for trapped animals. To prevent inadvertent entrapment of Covered Species or any other animals, the Biological Monitor(s) shall oversee the covering of all excavated, steep-walled holes or trenches more than two feet deep, or of any depth if they contain water or other material, at the close of each working day by plywood or other barrier materials such that animals are unable to enter and become entrapped. Permittee shall provide escape ramps in holes greater than two feet deep that do not hold water or other material, to allow animals to escape. Before holes or trenches are filled, the Biological Monitor(s) shall thoroughly inspect them for trapped animals. If any worker discovers that Covered Species have become trapped, they shall halt Project-related activities and notify the Authorized Biologist(s) immediately. Project workers and the Biological Monitor(s) shall allow the Covered Species to escape unimpeded if possible, or the Authorized Biologist(s) shall move the Covered Species out of harm's way before allowing work to continue. The use of temporary fencing, around the perimeter of trenches or holes is an acceptable minimization measure.	ITP Condition # 8.14	Entire Project	Biological Monitor(s)	
38	If a Covered Species is injured or killed as a result of Project-related activities or if a Covered Species is otherwise found dead within the Project Area, Permittee shall immediately notify the Authorized Biologist(s) as described in Conditions of Approval 7.8. The Authorized Biologist(s) shall immediately take injured individuals to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility prior to the start of Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species.	ITP Condition # 8.15	Entire Project	Permittee	
39	Permittee shall restrict Project-related vehicle traffic to established roads and the delineated Project Area; cross-country (off-road) vehicle travel is prohibited and signs shall be posted to this affect during maintenance activities. If a Covered Species is encountered, drivers shall stop, wait for the Covered Species to move off the road, and immediately notify the Biological Monitor(s) of the Covered Species location. If handling of a Covered Species is required the Biological Monitor(s) shall notify the Authorized Biologist(s) and shall halt Project-related activities and immediately.	ITP Condition # 8.16	Entire Project	Permittee Authorized Biologist(s)	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
40	The Permittee shall either purchase acres 25.44 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of 25.44 acres of occupied Covered Species 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 the ITP if Security is provided pursuant to Condition below for all uncompleted obligations.	ITP Condition #9	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
41	<p>a) <u>Cost Estimates. CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands as follows:</u></p> <p>i) <u>Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$1458.00/acre for 25.44 acres: <b>\$37,091.52</b>. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;</u></p> <p>ii) <u>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 25.44 acres: <b>\$7,377.60</b>;</u></p> <p>iii) <u>Interim management period funding as described in [Condition of Approval 9.3.6] below, estimated at <b>\$100,000.00</b>;</u></p> <p>iv) <u>Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$1490.00/acre for 25.44 acres: <b>\$37,905.60</b>. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management, plus the ten percent (\$3,790.56) contingency fee as described in Condition 9.4.2.2.1 for a total of <b>\$41,696.16</b>.</u></p> <p>v) <u>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 <b>\$3,000.00</b>.</u></p>	ITP Condition #9.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
42	Permittee shall purchase 25.44 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 the ITP if Security is provided pursuant to Condition of Approval 10 below. OR:			Permittee	



	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
43	<p>To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:</p> <p>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 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);</p>	ITP Condition #9.3.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
44	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 (Attachment 3B) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;	ITP Condition #9.3.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
45	Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents. 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;	ITP Condition # 9.3.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
46	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;	ITP Condition # 9.3.4	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
47	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: <a href="http://www.dfg.ca.gov/habcon/conplan/mitbank/">http://www.dfg.ca.gov/habcon/conplan/mitbank/</a> ); (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;	ITP Condition # 9.3.5	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
48	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.	ITP Condition # 9.3.6	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
49	<p>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 the 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 the ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by the ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.</p> <p>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 the ITP, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.</p>	ITP Condition # 9.4.	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	



	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
50	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);	ITP Condition # 9.4.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
51	<p>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.</p> <p>9.4.2.1. Capitalization Rate and Fees. 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;</p> <p>9.4.2.2. Endowment Buffers/Assumptions. 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:</p> <p>9.4.2.2.1. 10 Percent Contingency. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.</p> <p>9.4.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.</p> <p>9.4.2.2.3. Non-annualized Expenses. 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.</p>	ITP Condition #9.4.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
52	Permittee shall designate an interim and long-term land manager. Permittee may select the conservation easement grantee, land owner, or other party as the land manager. Documents related to land management shall identify the land manager. 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 long-term land manager unless otherwise specified.	ITP Condition #9.5	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	



