



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 5, 2022

Susana Zak
Palmdale Investors, LLC
1880 Century Park East, Suite 1017
Los Angeles, CA 90067
SusanaZ@laterradev.com

Subject: Incidental Take Permit Application for Strata West Palmdale Apartments and Strata Commons Project (ITP #2081-2021-055-05)

Dear Ms. Zak:

Enclosed you will find two originals of the incidental take permit for the above referenced Project, which have been signed by the Department. Please read the permit carefully, sign the acknowledgement on both copies of the permit, and return one original **no later than 30 days from Department signature**, and prior to initiation of ground-disturbing activities. You may return a hard copy of the permit via mail to:

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

Alternatively, you may return an electronic copy of the permit with scanned hardcopy signature or digital signature to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5.

You are advised to keep the other original signature permit in a secure location and distribute copies to appropriate project staff responsible for ensuring compliance with the conditions of approval of the permit. Note that you are required to comply with certain conditions of approval prior to initiation of ground-disturbing activities. Additionally, a copy of the permit must be maintained at the project work site and made available for inspection by Department staff when requested.

The permit will not take effect until the signed acknowledgement is received by the Department. If you wish to discuss these instructions or have questions regarding the permit, please contact Thompson Banez, Environmental Scientist, at Thompson.Banez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Ed Pert

A87CE992DB57479...

Edmund Pert
Regional Manager
South Coast Region

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Palmdale Investors, LLC
January 5, 2022
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ec: CDFW
Erinn Wilson-Olgin, Los Alamitos – Erinn.Wilson-Olgin@wildlife.ca.gov
Victoria Tang, Los Alamitos – Victoria.Tang@wildlife.ca.gov
Katrina Smith, Sacramento – Katrina.Smith@wildlife.ca.gov
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Travis Cullen – TravisCullen1@gmail.com



**California Department of Fish and Wildlife
South Coast Region 5
3883 RUFFIN ROAD
SAN DIEGO, CA 92123**

California Endangered Species Act
Incidental Take Permit No. 2081-2021-055-05

**STRATA WEST PALMDALE APARTMENTS AND STRATA COMMONS
PROJECT**

I. 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 take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² However, CDFW may authorize the take of any such species by permit pursuant to 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:	Palmdale Investors, LLC
Principal Officer:	Susana Zak
Contact Person:	Susana Zak, (213) 503-2050
Mailing Address:	1880 Century Park East, Suite 1017 Los Angeles, CA 90067

II. Effective Date and Expiration Date of this ITP:

This ITP shall become effective when signed by all parties and received by CDFW as described in the Notices section of this ITP. Unless renewed by CDFW, this ITP and its authorization to take the Covered Species shall expire on **12/30/2025**.

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 5.7 of this ITP.

¹Pursuant 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".])

²The 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.

III. Project Location:

The Strata West Palmdale Apartments and Strata Commons Project (Project) is located within the City of Palmdale, Los Angeles County (Figure 1). The Project is located adjacent to the Antelope Valley Mall to the east at approximately 34°36'12.71"N, 118° 9'28.16"W. The Project site is approximately 20.55 acres, bounded by on all four sides by development with Rancho Vista Boulevard to the south, 15th Street West to the east, West Avenue O 12 to the north, and single-family residences to the west. The Project site is located within SW ¼ of Section 16, Township 6 North, Range 12 West of the USGS 7.5' Ritter Ridge quadrangle map (San Bernardino Meridian).

Figure 1. Project Area Location



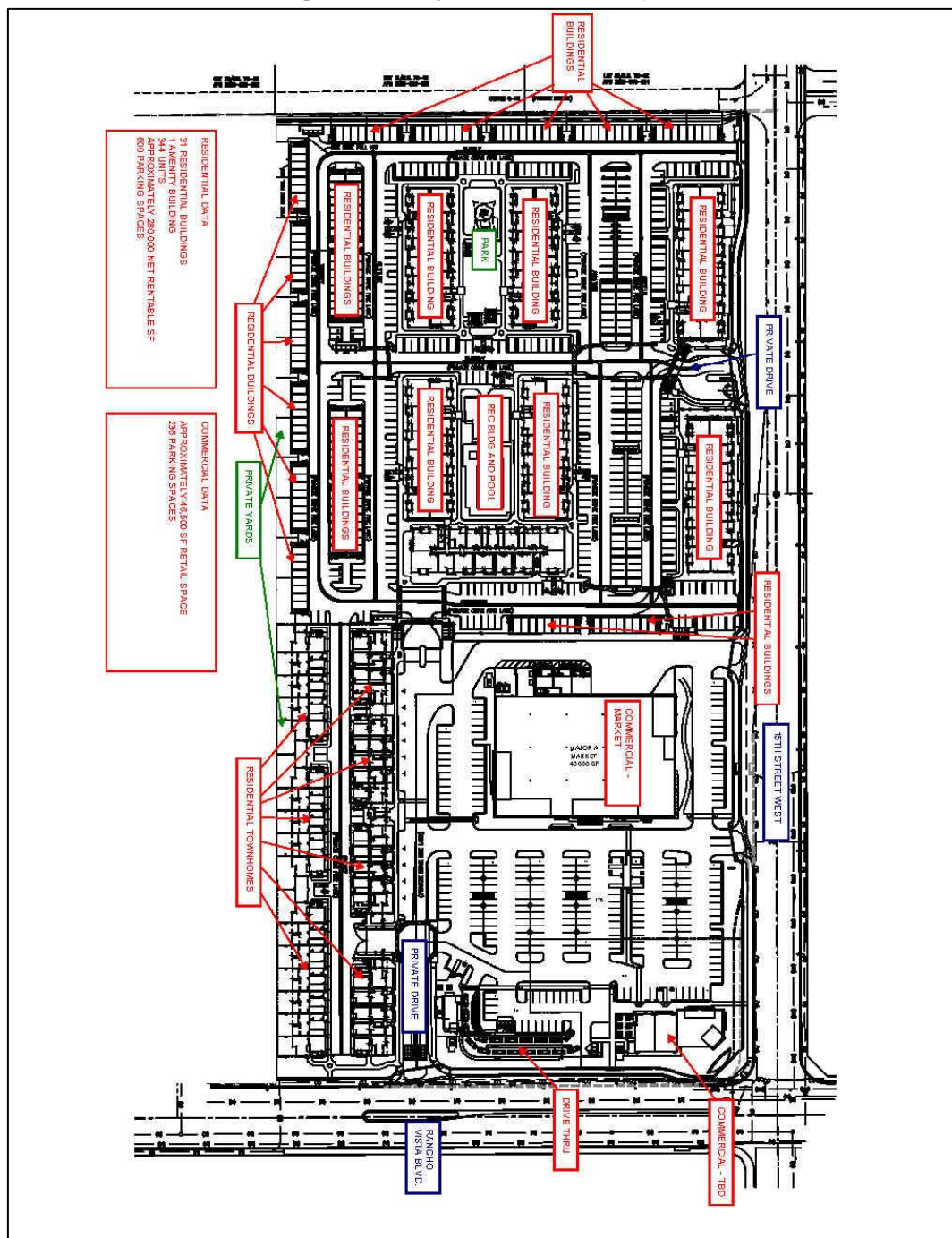
Aerial Source: Google Satellite Imagery, April 29, 2017.

