

### California Department of Fish and Game Inland Deserts Region 3602 INLAND EMPIRE BOULEVARD, SUITE C-220 ONTARIO, CA 91764

California Endangered Species Act Incidental Take Permit No. 2081-2016-040-06

#### **REDLANDS PASSENGER RAIL PROJECT**

## Authority:

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

Permittee:	San Bernardino County Transportation Authority
Principal Officer:	Andres Ramirez, Director of Transit & Rail Programs
Contact Person:	Andres Ramirez (909) 884-8276 (Ext. 150)
Mailing Address:	1170 W. 3 <sup>rd</sup> Street, 2 <sup>nd</sup> Floor San Bernardino, CA 92410

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

RECEIVED

APR 1 9 2019

HABITAT CONSERVATION

PLANNING BRANCH

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 **January 1, 2027.** 

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.

Rev. 2012.06.01

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

## **Project Location:**

The Redlands Passenger Rail Project (Project) is located from just east of E Street, in the City of San Bernardino, to Cook Street, in the City of Redlands, San Bernardino County. The Project is presented according to mile post (MP) from west to east, with east of E Street represented by MP 1, and Cook Street at the University of Redlands by MP 10.1. The Project passes over six (6) local waterways – Warm Creek (MP 1.1),Gage Canal (MP 3.8), Bryn Mawr Avenue (MP 5.78), and Twin Creek (MP 2.2) within the City of San Bernardino, and the Santa Ana River (SAR; MP 3.4) and Mill/Zanja Creek (MP 9.4) located in the City of Redlands (See Figure 1 - *Project Overview*).

## **Project Description:**

The Project is within the existing San Bernardino County Transportation Authority (SBCTA) right-of-way (ROW). The Project will occur within the ROW, which averages between 50 to 100 feet, and will include improvements along a 9.97-mile stretch of railway tracks to facilitate commuter rail service between the City of San Bernardino and the University of Redlands in the City of Redlands. The Project will comprise the construction or improvements of railroad tracks, structural crossings and bridges, rail platforms, public utilities, and drainages. After construction is complete, the Project will also include routine maintenance. A more detailed account of the activities that will occur during and post construction are detailed below.

### **DURING CONSTRUCTION**

Overall, construction will occur in three phases: 1) demolition; 2) early utilities relocations; and 3) mainline construction. Demolition began in September 2017, while early utility relocation started in November 2017. Mainline assembly began in summer 2018, with construction within the Project expected to begin in February 2019. This ITP only addresses construction beginning after ITP issuance. In its entirety, construction of the Project will take up to 36 months to complete (Operations and Maintenance will occur under this permit through January 1, 2027). Construction will proceed generally from the west of E Street to the SAR and similarly from the SAR east to Cook Street and includes the following:

- (a) Construction easement acquisition, clearing and grubbing, and removal of existing track;
- (b) Relocate, extend, or encase utilities;
- (c) Construction of embankments, culvert extensions, and retaining walls;
- (d) Re-grade, install drainage, and construct bridge crossings;
- (e) Construct new rail platforms; and
- (f) Construct new continuous welded rail track, roadway grade crossings, and install pedestrian access improvements and landscaping.

### Track improvements

A single track, along with an approximately 10,000-foot-long section of passing rail, will be improved from just west of Richardson Street to just east of California Street (MP 5.5 to MP

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7.4). The proposed track ballast and sub-grade along the corridor will be, on average, constructed to 24 feet in width; except through areas of passing, which will be up to 50 feet wide. Track installation will require demolition and replacement of the existing track. The rail improvements will also include the construction of a new train signaling and communications system.

### Rail platform construction

Two (2) station stops (E Street and Tippecanoe Avenue) will be located in the City of San Bernardino, while three (3) station stops (New York Street, Downtown Redlands, and the University of Redlands) will occur in the City of Redlands. The terminal stations (E Street and University of Redlands Stations) include two (2) platforms and edges. The E Street rail platforms will be constructed in conjunction with the already approved Downtown San Bernardino Passenger Rail Project and, therefore, only track improvements will be required west of E Street to align the Project tracks with the planned rail platforms. The terminal rail platforms will be up to 350 feet and at intermediate locations, less than 200 feet long. Pedestrian crossovers will be provided for each platform with accessible parking provided adjacent to pedestrian crossovers.

### Utility replacement and relocation

Relocation of existing subsurface and overhead crossing utilities (water, sewer, storm drain, power, gas, fiber optics, and telephone) will be determined with engineering standards and coordination with the affected utility provider.