	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
53	<p>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:</p> <p>b) <u>Security Amount</u>. The Security shall be in the amount of <b>\$189,165.28</b>. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.</p> <p>c) <u>Security Form</u>. The Security shall be in the form of an irrevocable letter of credit (Attachment 4) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.</p> <p>d) <u>Security Timeline</u>. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of the ITP, whichever occurs first.</p> <p>e) <u>Security Holder</u>. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.</p> <p>f) <u>Security Transmittal</u>. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (Attachment 5) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.</p> <p>g) <u>Security Drawing</u>. 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 the ITP.</p> <p>h) <u>Security Release</u>. 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:</p> <ul style="list-style-type: none"> <li>• Written documentation of the acquisition of the HM lands;</li> <li>• Copies of all executed and recorded conservation easements;</li> <li>• Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and</li> <li>• Timely submission of all required reports.</li> </ul> <p>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 the 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.</p>	ITP Condition #9.10	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
54	The Biological Monitor(s) or Authorized Biologist(s) shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Quarterly 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. Quarterly Compliance Reports shall be submitted to CDFW's Regional Office at the address listed in the Notices section of the ITP and via e-mail to CDFW's Regional Representative. At the time of the ITP's approval, the CDFW Regional Representative is Heather Elder (Heather.Elder@wildlife.ca.gov). CDFW may at any time increase the timing and number of compliance inspections and reports required under the 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	Quarterly	Biological Monitor(s) or Authorized Biologist(s)	
55	Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of the ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports for that year; (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	No Later than January 31 of Every year beginning with issuance of the ITP	Permittee	
56	No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Biological Monitor(s) shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Quarterly 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 the 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	
57	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 #6.17	Upon completion of Covered Activities	Permittee	
58	CDFW accepts the Final Mitigation Report as complete.		Post-construction	CDFW	



ATTACHMENT 2A  
DEPARTMENT OF FISH AND WILDLIFE  
HABITAT MANAGEMENT LAND ACQUISITION PACKAGE CHECKLIST FOR PROJECT APPLICANTS

The following checklist is provided to inform you of what documents are necessary to expedite the Department of Fish and Wildlife (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 process the land acquisition for formal acceptance.

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

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

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

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

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

Enclosed is the complete package for the ☐ Conservation Easement OR ☐ Grant Deed

Documents in this package include:

☐ Fully executed, approved as to form Conservation Easement Deed or Grant Deed with legal description stamped by a licensed surveyor. Date executed: \_\_\_\_\_

☐ Proposed Lands for Acquisition Form (PLFAF)

☐ Phase I Environmental Site Assessment Report Date on report: \_\_\_\_\_  
(An existing report may be used, but it must be less than two years old.)

☐ 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 six months 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

☐ Policy of Title Insurance (an existing title policy is not acceptable)

☐ County Assessor Parcel Map(s) for subject property

☐ Site Location Map (Site location with property boundaries outline on a USGS 1:24,000 scale topo)

☐ 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 or if this package is for a Grant Deed)

☐ Biological Resources Report

☐ Draft Summary of Transactions ☐ hard copy ☐ electronic copy (both are required)

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: \_\_\_\_\_

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



IRREVOCABLE STANDBY LETTER OF CREDIT  
NO. [*Number issued by financial institution*]

---

Issue Date: [*date*]

Beneficiary:

Department of Fish and Wildlife  
Post Office Box 944209  
Sacramento, CA 94244-2090  
Attn: HCPB Mitigation Account Coordinator

Amount: U.S. \$[*dollar number*] [(*dollar amount*)]

Expiry: [*Date*] at our counters

Dear Sirs:

1. At the request and on the instruction of our customer, [*name of applicant*] ("Applicant"), we, [*Name of financial institution*] ("Issuer"), hereby establish in favor of the beneficiary, the California Department of Fish and Wildlife ("CDFW"), this irrevocable standby letter of credit ("Credit") in the principal sum of U.S. \$[*dollar number*] [(*dollar amount*)] ("Principal Sum").
2. We are informed this Credit is and has been established for the benefit of the CDFW pursuant to the terms of the incidental take permit for the [*name of project*] issued by the CDFW to the Applicant on [*date*] (No. [*number*]) ("Permit").
3. We are further informed that pursuant to the Permit, the Applicant has agreed to complete certain mitigation requirements, as set forth in Conditions [*numbers*] in the Permit ("Mitigation Requirements").
4. We are finally informed that this Credit is intended by the CDFW and the Applicant to serve as a security device for the performance by the Applicant of the Mitigation Requirements.
5. The CDFW shall be entitled to draw upon this Credit only by presentation of a duly executed Certificate for Drawing ("Certificate") in the same form as Attachment A, which is attached hereto, at our office located at [*name and address of financial institution*].
6. The Certificate shall be completed and signed by an "Authorized Representative" of the CDFW as defined in paragraph 12 below. Presentation by the CDFW of a

completed Certificate may be made in person or by registered mail, return receipt requested, or by overnight courier.