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IV. Project Description:

The Project activities include mixed-use development on a 20.55-acre parcel Project site with a combination of residential and retail uses that would include 308 residential apartment units, 36 townhome units, and 46,710 square feet of retail/commercial space (Figure 2).

Figure 2. Project Area Development



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Site Preparation

Prior to construction activities, clearing, brushing, and grubbing of vegetation and trees will occur throughout the Project site. Following vegetation removal, the entire Project site will be graded. Concrete will be laid down throughout the Project site to set the foundation for housing units, buildings, and roads. Equipment to be used on site will include, but not be limited to, excavators, earthmovers, frontend loaders, backhoes, compactors, cement mixers, water trucks, cranes, forklifts, and other typical construction equipment. Staging and construction parking areas will be on site.

Construction and Installation

Residential units

The Project proposes the construction of a 308-unit apartment community and a 36-unit townhome development. The apartment community will have a 10.69-acre footprint that will consist of seventeen 2-story buildings, seven 3-story buildings, and approximately 500 parking spaces. The apartment units will vary from studio to 2-bedrooms, 460 square-feet to 1,000 square feet. The townhome development will have approximately a 2.92-acre footprint, which will consist of seven 2-story buildings and approximately 55 parking spaces. The townhouse individual units will consist of 2 to 3-bedrooms ranging from 1,200 to 1,600 square feet. The perimeter of the apartment complex and town homes will include installation of a combination of gates and walls separating the residential areas from the retail/commercial area but will allow pedestrian connectivity between areas (Figure 2).

Community Amenities

In addition to the housing units, community amenities will be constructed to the north of the Project site. The on-site amenities will include play areas and swimming pools.

Retail/commercial space

The Project proposes the construction of 46,710 square feet of retail/commercial development. The development will consist of three buildings and 233 parking spaces within a 6.94-acre area. The Project site is zoned as General Commercial (C-3), which allows commercial shopping centers. The General Plan land use designation is Community Commercial, which is intended for businesses providing retail and service uses that serve the local market (e.g., restaurants, apparel stores, hardware stores, grocery markets, banks, offices, and similar uses) (Figure 2).

Circulation

The Project proposes access by existing adjacent public use roadways along the eastern and southern boundaries of the site. Access to the apartments will be provided through a main gated entrance along 15th Street West. There is also an emergency vehicle access point toward the north side of the complex on 15th Street East. The apartments will have a second gated access into the complex from the commercial center. The commercial center will have three entrances: a main access and a service lane entrance on 15th Street West and a main access on Rancho Vista Boulevard. The townhomes will have gated access from the

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commercial center drive from Rancho Vista Boulevard and gated access from the apartment complex. Streets that will be constructed within the Project site include Hubble, Airfield, Aviation, Altitude, Taxiway, Runway, Crosswind, and Galaxy Drive (Figure 2).

Transplanting

During construction, in compliance with the required permits for the approved Project and per section 14.04 of the Palmdale Municipal Code (PMC) the applicant proposes to transplant 25 western Joshua trees. Western Joshua trees to be transplanted will be removed prior to grading and either held on site or taken to a holding facility off site. The western Joshua trees will be reincorporated into the landscape of the developed Project site.

Project Schedule

On-site construction for the proposed Project is anticipated to begin in first quarter 2022 and will occur in three phases. The proposed construction of the commercial portion (first phase) will take approximately 8 months and the residential construction of the apartments (second phase) will begin shortly after. Construction of the townhomes (third phase) will follow. The residential component will take approximately 18 to 24 months once it is started. Construction activities would occur Monday through Friday. Per the PMC, building construction hours will be restricted between the hours of 8:00 p.m. and 6:30 a.m.

V. Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

<u>Name</u>	<u>CESA Status</u>
1. Western Joshua Tree (<i>Yucca brevifolia</i>)	Candidate ³

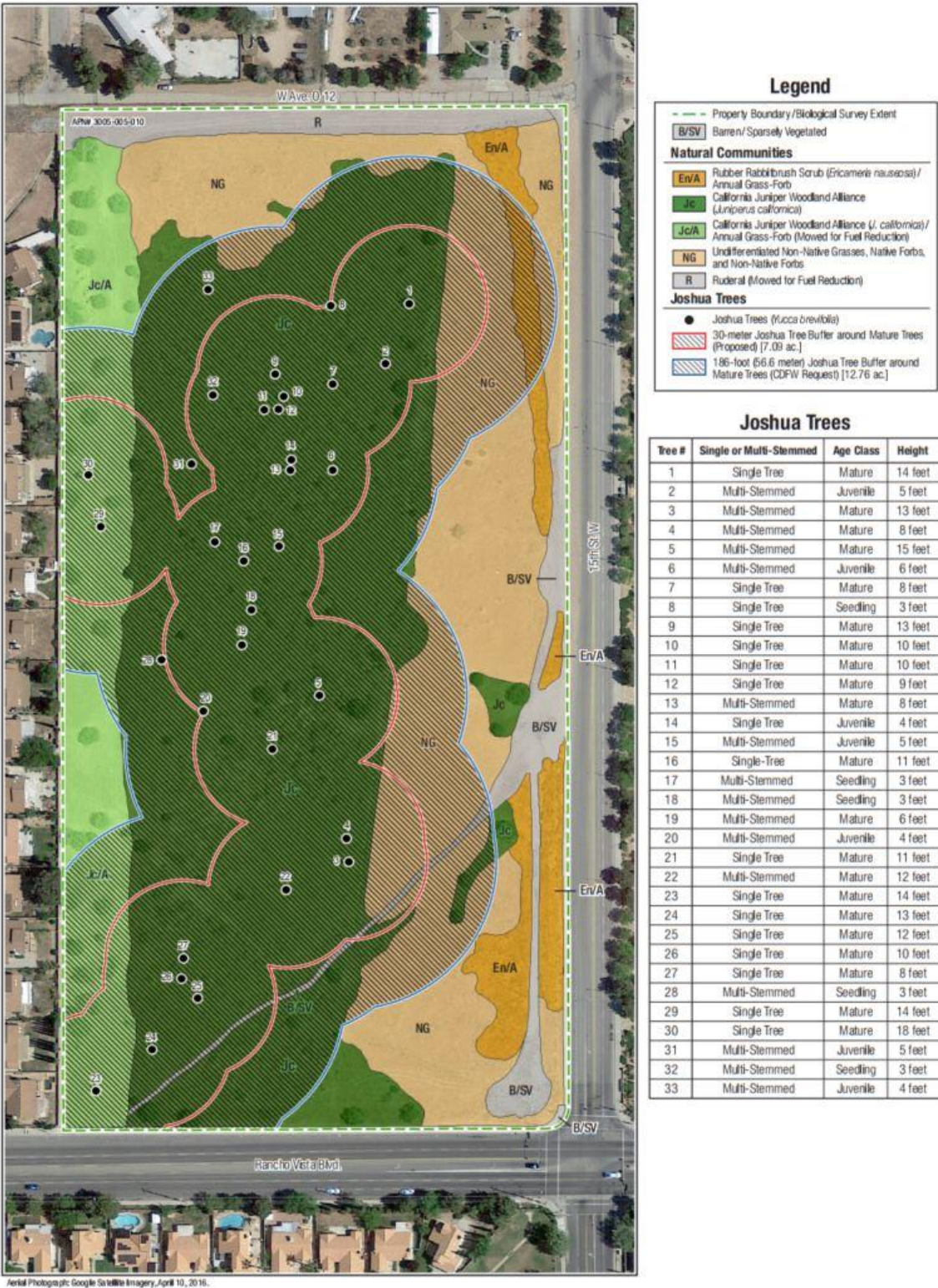
This species and only this species is the “Covered Species” for the purposes of this ITP.

VI. 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 are expected to result in incidental take of individuals of the Covered Species include removal of individuals and roots; vegetation clearing; grading; compacting dirt and pouring concrete foundations; general operation of vehicles and heavy equipment; construction of infrastructure; infrastructure improvements; construction of housing units; and construction of commercial space. Maintenance and management (startup, interim, and long term) of habitat management lands may result in potential take of individuals of the Covered Species. (Covered Activities).

³The species status may change following the decision of the Fish and Game Commission to designate the species as threatened or endangered but if there is such a designation, the species will remain a Covered Species. See 2020 Cal. Reg. Notice Register, No. 41-Z, pp.1349 (October 9, 2020).

Figure 3. Impacts to Covered Species



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Incidental take of individuals of the Covered Species in the form of mortality (“kill”) may occur as a result of Covered Activities such as grading, staging areas, removal of mature and emergent individuals, eliminating habitat, crushing and/or burying living seeds in the soil, rendering living seeds inviable and/or causing them to be killed. Incidental take of individuals of the Covered Species may also occur from the Covered Activities such as:

- 1) Increasing likelihood of mortality or vulnerability to competition or disease, or reducing fecundity by:
 - a) encroaching onto or disturbing the root zone;
 - b) reducing photosynthesis and evapotranspiration efficiency as a result of Project-related fugitive dust coating individuals of the Covered Species;
 - c) introducing and facilitating spread of invasive plants resulting in competition and increased fire risk; and,
 - d) changing habitat supporting individuals of the Covered Species, including vegetation characteristics, soil characteristics, and microclimate (temperature, humidity).
- 2) Reducing number of individuals of the Covered Species recruited from seed by:
 - a) changing conditions necessary to support the mutualistic relationship between the Covered Species and its obligate pollinator; and,
 - b) altering seed dispersal mechanisms.