### Drainage improvements

Several drainage facility improvements will be necessary to accommodate the Project. With coordination with the City of San Bernardino, City of Redlands, and the San Bernardino County Flood Control District (SBCFCD), the storm drain casings will be extended to span the entire width of the rail ROW. In addition, longitudinal storm drain lines will be relocated further from the proposed track centerlines to comply with Metrolink engineering standards. The majority of the storm drain facilities will be protected in place and will not need to be modified to meet minimum depth requirements.

### Construction of structural crossings and bridges

Six (6) existing structural water crossings will be retrofitted or replaced to facilitate the loading requirements of the passenger trains and track foundation.

Within the approximately 10-mile rail corridor, less than 0.5-mile occurs within an area of high biological value. For this ITP, the focus is on the portion of the Project that contains Covered Species and/or their habitat between MP 3.4 to MP 4.0 (See Figure 2 – *Project Sensitive Areas*), which consists of Bridge 3.4 at the Santa Ana River, Bridge 3.8 at the Gage Channel, and improvements to Mission/Zanja Channel (herein referred to as Project Area).

The construction Santa Ana River Bridge (Bridge 3.4) will include:

- (a) Providing access/staging from the north end of the western bank. Access to the eastern bank may occur via a temporary bridge crossing (earthen fill) from the west;
- (b) Creating five (5) new pier structures that will be spaced 62 feet apart using a cast-indrilled hole (CIDH) method. CIDH piles will be encased in a permanent steel casing;
- (c) Removing existing timber bents and concrete piers to a minimum of 3 feet below the existing surface after installation of new bridge foundation;
- (d) Constructing a single-tract steel beam bridge within the same footprint as the existing structure;
- (e) Building the Santa Ana River (SAR) trail along the eastern bank of Mission Zanja channel to travel underneath the bridge near the seventh abutment;
- (f) Incorporating a soil slurry/cement at both the west and east bridge abutments that will be capped with articulate concrete block (ACB); and
- (g) Using ACB and vegetated riprap and/or revetment to stabilize the western bank both north and south of the bridge.

For the Gage Canal Bridge (Bridge 3.8), approximately 160-feet will be structurally reinforced with cellular concrete. Within the adjacent Mission Zanja Channel (MP 3.5 - 4.0), a 2 to 3-foot-high floodwall will be built along the northern (160-foot) and southern (100-foot) banks to increase hydraulic conveyance and flood protection. Three (3) new drainage connections will also be created within this stretch of the Mission Zanja Channel.

Construction may involve limited dredging of material from the channel bed and/or excavation along the adjacent banks. These activities could also include the placement of fill such as concrete and riprap. To minimize construction activity in the channel, the structural improvements will be constructed in two or more phases to minimize disturbance to the channel bottom and allow for passage of water flow. A similar approach will be employed for the removal of any existing structures. Construction of the structural crossings at local waterways may require the isolation of the work zone through the installation of a cofferdam and/or construction work pads within the wet area. New structural supports behind a temporary cofferdam will be constructed using sheet piling or a similar method. The structural foundation will consist of reinforced concrete supported by piling, with conventional reinforced concrete piers extending up to the bridge decks. To minimize the potential for falling debris into local waterways during bridge construction, a debris containment system will be installed under the bridge. If flow is present, a boom will also be strung across the water feature to capture any material that escapes from the containment system from being carried downstream. Following construction, routine maintenance will be performed to ensure the proper function and safety of the rail system.

Post-construction

Train operation

During morning and afternoon peak commute hours, trains will operate every 30 minutes. During non-commute or off-peak hours, trains will operate every 60 minutes. Weekday and weekend service is planned to start at 5 a.m. and run until 10 p.m. In addition to standard passenger rail service, the Metrolink Express train will be extended to serve the Downtown Redlands Station with limited stop service to and from Los Angeles during the peak commute hours.

## Routine maintenance

The long-term operation and routine maintenance of the Project Area will require continued railroad maintenance per Federal Railroad Administration (FRA) requirements. Typical railroad maintenance and inspections will be conducted by a contractor hired by SBCTA throughout the operational phase of the Project in accordance with Southern California Regional Rail Authority/Metrolink standard practices. All routine maintenance work will occur within the Project Area ROW and include, at a minimum, annual maintenance of the track and track ties, grade crossings, and communication system, including vegetation management and weed abatement.