7. Upon presentation of a duly executed Certificate as above provided, payment shall be made to the CDFW, or to the account of the CDFW, in immediately available funds, as the CDFW shall specify.
8. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give the CDFW prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Credit, state the reasons therefore, and await further instruction.
9. Upon being notified that the demand for payment was not effected in conformity with the Credit, the CDFW may correct any such non-conforming demand for payment under the terms and conditions stated herein.
10. All drawings under this Credit shall be paid with our funds. Each drawing honored by us hereunder shall reduce, *pro tanto*, the Principal Sum. By paying to the CDFW an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.
11. This Credit will be cancelled upon receipt by us of Certificate of Cancellation, which: (i) shall be in the form of Attachment B, which is attached hereto, and (ii) shall be completed and signed by an Authorized Representative of the CDFW, as defined in paragraph 12 below.
12. An "Authorized Representative" shall mean either the Director of the Department of Fish and Wildlife, the General Counsel of the Department of Fish and Wildlife, or a Regional Manager of the Department of Fish and Wildlife.
13. This Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof, unless at least sixty (60) days prior to any such date, we notify the CDFW in writing by registered mail, return receipt requested, or by overnight courier that we elect not to consider this Credit extended for any such period.
14. Communications with respect to this Credit shall be in writing and addressed to us at [**name and address of financial institution**], specifically referring upon such writing to this credit by number. The address for notices with respect to this Credit shall be: (i) for the CDFW: Department of Fish and Wildlife, Habitat Conservation Planning Branch, 1416 Ninth Street, 12th Floor, Sacramento, California 95814-2090 Attn: HCPB Mitigation Account Coordinator; and (ii) for the Applicant: [**name and address of applicant**].
15. This Credit may not be transferred.



16. This Credit is subject to the International Standby Practices 1998 ("ISP 98"). As to matters not covered by the ISP 98 and to the extent not inconsistent with the ISP 98, this credit shall be governed by and construed in accordance with the Uniform Commercial Code, Article 5 of the State of California.
17. This Credit shall, if not canceled, expire on [**expiration date**], or any extended expiration date.
18. We hereby agree with the CDFW that documents presented in compliance with the terms of this Credit will be duly honored upon presentation, as specified herein.
19. This Credit sets forth in full the terms of our undertaking. Such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which this Credit is referred to or to which this Credit relates and any such reference shall not be deemed to incorporate herein by reference any document or instrument.

**[Name of financial institution]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTACHMENT A

IRREVOCABLE STANDBY LETTER OF CREDIT NO. *[Number issued by financial institution]*  
CERTIFICATE FOR DRAWING

To:

*[Name and address of financial institution]*

Re: Incidental Take Permit No. *[permit number]*

The undersigned, a duly Authorized Representative of the Department of Fish and Wildlife ("CDFW"), as defined in paragraph 12 in the above-referenced Irrevocable Standby Letter of Credit ("Credit"), hereby certifies to the Issuer that:

1. ***[Insert one of the following statements:*** "In the opinion of the CDFW, the Applicant has failed to complete the Mitigation Requirements referenced in paragraph 3 of the Credit." ***or*** "As set forth in paragraph 13, the Issuer has informed the CDFW that the Credit will not be extended and the Applicant has not provided the CDFW with an equivalent security approved by the CDFW to replace the Credit."
2. The undersigned is authorized under the terms of the Credit to present this Certificate as the sole means of demanding payment on the Credit.
3. The CDFW is therefore making a drawing under the Credit in amount of U.S. \$\_\_\_\_\_.
4. The amount demanded does not exceed the Principal Sum of the Credit.

Therefore, the CDFW has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: \_\_\_\_\_

***[Insert one of the following: "DIRECTOR" or "GENERAL COUNSEL" or "REGIONAL MANAGER, [NAME OF REGIONAL OFFICE]"***



ATTACHMENT B

IRREVOCABLE LETTER OF CREDIT NO. **[Number issued by financial institution]**  
CERTIFICATE FOR CANCELLATION

To:

**[Name of financial institution and address]**

Re: Incidental Take Permit No. **[permit number]**

The undersigned, a duly Authorized Representative of the California Department of Fish and Wildlife ("CDFW"), as defined in the paragraph 12 in the above-referenced Irrevocable Standby Letter of Credit ("Credit"), hereby certifies to the Issuer that:

1. **[Insert one of the following statements:** "The Applicant has presented documentary evidence of full compliance with the Mitigation Requirements referenced in paragraph 3 of the Credit." **or** "The natural expiration of this Credit has occurred."]
2. The CDFW therefore requests the cancellation of the Credit.

Therefore, the CDFW has executed and delivered this Certificate for Cancellation as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: \_\_\_\_\_

**[Insert one of the following: "DIRECTOR" or "GENERAL COUNSEL" or "REGIONAL MANAGER, [NAME OF REGIONAL OFFICE]"**

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: _____	