Authorized take of the Covered Species is expected to only occur in the 20.55-acre area (Project Area). The Project Area is bounded by Rancho Vista Boulevard to the south, 15th Street West to the east, West Avenue O 12 to the north, and single-family residences to the west. Within the Project Area, there are 21 mature individuals, 7 juvenile and 5 seedling individuals for a total of 33 individuals of the Covered Species. The Project is expected to take 33 individuals of the Covered Species due to clearing and grading of the entire Project Area. The Project is expected to cause the permanent loss of no more than 12.76 acres of habitat supporting individuals and seedbank of the Covered Species. All 12.76 acres of habitat are associated with direct impacts on individuals of the Covered Species and their seedbank.

VII. 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.

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VIII. Conditions of Approval:

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used 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 the Mitigated Negative Declaration adopted by the City of Palmdale on July 11, 2019, for the Project, as lead agency for the Project pursuant to the California Environmental Quality Act. (CEQA) (Pub. Resources Code, § 21000 et seq.). The City of Palmdale adopted an Addendum on May 26, 2021. The Addendum includes the presence of western Joshua trees as a candidate species, defined by Section 2068 of the Fish and Game Code, and is fully protected under CESA effective October 9, 2020.
- 3. ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
- 4. General Provisions:**
 - 4.1. Designated Representative.** 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.
 - 4.2. Designated Botanist.** Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Botanist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Botanist is knowledgeable and experienced in the biology, natural history, and handling of the Covered Species. The Designated Botanist 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 Botanist in writing before starting Covered Activities and

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shall also obtain approval in advance in writing if the Designated Botanist must be changed.

- 4.3. Designated Botanist Authority.** To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Area and otherwise facilitate the Designated Botanist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Botanist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.
- 4.4. Education Program.** Permittee shall conduct an education program (Worker Environmental Awareness Program – WEAP) 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 Botanist that includes a discussion of the biology 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 include information about stopping the introduction and/or spread of non-native invasive plants. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.
- 4.5. Construction Monitoring Notebook.** The Designated Botanist 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 Area upon request by CDFW.

- 4.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed, ideally at daily intervals but at least once a week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 4.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to minimize construction-related fugitive dust. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 4.8. 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.
- 4.9. Delineation of Property Boundaries. Before starting Covered Activities, Permittee, in consultation with the Designated Botanist, 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.
- 4.10. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area. This shall include delineating the area where 25 individuals of the Covered Species will be held on site prior to those individuals being reincorporated into the landscape of the developed Project site. Habitat shall be delineated with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 4.11. Project Access. Project-related personnel shall access the Project Area using existing routes and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. 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.
- 4.12. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the

Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 4.11 of this ITP.

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

5. Monitoring, Notification and Reporting Provisions:

- 5.1. Notification Before Commencement.** The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 5.2. Notification of Non-compliance.** The Designated Representative shall immediately notify CDFW if 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 follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.
- 5.3. Compliance Monitoring.** The Designated Botanist shall be on site during the removal of vegetation, site grading, and during the transplant of western Joshua trees. The Designated Biologist shall conduct compliance inspections to:
- (1) minimize incidental take of the Covered Species;
 - (2) prevent unlawful take of species;
 - (3) check for compliance with all measures of this ITP;

- (4) check all exclusion zones; and,
- (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area.

The Designated Botanist shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Designated Botanist shall conduct compliance inspections during site preparation, grading activities, transplanting activities or any activity until all western Joshua trees are transplanted or removed.

5.4. Monthly Compliance Report. The Designated Representative or Designated Botanist shall compile the observation and inspection records identified in Condition of Approval 5.3 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 on the tenth day of each month following the notice of start of construction to the end of Project activities. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program no later than the 10th of the following month. At the time of this ITP's approval, the CDFW Regional Representative is Thompson Banez (Thompson.Banez@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

5.5. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 5.4; (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.

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5.6. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.

5.7. Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Botanist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.

5.8. Notification of Take or Damage. Permittee shall immediately notify the Designated Botanist if an individual or individuals of the Covered Species is taken or damaged by a Project-related activity beyond the taking authorized by this ITP. Likewise, the Permittee shall immediately notify the Designated Botanist if a Covered Species is otherwise founded or damaged within the vicinity of the Project. The Designated Botanist or Designated Representative shall provide initial notification to CDFW by email to (Thompson.Banez@wildlife.ca.gov) and Headquarters CESA Program (CESA@wildlife.ca.gov). The initial notification to CDFW shall include information regarding the location, species, and number of individuals taken or damaged 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 taken or damaged individual(s), and if possible, provide a photograph, explanation as to cause of take or damage, and any other pertinent information.

6. 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:

6.1. Transplanting. Per the City of Palmdale's Joshua Tree and Native Desert Vegetation Preservation Ordinance, two western Joshua trees per gross acres shall be preserved. The Permittee and the Designated Botanist shall consult with the City of

Palmdale's landscape architect prior to all transplanting activities. Permittee shall transplant individuals to suitable native plant habitat to support the Covered Species. Permittee shall select locations that fully avoid impacts on existing individuals of the Covered Species and their root zones. Permittee shall notify CDFW via email at least 7 days prior to scheduled transplanting activities. The Monthly Compliance Report shall provide a list of individuals transplanted; a map of the recipient site(s); methodology; and photographs of the transplanted individuals at the receiver sites(s).

6.2. Cut Vegetation. Vegetation removed from the Project Area shall be distributed away from where individuals of the Covered Species will be held on site for transplanting per Condition of Approval 4.10.

6.3. Excavation. No excavation activities shall take place during a storm event as soils around the root zone of individuals of the Covered Species may be more susceptible to erosion. Work shall only occur during periods of dry weather (with less than a 40 percent chance of rain). No work shall occur during a precipitation event. Within at least 12 hours prior to the onset of precipitation, excavation shall cease, all associated erosion control measures shall be in place, and all motorized equipment and fueling materials shall be removed from areas where runoff from these items can be reasonably foreseen to contact with the Covered Species. Excavating halted due to precipitation may resume when precipitation ceases and after a dry-out period of 48 hours for rain events. Permittee shall monitor the National Weather Service 72-hour forecast for the Project Area. Weather forecasts shall be documented and provided upon request by CDFW.