Inspections within the Project will include, but not limited to, the following:

- (a) A regular comprehensive inspection performed at least annually on a calendar year basis no more than 540 days apart by a designated Railroad Bridge Inspector to detect cracks, damaged or broken components, signs of wear and tear, distress caused by overload or the misapplication of loads, changes in condition from previous inspection, or changes from the as designed/as-constructed condition necessitating further investigation through the use of a Detailed Inspection.
- (b) Inspections after flood events including soundings, probing, or other methods will be conducted if flood events or flow conditions create scour hazards or concerns. In the event that a specific structure is at risk during a flood event, the designated Railroad Bridge Inspector will monitor the structure periodically to ensure safe railroad operation and will consult with the Assistant Director of Standards and Design or the Railroad Bridge Engineer to prescribe corrective measures, if required.

Any additional work that may result from the inspections is not covered by this ITP unless CDFW written confirmation is obtained.

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

This ITP covers the following species:

#### Name

### CESA Status<sup>3</sup>

Endangered<sup>5</sup>

1. Santa Ana River woollystar (*Eriastrum densifolium sanctorum*) – SAWS Endangered<sup>4</sup>

2. Least Bell's vireo (Vireo bellii pusillus) - LBVI

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 construction of the passenger rail and operation and maintenance of the rail system within their habitat (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 habitat removal, as well as the effects from lighting, vibration, and noise. Authorized take is expected to occur within areas that are required by the Covered Species for its survival and persistence (e.g. mobility and local migration, shelter, foraging, and reproduction) that will be used for the rail construction, (access roads, slope stabilization areas, and equipment storage and stockpile areas), operation of the passenger train, and maintenance of the rail system.

The Project is expected to cause the permanent loss 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 from construction-related and post construction operational and maintenance impacts resulting from lighting, vibration, noise, and habitat loss – leading to the displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation and parasitism. More specifically, the impacts of the Project are listed below for each Covered Species.

### DURING CONSTRUCTION

### SANTA ANA RIVER WOOLLYSTAR

Based on rare plant survey updates conducted in May 2017, fifteen (15) SAWS individuals occur adjacent to, but not within, the Project Area. Two (2) individuals were observed 50 feet

<sup>3</sup> Species may be designated under CESA as a candidate for listing, or as an endangered or threatened species. All other species are "unlisted."

<sup>4</sup> Cal. Code Regs., tit. 14 §§ 670.2, subd.(a)(25)(A).

<sup>5</sup> Cal. Code Regs., tit. 14 §§ 670.5, subd (a)(5)(I).

southwest of Bridge 3.4 on a sparsely vegetated sandy bench terrace, approximately 20 feet wide by 50 feet length, while thirteen (13) individuals were detected 290 feet southwest of the bridge and closer to the western bank of the Santa Ana River. No individuals were found within the Project Area, with the closest plant being 9 feet south of the ROW. The area within the Santa An River south of Bridge 3.4 contains highly suitable habitat based on: the various stages and/or ages (mature, seedlings, and senescent) observed; the primarily dominate sandy small gravel (0.25 inch to 0.5 inch in diameter) substrate with cryptogamic crust; and the expansion of the population from a single individual to 15 individuals since 2012. For this ITP, the entire terrace that contains alluvial scrub habitat is considered to provide the necessary elements needed for SAWS seed storage and propagation.

The Project will result in the temporary removal of 0.10 acres of SAWS habitat within the Santa Ana River. The construction and water diversion may also result in the impediment of water and sediment flow, temporarily decreasing seed dispersal and limit scour events just downstream of the Project Area.

LEAST BELL'S VIREO

Five LBVI individuals (5 individuals; 4 males and 1 female) comprising four (4) territories were mapped within, or immediately adjacent to, the Project within the Santa Ana River and Mission Zanja channel confluence in 2012. LBVI take was based on the 2012 survey results.

During construction, impacts resulting from lighting, vibration, and noise may occur. If nighttime construction occurs, the reproductive fitness and survival of LBVI individual(s) may be adversely affected due to an increase in predator detection, modification of daily and seasonal activities, changes in intraspecific interactions, and the altering of physiological processes. Vibrations could disturb fragile nests by knocking them from their substrate, causing eggs and/or nestlings to be destroyed. Additionally, vibrations may indirectly cause disruptions in adult nesting behaviors (e.g. leaving the nest) that could increase mortality and nest failure rates, which would decrease productivity. Noise has the potential to produce a suite of short- and long-term behavioral and physiological changes in adult birds including: changes in the selection of foraging locations; interference with acoustic communications between conspecifics; failure to recognize other important biological signals such as sounds of predators and/or prey; loss of hearing sensitivity, either temporarily or permanently; and an increase in stress and/or altered steroid hormone levels or other physiological effects. Less known is the hearing ability in nestlings and fledglings as compared to adults. A limited amount of data from young songbirds suggests that the auditory system of altricial birds (i.e., birds that are in an undeveloped stage at hatching in the nest and require care and feeding from parents) does not function well at hatching, making them potentially more sensitive to noise. Finally, LBVI are known to be particularly vulnerable to brown-headed cowbird parasitism. Because cowbirds are highly evolved and will often wait until the host leaves and lay their eggs quickly (ranging 20 - 40 seconds), sporadic noise may create a greater risk of cowbird parasitism with the parents being startled off the nest.