6.4. Designated Areas for Stockpiling Materials. Permittee shall ensure that fill brought into the Project Area is placed only within the Project Area and away from where individuals of the Covered Species will be held on site for transplanting per Condition of Approval 4.10.

6.5. Check Equipment for Leaks. Permittee shall ensure that construction equipment and vehicles operated in the Project Area are checked and maintained daily to prevent leaks of fuel, lubricants, solvents, or other fluids that could contaminate soils.

6.6. Fire. To avoid impacts on the Covered Species as a result of fire, workers conducting activities with the potential to inadvertently cause a fire (e.g., excavating) shall be equipped with an appropriate level of fire prevention and suppression equipment, such as fire extinguishers, backpack pumps filled with water, shovels, welding tents, shields, and/or fire-resistant mats.

7. Habitat Management Land Acquisition: CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered

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Species that will result from 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 protected acreage required to provide for adequate compensation.

Mitigation was calculated using the following impacts (See Impacts to Covered Species, Figure 3):

- Take of 33 individuals of the Covered Species; and,
- Direct impact to 12.76 acres of habitat supporting individuals and seedbank of the Covered Species.

To meet this requirement, the Permittee shall either purchase 25.52 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 7.2 below OR shall provide for both the permanent protection and management of 25.52 acres of Habitat Management (HM) lands pursuant to Condition of Approval 7.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.4 below. Permanent protection and funding for perpetual management of HM lands 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 8 below for all uncompleted obligations.

7.1. Cost Estimates. For the purposes of determining the Security amount, CDFW has estimated the cost sufficient for CDFW or its contractors to complete acquisition, protection, and perpetual management of the HM lands as follows:

- 7.1.1. Land acquisition costs for HM lands identified in Condition of Approval 7.3 below, estimated at \$12,000/acre for 25.52 acres: **\$306,000**. Land acquisitions costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements;
- 7.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 7.3.6 below, estimated at \$5,443.41/acre for 25.52 acres: **\$139,000**.
- 7.1.3. Interim management period funding as described in Condition of Approval 7.3.7 below, estimated at \$6,116.84/acre for 25.52 acres: **\$156,000**.
- 7.1.4. Long-term management funding as described in Condition of Approval 7.4 below, estimated at \$44,927.94/acre for 25.52 acres: **\$1,147,000**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 7.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title

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transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 7.5, estimated at **\$15,000**.

7.2. Covered Species Credits. Permittee shall purchase **25.52 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 8 below. Prior to purchase of Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project.

7.2.1. Bill of Sale and Payment Receipt or Credit Transfer Agreement. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt or an executed Credit Transfer Agreement prior to Project activities or within 18 months from issuance of this ITP if Security is provided.

OR

7.3. Habitat Acquisition and Protection. Permittee shall acquire, protect, and manage **25.52 acres** of Covered Species 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 8 below. To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:

7.3.1. Fee Title. Transfer fee title of 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.

7.3.2. Conservation Easement. 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 elects not to be named as the grantee for 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 Civil Code sections 815-816, as amended, and Government Code sections 65965-65968, as amended and includes provisions expressly addressing

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Government Code sections 65966(j) and 65967(e). Because the “doctrine of merger” could invalidate the conservation interest, under no circumstances can the fee title owner of the HM lands serve as grantee for the conservation easement.

- 7.3.3. 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, documentation identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project’s impacts on Covered Species.
- 7.3.4. HM Lands Documentation. Provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents (please contact CDFW for document list). 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.
- 7.3.5. 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. The grantee for the conservation easement cannot serve as the interim or long-term manager without the express written authorization of CDFW in its sole discretion.
- 7.3.6. 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 <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates>) (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.
- 7.3.7. 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 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.

- 7.4. Endowment Fund.** If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 7.3, 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 is permanently restricted to paying the costs of long-term management and stewardship of the mitigation property for which the funds were set aside, which costs include the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with this ITP, the conservation easement, and the management plan required by Condition of Approval 7.3.7. 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.

- 7.4.1. 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 thirty 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)(3) 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)(3).

- 7.4.2. Calculate the Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare an endowment assessment (equivalent to a Property Analysis Record (PAR)) to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). Note that the endowment for the easement holder should not be included in this calculation. The Permittee shall submit to CDFW for review and approval the results of the endowment assessment before transferring funds to the Endowment Manager.
- 7.4.2.1. Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the endowment assessment and adjust for any additional administrative, periodic, or annual fees.
- 7.4.2.2. Endowment Buffers/Assumptions. Permittee shall include in the endowment assessment assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:
 - 7.4.2.2.1. Ten 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.

7.4.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.

7.4.2.2.3. 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.

7.4.3. 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.

7.4.4. Management of the Endowment. 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.

Notwithstanding Probate Code sections 18501-18510, the Endowment Manager shall not make any disbursement from the Endowment that will result in expenditure of any portion of the principal of the endowment without the prior written approval of CDFW in its sole discretion. Permittee shall ensure that this requirement is included in any agreement of any kind governing the holding, investment, management, and/or disbursement of the Endowment funds.

Notwithstanding Probate Code sections 18501-18510, if CDFW determines in its sole discretion that an expenditure needs to be made from the Endowment to preserve the conservation values of the HM lands, the Endowment Manager shall process that expenditure in accordance with directions from CDFW. The Endowment Manager shall not be liable for any shortfall in the Endowment resulting from CDFW's decision to make such an expenditure.

7.5. Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable costs incurred by CDFW related to issuance and monitoring of this ITP, including, but not limited to transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, costs incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.