LBVI is a relatively mobile species; therefore, project-related construction activities are not likely to result in the direct mortality of adult vireos. However, the Covered Activities will permanently remove 1.20 acres of LBVI habitat and could reduce reproductive success during the breeding season (herein defined as March 15 – September 15).

# POST CONSTRUCTION

SANTA ANA RIVER WOOLLYSTAR

Future long-term maintenance of the Project Area was evaluated using the existing Federal Emergency Management Agency (FEMA) model for the Santa Ana River as the base model. The hydrology calculated the Project would lower the water surface (1017.0 feet NAVD) and velocity (11.7 ft/s); improving the flood capacity in the river. A Cooperative Agreement (No. 17-1001640) between the San Bernardino County Flood Control District and SBCTA clarified each agencies' future responsibilities and needs given the Project design and the Covered Activities to be performed (See Attachment 1). For areas owned by the San Bernardino County Flood Control District Area, it was determined that no additional long-term vegetation or sediment management will be needed.

LEAST BELL'S VIREO

After construction is completed, future maintenance of LBVI habitat beyond that addressed by this ITP has been analyzed and is not anticipated to occur. Long-term impacts from the train operation and routine maintenance may occur – with sporadic light pollution from trains passing during nighttime hours, as well as, operational noise of passing-by trains. The severity of the impact will depend on the radius curves in the track where sound will travel, the narrowness and topography of the habitat, and species-specific behavioral responses (fledgling/adult communication, habitat utilization, startle reaction).

# 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 shall pertain to all Covered Activities within the Project Area, including areas used for vehicular ingress and egress, staging and

parking, and dust-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 State, federal, and local laws in existence on the effective date of this ITP or adopted thereafter.
- 2. CEQA Compliance: Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Environmental Impact Report (SCH No. 2012041012) certified by the lead agency, San Bernardino County Transportation Authority, for the Project on September 6, 2017, 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. 1600-2014-0227-R6 (Revision 1) 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 Formal Section 7 Consultation for Redlands Passenger Rail Project in the City of Highland, San Bernardino County, California (FWS-SB-13B0313-14F0168) for the Project pursuant to the Federal Endangered Species Act (ESA), unless those terms and conditions are less protective of the Covered Species or conflict with the conditions of this ITP.
- 5. ITP Time Frame Compliance: Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 2 to this ITP.
- 6. General Provisions:
  - 6.1 <u>Designated Representative</u>. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
  - 6.2 <u>Designated Biologist</u>. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered

Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed.

- 6.3 <u>Designated Biologist Authority</u>. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this ITP, and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species, or a state-listed species not covered by this ITP.
- 6.4 <u>Education Program</u>. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided for any new workers before they perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.
- 6.5 <u>Construction Monitoring Notebook</u>. The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.
- 6.6 <u>Trash Abatement</u>. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in closed (animal-proof) containers and removed regularly (at least once a week) to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 6.7 <u>Dust Control</u>. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the

minimum amount needed and shall not allow water to form puddles.

- 6.8 <u>Erosion Control Materials</u>. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as mono-filament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 6.9 <u>Delineation of Property Boundaries</u>. 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 in that area.
- 6.10 <u>Delineation of Habitat</u>. Prior to construction, the Permittee shall clearly delineate habitat of the Covered Species by erecting construction fencing along the perimeter of the identified construction area, including staging and laydown areas, to protect adjacent sensitive habitats (southern willow scrub, southern cottonwood riparian forest, and alluvial fan scrub). Limits of the construction fencing shall be confirmed by the project biologist prior to habitat clearing. Construction fencing shall be maintained throughout the duration of construction work and can be removed at the conclusion of construction work as approved by the Designated Biologist.
- 6.11 <u>Project Access</u>. Project-related personnel shall access the Project Area using established/designated routes and access roads and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 15 miles per hour to avoid the production of dust, which may result in take of the Covered Species. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP if additional take of Covered Species may result from Project modification.
- 6.12 <u>Staging Areas</u>. 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.
- 6.13 <u>Hazardous Waste</u>. Permittee shall immediately stop and following pertinent State and federal statutes and regulations arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of

occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.