8. 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 7

that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

- 8.1. Security Amount. The Security shall be in the amount of **\$1,763,000** or in the amount identified in 7.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 7.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.
- 8.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 2), or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.
- 8.3. 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.
- 8.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 8.5. Security Transmittal. Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 3) or by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other.
- 8.6. 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.
- 8.7. 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:
 - Copy of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer Agreement for the purchase of Covered Species credits; and,
 - Timely submission of all required reports.

OR

- 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.

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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.

IX. Amendment:

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

X. Stop-Work Order:

If CDFW determines the Permittee has violated any term or condition of this ITP or has engaged in unlawful take, CDFW may issue Permittee a written stop-work order instructing the Permittee to suspend any Covered Activity for an initial period of up to 30 days or risk suspension or revocation of this ITP. CDFW can issue a stop-work order 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, regardless of whether that species is a Covered Species under this ITP. 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 30 additional days.

If Permittee fails to remedy the violation or to comply with a stop-work order, CDFW may proceed with suspension and revocation of this ITP. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and any other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

XI. 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.

XII. 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

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

Alternatively, the Permittee shall email the digitally signed ITP to CESA@wildlife.ca.gov.
Digital signatures shall comply with Government Code section 16.5.

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2021-055-05) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Ed Pert, Regional Manager
California Department of Fish and Wildlife
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4210

and a copy to:

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

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

Thompson Banez
Environmental Scientist
Habitat Conservation Planning – Central
South Coast Region
4665 Lampson Avenue
Los Alamitos, CA 90720
(562) 430-5082
Thompson.Banez@wildlife.ca.gov

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XIII. Compliance with the California Environmental Quality Act:

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 Palmdale (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Strata West Palmdale Apartments and Strata Commons Mitigated Negative Declaration adopted by the City of Palmdale on July 11, 2019, for the Project as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The City of Palmdale adopted an Addendum on May 26, 2021, to include the presence of western Joshua trees as a candidate species, defined by Section 2068 of the Fish and Game Code, and is fully protected under CESA effective October 9, 2020 (CFGC 2020b). At the time the lead agency 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.

XIV. 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, Strata Mitigated Negative Declaration, Initial Study, Addendum, the results of site visits, 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 protection; (2) establishment of avoidance

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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 25.52 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;
- (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.

XV. Attachments:

ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Letter of Credit Form
ATTACHMENT 3	Mitigation Payment Transmittal Form

**ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE ON
January 5, 2022**

DocuSigned by:
Ed Pert
A87CE992DB57479...

Edmund Pert, Regional Manager
South Coast 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: _____ Date: _____