- 6.14 <u>CDFW Access</u>. Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.15 <u>Refuse Removal</u>. 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 <u>Notification Before Commencement</u>. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2 <u>Notification of Non-compliance</u>. 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 within 24 hours.
- 7.3 <u>Compliance Monitoring</u>. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area (See Measures 8.1 through 8.5 below for species specific monitoring). The Designated Representative or Designated Biologist shall prepare written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.
- 7.4 <u>Monthly Compliance Report</u>. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition 7.3 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to CDFW's Regional Office at the office 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 Brandy Wood (brandy.wood@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 <u>Annual Status Report.</u> Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition 7.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion datas, 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; and (6) information about other Project impacts on the Covered Species.
- 7.6 <u>CNDDB Observations.</u> The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next monthly compliance report or ASR, whichever is submitted first relative to the observation.
- 7.7 <u>Final Mitigation Report.</u> No later than 90 days after completion of all construction monitoring measures, Permittee shall provide CDFW with a Final Monitoring Report. The Designated Biologist shall prepare the Final Monitoring Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information. CDFW will notify the Permittee in writing that the Final Monitoring Report is complete via the Regional Representative.
- 7.8 <u>Noise Report</u>. To provide future benefit for LBVI management and analyzing the effectiveness of the minimization measures to protect the species, Permittee

shall prepare an LBVI Noise study methodology/protocol and submit to CDFW for review and approval within 6 months of the start of construction. No later than 12 months after CDFW approval of the study methodology/protocol, the Permittee shall provide CDFW with a LBVI Noise Study Report (Details of the Noise Report are in Measure 8.8.3).

7.9 <u>Notification of Take</u>. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken by a Project-related activity, or if a Covered Species is otherwise found dead within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (909) 484-0459. The initial notification to CDFW shall include information regarding the location, species, number of individuals taken and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within 2 calendar days. The report shall include the date and time of the finding or incident, location of the individual taken, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

## 8. Take Minimization Measures:

**DURING CONSTRUCTION** 

Permittee shall implement and adhere to the following conditions to minimize take during construction of Covered Species:

SANTA ANA RIVER WOOLLYSTAR

8.1 <u>Plant/Habitat Avoidance.</u> Prior to construction activities, high visibility construction fencing shall be erected along the perimeter of the disturbance limits. The Designated Biologist shall be onsite daily when vegetation removal is occurring. The fencing shall be maintained throughout the construction period. Once vegetation removal (clearing and grubbing) is complete, the Designated Biologist shall perform weekly spot checks during construction to ensure the fence is being maintained and to document compliance. The fencing shall be removed at the conclusion of construction work in the Project Area and as approved by the Designated Biologist.

LEAST BELL'S VIREO

- 8.2 <u>Habitat Avoidance and Timing.</u> Suitable riparian habitat for LBVI shall not be removed during the nesting season. The Designated Biologist shall be onsite daily when vegetation removal is occurring and weekly during construction.
- 8.3 <u>Lighting Minimization.</u> If nighttime construction occurs, SBCTA shall implement the following measures for construction staging areas within 500 feet of LBVI habitat:

- 8.3.1 Limit construction to daylight hours to the extent possible.
- 8.3.2 If nighttime lighting or construction is necessary, construction areas set-up for nighttime activity and requiring lights shall be reduced to the minimal necessary to accomplish the work safely.
- 8.3.3 All construction related lighting shall be fully shielded and focused down to ensure no significant illumination passes beyond the immediate work area. Shielding techniques shall be coordinated with the local jurisdiction regarding the type and method of screening, which may include but is not limited to, the use of fence slats, netting, mesh, or tarps.
- 8.3.4 Yellow or orange lighting shall be used.
- 8.3.5 Light shall not be allowed to shine directly into areas where LBVI nests are known to occur.
- 8.4 <u>Vibration Minimization.</u> To avoid vibrational impacts:
  - 8.4.1. Steel driven piles shall not be used during the LBVI nesting bird season within the Project Area.
  - 8.4.2 The cast-in-drilled-hole (CIDH) technique shall be used during the LBVII nesting period due to it requiring a smaller cross-sectional area and less driving force compared to other types of piling methods (e.g. precast prestressed concrete piles).

### 8.5 Noise Minimization.

- 8.5.1 To minimize noise within different strata of the riparian canopy, noise suppression devices and techniques shall be used.
  - 8.5.1.1 All internal combustion engine-driven equipment shall be appropriately equipped with mufflers, air-inlet silencers, shrouds, shields, or other noise- reducing features that are in good operating condition.
  - 8.5.1.2 Using "quiet" models of air compressors and other stationary noise sources where such technology exists.
  - 8.5.1.3 Using electrically powered equipment instead of pneumatic or internal combustion-powered equipment, where feasible.