Printed Name: Susana Zak Title: _____

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Attachment 1

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

INCIDENTAL TAKE PERMIT NO. 2081-2021-055-05

PERMITTEE: Palmdale Investors, LLC

**PROJECT: Strata West Palmdale Apartments and Strata Commons
Project**

PURPOSE OF THIS MMRP

The purpose of this 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
BEFORE SITE PREPARATION, CONSTRUCTION AND INSTALLATION					
1	Before starting Covered Activities, Permittee shall designate a representative (Designated 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 #4.1	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 (Designated Botanist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Botanist is knowledgeable and experienced in the biology, natural history, and handling of the Covered Species. The Designated Botanist 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 Botanist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Botanist must be changed.	ITP Condition #4.2	At least 30 days before commencing ground- or vegetation-disturbing activities Entire Project	Permittee	
3	Permittee shall conduct an education program (Worker Environmental Awareness Program – WEAP) 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 Botanist that includes a discussion of the biology 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 include information about stopping the introduction and/or spread of non-native invasive plants. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.	ITP Condition #4.4	Before commencing ground- or vegetation-disturbing activities Entire Project	Permittee Designated Botanist	
4	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, ideally at daily intervals but at least once a week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.	ITP Condition #4.6	Before commencing ground- or vegetation-disturbing activities At least once a week over the course of the Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status/ Date/ Initials
5	Before starting Covered Activities, Permittee, in consultation with the Designated Botanist, shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.	ITP Condition #4.9	Before commencing ground- or vegetation-disturbing activities Entire Project	Permittee	
6	Permittee shall clearly delineate habitat of the Covered Species within the Project Area. This shall include delineating the area where 25 individuals of the Covered Species will be held on site prior to those individuals being reincorporated into the landscape of the developed Project site. Habitat shall be delineated 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 #4.10	Before commencing ground- or vegetation-disturbing activities	Permittee	
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 #5.1	14 days before commencing ground- or vegetation-disturbing activities	Designated Representative	
8	Per the City of Palmdale's Joshua Tree and Native Desert Vegetation Preservation Ordinance, Permittee shall preserve two western Joshua trees per gross acres. Permittee and the Designated Botanist shall consult with the City of Palmdale's landscape architect prior to all transplanting activities. Permittee shall transplant individuals to suitable native plant habitat to support the Covered Species. Permittee shall select locations that fully avoid impacts on existing individuals of the Covered Species and their root zones. Permittee shall notify CDFW via email at least 7 days prior to scheduled transplanting activities. The Monthly Compliance Report shall provide a list of individuals transplanted; a map of the recipient site(s); methodology; and photographs of the transplanted individuals at the receiver sites(s).	ITP Condition #6.1	Before undertaking transplanting activities Notify CDFW at least 7 days before undertaking transplanting activities	Permittee	
9	Permittee shall either purchase 25.52 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 7.2 OR shall provide for both the permanent protection and management of 25.52 acres of Habitat Management (HM) lands pursuant to Condition of Approval 7.3 and the calculation and deposit of the management funds pursuant to Condition of Approval 8.4. Permanent protection and funding for perpetual management of HM lands 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 of Approval 8 for all uncompleted obligations	ITP Condition #7, 7.2, and 7.3	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
10	<p>CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands as follows:</p> <ul style="list-style-type: none"> i) Land acquisition costs for HM lands estimated at \$12,000/acre for 25.52 acres at \$306,000; ii) Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 7.3.6, estimated at \$139,000; iii) Interim management period funding as described in Condition of Approval 7.3.7, estimated at \$156,000; iv) Long-term management funding as described in Condition of Approval 7.4, estimated at \$44,927.94/acre at \$1,147,000; and, v) 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 7.5, estimated at \$15,000. 	ITP Condition #7.1, 7.1.1, 7.1.2, 7.1.3, 7.1.4, and 7.1.5	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
11	<p>Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt or an executed Credit Transfer Agreement prior to Project activities or within 18 months from issuance of the ITP if Security is provided.</p> <p><u>OR</u></p> <p>Permittee shall transfer fee title of 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.</p> <p>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 elects not to be named as the grantee for the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. 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 Civil Code sections 815-816, as amended, and Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e). Because the "doctrine of merger" could invalidate the conservation interest, under no circumstances can the fee title owner of the HM lands serve as grantee for the conservation easement.</p>	ITP Condition #7.2.1, 7.3.1, and 7.3.2	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
12	Permittee shall 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, documentation 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 #7.3.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
13	Permittee shall provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents (CDFW shall be contact for a document list). 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 #7.3.4	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
14	Permittee shall 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. The grantee for the conservation easement cannot serve as the interim or long-term manager without the express written authorization of CDFW in its sole discretion.	ITP Condition #7.3.5	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
15	Permittee shall 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;(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 #7.3.6	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
16	<p>Provide for the interim management of the HM lands. 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.</p> <p>Permittee shall either (1) provide 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.</p>	ITP Condition #7.3.7	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
17	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 7.3.6. Endowment as used in the ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon.	ITP Condition #7.4	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
18	<p>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.</p> <p>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).</p>	ITP Condition #7.4.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
19	After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare an endowment assessment (equivalent to a Property Analysis Record (PAR)) to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). Permittee shall submit to CDFW for review and approval the results of the endowment assessment before transferring funds to the Endowment Manager.	ITP Condition #7.4.2	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
20	Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the endowment assessment and adjust for any additional administrative, periodic, or annual fees.	ITP Condition #7.4.2.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
21	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: i) A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events. ii) The endowment shall be established assuming spending will not occur for the first three years after full funding. iii) 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.	ITP Condition #7.4.2.2, 7.4.2.2.1, 7.4.2.2.2, and 7.4.2.2.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
22	Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount.	ITP Condition #7.4.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
23	Permittee shall reimburse CDFW for all reasonable costs incurred by CDFW related to issuance and monitoring of the ITP, including, but not limited to transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, costs incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.	ITP Condition #7.5	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
24	<p>Permittee may proceed with Covered Activities only after Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 8 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:</p> <ul style="list-style-type: none"> i) <u>Security Amount</u>. The Security shall be in the amount of \$1,763,000. This amount is based on the cost estimates identified in Condition of Approval 7.1. ii) <u>Security Form</u>. The Security shall be in the form of an irrevocable letter of credit or another form of Security approved in advance in writing by CDFW's Office of the General Counsel. iii) <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. iv) <u>Security Holder</u>. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW. v) <u>Security Transmittal</u>. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form or by way of an approved instrument such as escrow, irrevocable letter of credit, or other. vi) <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>Even if Security is provided, 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 #8, 8.1, 8.2, 8.3, 8.4, 8.5, and 8.6.	Before commencing ground- or vegetation-disturbing activities or within 30 days after the effective date of the ITP (whichever occurs first)	Permittee	
25	<p>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"> • 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. <p><u>OR</u></p> <ul style="list-style-type: none"> • Copy of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer Agreement for the purchase of Covered Species credits; and, • Timely submission of all required reports. 	ITP Condition #8, 8.7	After CDFW conducts an on-site inspection and receives confirmation that all secured requirements have been satisfied	Permittee	

DURING SITE PREPARATION, CONSTRUCTION AND INSTALLATION					
26	To ensure compliance with the Conditions of Approval of the ITP, the Designated Biologist shall immediately stop any activity that does not comply with the ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Area and otherwise facilitate the Designated Botanist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Botanist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of the ITP.	ITP Condition #4.3	Entire Project	Designated Botanist	
27	The Designated Botanist 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 Area upon request by CDFW.	ITP Condition #4.5	Entire Project	Designated Botanist/Permittee	
28	Permittee shall implement dust control measures during Covered Activities to minimize construction-related fugitive dust. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.	ITP Condition #4.7	Entire Project	Permittee	
29	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 #4.8	Entire Project	Permittee	
30	Project-related personnel shall access the Project Area using existing routes and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. 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 #4.11	Entire Project	Permittee	
31	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 4.11 of the ITP.	ITP Condition #4.12	Entire Project	Permittee	
32	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 #4.13	Entire Project	Permittee	

33	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 #4.14	Entire Project	Permittee	
34	The Designated Representative shall immediately notify CDFW if 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 follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with the ITP and suggested measures to remedy the situation.	ITP Condition #5.2	Within 24 hours of non-compliance Entire Project	Designated Representative	
35	<p>The Designated Botanist shall be on site during the removal of vegetation, site grading, and during the transplant of western Joshua trees. The Designated Biologist shall conduct compliance inspections to:</p> <ol style="list-style-type: none"> (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. <p>The Designated Botanist shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by the ITP. The Designated Botanist shall conduct compliance inspections during site preparation, grading activities, transplanting activities or any activity until all western Joshua trees are transplanted or removed.</p>	ITP Condition #5.3	Entire Project	Designated Botanist/ Designated Representative	
36	The Designated Representative or Designated Botanist shall compile the observation and inspection records identified in Condition of Approval 5.3 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 on the tenth day of each month following the notice of start of construction to the end of Project activities. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of the ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program no later than the 10 th of the following month. At the time of the ITP's approval, the CDFW Regional Representative is Thompson Banez (Thompson.Banez@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov . CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.	ITP Condition #5.4	Monthly, no later than the 10 th of the following month Entire Project	Designated Representative/ Designated Botanist	