- 8.5.1.4 Locating stationary noise-generating equipment, construction parking, and maintenance areas as far as reasonable from LBVI habitat.
- 8.5.1.5 Prohibiting unnecessary idling of internal combustion engines (i.e., in excess of 5 minutes).
- 8.5.1.6 Reducing construction vehicle back-up alarms to the minimum required to provide safety to the personnel at the job site.
- 8.5.2 When Project-related construction is occurring during the LBVI nesting season, LBVI shall be monitored at least weekly by a Qualified Biologist within the Project Area and a 500-foot buffer. If nesting activity (e.g. nest building, incubation, or feeding) is observed, a 300-foot buffer shall be established if feasible. This buffer may be reduced based on the intensity of construction activities, construction noise levels, disturbance levels in the area not attributable to construction, and observed behavior of individual birds. Any buffer adjustment shall be submitted by the Designated Biologist and reviewed and approved by CDFW.
- 8.5.3 If it is anticipated that the Covered Activities will exceed a noise level of 60 dBA and nesting activity is observed within the Project Area or 500-foot buffer, the Designated Biologist shall monitor LBVI nesting behavior and noise from the edge of the LBVI territory that is nearest to where the construction noise is originating. Using a noise meter, different sound level descriptors may be applied given the type of construction that is occurring, including:
  - (a) A-weighted Sound Level (instantaneous) for noise measurements and prediction purposes;
  - (b) Maximum Sound Level (Lmax) during a single event for noise measurements and prediction purposes;
  - (c) Sound Exposure Level (SEL) that describes the average sound level from a single noise event for noise measurements and prediction purposes (equivalent to Leq but normalized to a time base of 1 second);
  - (d) Equivalent Sound Level (Leq) which is an exposure-based metric (time/number of events) to describe a receiver's cumulative noise exposure from all events over a specified period of time for compliance assessment purposes (e.g. 1 hour, 16-hour day, 8-hour night or 24-hour day). This is the commonly used descriptor for impact assessment purposes.

8.5.4 If the Designated Biologist determines that Project related noise is altering the Covered Species behavior, Permittee shall notify CDFW and consider implementing various techniques, including:

- 8.5.4.1 Increasing or reestablishing a nest buffer;
- 8.5.4.2 Placement of temporary noise barriers or enclosures around stationary noise generating equipment (5 to 15 decibel reduction possible);
- 8.5.4.3 Strategic placement of noise attenuation structures (e.g. hay bales, etc.); and/or
- 8.5.4.4 Noise attenuation measures (e.g. reducing the number of construction vehicles or using different types of construction vehicles; reducing the number of noisy activities that occur simultaneously).

### Post CONSTRUCTION

The Covered Activities authorized within this ITP include the long-term train operation and maintenance of the railway. To minimize incidental take of Covered Species once the construction is complete, the below conditions shall be applied.

### SANTA ANA RIVER WOOLLYSTAR

8.6 <u>Plant/Habitat Minimization.</u> Permittee shall be accountable for the long-term maintenance of rail structures (bridges, culverts, track, signals, etc.) and vegetation management only where permanent impacts have been mitigated for within their ROW.

LEAST BELL'S VIREO

- 8.7 <u>Habitat Minimization</u>. Same as Santa Ana River woollystar above (Section 8.6 Plant/Habitat Minimization).
- 8.8 Noise Minimization. SBCTA shall:
  - 8.8.1 Use Diesel Multiple Units (DMUs) trains that are smaller and quieter.
  - 8.8.2 Mitigate noise generated by train horns through constructing safety enhancements to ensure the crossings are 'Quiet Zone' ready (Memorandums of Understanding between Redlands, San Bernardino, and SBCTA - Contract No. 15-1001182; February 2015 – December 31, 2020). See Attachment 3 for more details. To achieve this, SBCTA shall:

- 8.8.2.1 Construct supplemental safety measures (SSMs).
- 8.8.2.2 Assist the Cities of Redlands and San Bernardino in filing the Notice of Intent (NOI) with the FRA.
- 8.8.2.3 Support the Cities of Redlands and San Bernardino with the filing of the Notice of Establishment following the filing of the NOI and approval by FRA.
- 8.8.3 Develop a proposal for studying and reporting the potential indirect effects of railroad noise and the effectiveness of minimization measures, including the area needed for an established quiet zone, as well as, the type of brownheaded cowbird management needed to increase reproductive success (e.g. number of traps, trap distance from the noise source, etc.). The study plan shall include preparation of a report analyzing the effectiveness of the minimization measures. The report shall be submitted to CDFW one (1) year after the CDFW approval of the study protocol. The study protocol shall be submitted to CDFW for approval six (6) months after the start of construction and may include one of the following approaches:
  - 8.8.3.1 A field study that collects noise, startle behavior and breeding success data from a minimum of three (3) accessible sites known to be occupied by LBVI and within 300 feet of an active railroad and at least three (3) accessible sites known to be occupied by LBVI but located greater than 500 feet from an active railroad. The final report shall include an analysis of findings and recommended long-term management strategies for railroad operators and regulators, if any;
  - 8.8.3.2 A data analysis study in which existing data (e.g. Santa Ana Water Authority) is correlated to the proximity of active railroads. The final report shall include an analysis of findings and recommended longterm management strategies for railroad operators and regulators, if any; or
  - 8.8.3.3 A blended study that includes both a field component (e.g. startle effect in the field and collection of baseline and other noise measurements at varying distances from rail lines) and comparing/supplementing with existing Covered Species noise data.

## 9. Habitat Management and Land Acquisition:

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

- 9.1 <u>Habitat for Covered Species.</u> Permittee has funded the rehabilitation of four (4) acres of riparian habitat to benefit LBVI from the Riverside-Corona Resource Conservation District in March 2017. The Permittee shall also provide for the management for LBVI in perpetuity on 1 acre of riparian habitat with an existing conservation easement from the Riverside-Corona Resource Conservation District. Finally, Permittee shall purchase 0.2 acre of credit to benefit SAWS from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities or no later than 6 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below.
- 9.2 <u>LBVI Noise Study.</u> To provide future benefit for LBVI management and implementation measures to protect the species, Permittee shall submit a methodology/protocol to CDFW for review and approval within 6 months of the start of construction. No later than 12 months after CDFW approval of the study methodology/protocol, the Permittee shall provide CDFW with a LBVI Noise Study Report. Security shall be provided until a study report is submitted to CDFW pursuant to Condition of Approval in Section 10.1.3 below.
- 9.3 <u>LBVI Reproductive Success.</u> Permittee shall fund the management of two (2) brown-headed cowbird traps throughout three (3) LBVI breeding seasons within the Santa Ana River watershed. Security shall be provided until proof of funding to the Santa Ana Watershed Authority or other brown-headed cowbird trapping entity acceptable to CDFW is submitted to CDFW pursuant to Condition of Approval 10 below.

### 10. Performance Security:

- 10.1 <u>Security Amount.</u> The Permittee may proceed with Covered Activities only after the Permittee has provided receipt of purchase or a security amount or has otherwise ensured funding (Security) to complete any activity required by Condition 9 that has not been completed before Covered Activities begin.
  - 10.1.1 Security for the purchase 0.2 acre of mitigation bank credit from a CDFW approved bank for Santa Ana River woollystar (SAWS) habitat shall be in the amount of **\$300,000**. This amount is based on the preliminary cost estimates provided by the Vulcan Cajon Bank to

purchase one (1) acre of scalebroom (*Lepidospartum squamatum*) scrub.

- 10.1.2 Security for the funding of 1 acre of management of LBVI habitat shall be in the amount of **\$275,000**. This amount is based on the preliminary cost estimates provided by the Riverside Corona Conservation District to manage one (1) acre of suitable and/or occupied LBV habitat in perpetuity within the Santa Ana River watershed where an existing conservation easement is present.
- 10.1.3 Least Bell's Vireo Noise Study. Security for the LBVI noise study shall be in the amount of **\$60,000**. This amount is based on the preliminary cost estimates provided by the Santa Ana Watershed Association (SAWA) and HDR for different noise study protocols.
- 10.1.4 *Brown-headed Cowbird Abatement Program*. Security to implement two cowbird traps within the Santa Ana River watershed for three years shall be in the amount of \$45,000. This amount is based on the preliminary cost estimates provided by SAWA.
- 10.2 <u>Security Form.</u> The Security shall be in the form of an irrevocable letter of credit (see Attachment 4) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.
- 10.3 <u>Security Timeline</u>. The Security shall be provided to CDFW before Covered Activities begin or within 180 days after the effective date of this ITP, whichever occurs first;
- 10.4 <u>Security Holder</u>. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW;
- 10.5 <u>Security Transmittal</u>. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 5) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other form
- 10.6 <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 this ITP;
- 10.7 <u>Security Release</u>. The Security (or any portion of the Security then remaining) shall be released to the Permittee after all secured requirements have been met as evidenced by submission of:
  - 10.7.1 A purchase receipt for 0.2 acre of mitigation bank credit for SAWS Habitat.