37	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 Monthly Compliance Reports for that year identified in Condition of Approval 5.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.	ITP Condition #5.5	January 31 of every year Entire Project	Permittee	
38	The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.	ITP Condition #5.6	Within 60 calendar days of the observation Entire Project	Designated Botanist	
39	Permittee shall immediately notify the Designated Botanist if an individual or individuals of the Covered Species is taken or damaged by a Project-related activity beyond the taking authorized by the ITP. Likewise, Permittee shall immediately notify the Designated Botanist if a Covered Species is otherwise founded or damaged within the vicinity of the Project. The Designated Botanist or Designated Representative shall provide initial notification to CDFW by email to (Thompson.Banez@wildlife.ca.gov) and Headquarters CESA Program (CESA@wildlife.ca.gov). The initial notification to CDFW shall include information regarding the location, species, and number of individuals taken or damaged 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 taken or damaged individual(s), and if possible, provide a photograph, explanation as to cause of take or damage, and any other pertinent information.	ITP Condition #5.8	Notify immediately and provide written report within two calendar days Entire Project	Permittee/ Designated Botanist	
40	Vegetation removed from the Project Area shall be distributed away from where individuals of the Covered Species will be held on site for transplanting per Condition of Approval 4.10.	ITP Condition #6.2	Entire Project	Permittee	
41	No excavation activities shall take place during a storm event as soils around the root zone of individuals of the Covered Species may be more susceptible to erosion. Work shall only occur during periods of dry weather (with less than a 40 percent chance of rain). No work shall occur during a precipitation event. Within at least 12 hours prior to the onset of precipitation, excavation shall cease, all associated erosion control measures shall be in place, and all motorized equipment and fueling materials shall be removed from areas where runoff from these items can be reasonably foreseen to contact with the Covered Species. Excavating halted due to precipitation may resume when precipitation ceases and after a dry-out period of 48 hours for rain events. Permittee shall monitor the National Weather Service 72-hour forecast for the Project Area. Weather forecasts shall be documented and provided upon request by CDFW.	ITP Condition #6.3	Entire Project	Permittee	
42	Permittee shall ensure that fill brought into the Project Area is placed only within the Project Area and away from where individuals of the Covered Species will be held on site for transplanting per Condition of Approval 4.10.	ITP Condition #6.4	Entire Project	Permittee	

43	Permittee shall ensure that construction equipment and vehicles operated in the Project Area are checked and maintained daily to prevent leaks of fuel, lubricants, solvents or other fluids that could contaminate soils.	ITP Condition #6.5	Entire Project	Permittee	
44	To avoid impacts on the Covered Species as a result of fire, workers conducting activities with the potential to inadvertently cause a fire (e.g., excavating) shall be equipped with an appropriate level of fire prevention and suppression equipment, such as fire extinguishers, backpack pumps filled with water, shovels, welding tents, shields, and/or fire-resistant mats.	ITP Condition #6.6	Entire Project	Permittee	
POST-SITE PREPARATION, CONSTRUCTION, AND INSTALLATION					
45	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 #4.15	Post-site preparation, construction, and installation	Permittee	
POST-PROJECT					
46	No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Botanist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of 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 #5.7	No later than 45 days after completion of mitigation	Permittee	

[Financial institution letterhead]

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

Issue Date: **[date]**

Beneficiary:

California Department of Fish and Wildlife
Habitat Conservation Planning Branch
Post Office Box 944209
Sacramento, CA 94244-2090
Attn: HCPB Contract Coordinator

Amount: U.S. \$**1,763,000.00** (**One Million Seven Hundred Sixty Three Thousand Dollars**)

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 CDFW pursuant to the terms of the incidental take permit for the **[name of project]** issued by 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 in the Permit ("Mitigation Requirements").
4. We are finally informed that this Credit is intended by CDFW and the Applicant to serve as a security device for the performance by the Applicant of the Mitigation Requirements.
5. 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 CDFW as defined in paragraph 12 below. Presentation by 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 CDFW, or to the account of CDFW, in immediately available funds, as CDFW shall specify.
8. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give 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, 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 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 CDFW, as defined in paragraph 12 below.
12. An Authorized Representative shall mean the Director of CDFW; the General Counsel of CDFW; a Regional Manager of CDFW; or the Branch Chief of CDFW's Habitat Conservation Planning Branch.
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 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 CDFW: Department of Fish and Wildlife, Habitat Conservation Planning Branch, Post Office Box 944209, Sacramento, CA 94244-

2090, Attn: HCPB Contract 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 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: _____

Telephone: _____

California Department of Fish and Wildlife
Mitigation Payment Transmittal Form

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 FASB Mitigation Tracking Number (if available) on the attached payment type.

(1) **DATE:** _____

TO: _____

[CDFW Regional Manager]

[CDFW Region Office Address]

(2) **FROM:** _____

Name

Mailing Address

City, State, Zip

Telephone Number/FAX Number

(3) **RE:** _____

[Project Name as appears on permit/agreement]

(4) **AGREEMENT/ACCOUNT INFORMATION:**

(Check the applicable type)

☒ 2081 Permit ☐ Conservation Bank ☐ 1802 Agreement

☐ 2835 NCCP ☐ Other _____

XXXX-XXXX-XXX-XX

[Project Tracking Number]

[FASB Mitigation Tracking Number (if available)]

Index _____ PCA _____

(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: _____