- 10.7.2 Written confirmation from Riverside-Corona Resource Conservation District of sufficient funding for 1 acre of management in perpetuity of LBVI habitat.
- 10.7.3 A LBVI noise study report to CDFW.
- 10.7.4 A receipt from an entity acceptable to CDFW for funding the operation and management of two brown-headed cowbird traps for three LBVI breeding seasons.

## Amendment:

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable regulations and law. This ITP may also be amended without the concurrence of the Permittee as required by law, including if CDFW determines that continued implementation of the Project under existing ITP conditions would jeopardize the continued existence of the Covered Species or that Project changes or changed biological conditions necessitate an ITP amendment to ensure that impacts to the Covered Species are minimized and fully mitigated.

# Stop-Work Order:

CDFW may issue Permittee a written stop-work order to suspend any activity covered by this ITP for an initial period of up to 25 days to prevent or remedy a violation of any ITP condition(s) (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. Permittee shall comply with the stop-work order immediately upon receipt thereof. CDFW may extend a stop-work order under this provision for a period not to exceed 25 additional days, upon written notice to the Permittee. CDFW may commence the formal suspension process pursuant to California Code of Regulations, Title 14, section 783.7, within five working days of issuing a stop-work order. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

## **Compliance with Other Laws:**

This ITP contains CDFW's requirements for 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 State, federal, and local laws.

# 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 Game 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 2081-20016-040-06 in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Leslie MacNair, Regional Manager California Department of Fish and Wildlife 3602 Inland Empire Blvd., Suite C-220 Ontario, CA 91764 Telephone (909) 484-0167 Fax (909) 481-2945

and a copy to:

Habitat Conservation Planning Branch California Department of Fish and Wildlife Attention: CESA Permitting Program 1416 Ninth Street, Suite 1266 Sacramento, CA 95814

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

Brandy Wood, Environmental Specialist 3602 Inland Empire Blvd., Suite C-220 Ontario, CA 91764 Telephone (909) 980-1381 Fax (909) 481-2945

### Compliance with CEQA:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, City of Highland. (See generally Pub. Resources Code, §§

21067, 21069.). The lead agency's prior environmental review of the Project is set forth in the Redlands Passenger Rail Project Environmental Impact Report (SCH No. 2012041012), dated March 1, 2015, that the San Bernardino County Transportation Authority certified for the Project on September 6, 2017. At the time the lead agency certified the Environmental Impact Report and approved the Project, it also certified all mitigation measures described in the Mitigated Negative Declaration as conditions of Project approval.

In fulfilling its obligations as a responsible agency, CDFW's obligations pursuant to CEQA are more limited than those of the lead agency. CDFW, in particular, is responsible for considering only the effects of those Project activities that it is required by law to carry out or approve and mitigating or avoiding only the direct or indirect environmental effects of those parts of the Project that it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).)<sup>6</sup> Accordingly, because CDFW's exercise of discretion is limited to issuance of this ITP, CDFW is responsible for considering only the environmental effects that fall within its permitting authority pursuant to CESA.

This ITP, along with CDFW's CEQA findings for the Project, which are available as a separate document, provide evidence of CDFW's consideration of the lead agency's Environmental Impact Report 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 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, as well as adherence to and implementation of the SUPPW through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. CDFW consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

## Findings Pursuant to CESA:

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

CDFW finds based on substantial evidence in the ITP application, the Redlands Passenger Rail Project Environmental Impact Report, the results of site visits, meetings and consultations, and the administrative record of proceedings, that issuance of this

<sup>&</sup>lt;sup>6</sup> The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000

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 protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of one (1) acre 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;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on

CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by Law.

### Attachments:

FIGURE 1 FIGURE 2	Map of Project Map of Sensitive Areas
ATTACHMENT 1	San Bernardino County Transportation Authority and San Bernardino County Flood Control District Cooperation Agreement (No. 17-1001640)
ATTACHMENT 2	Mitigation Monitoring Management Program
ATTACHMENT 3	Cities of Redlands and San Bernardino and San Bernardino County Transportation Authority Memorandums of Understanding - Contract No. 15-1001182
ATTACHMENT 4	Letter of Credit Form
ATTACHMENT 5	Mitigation Payment Transmittal Form

### ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

April 10, 2019 on

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:

**Printed Name:** 

Date: <u>4/12/19</u> <u>Leptz</u> Title: <u>Boyran Munuger</u>

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