



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

California Endangered Species Act  
 Incidental Take Permit No. 2081-2023-026-06

**DESERT BREEZE SOLAR**

### **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 take<sup>1</sup> of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.<sup>2</sup> 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). (See Cal. Code Regs., tit. 14, § 783.4).

<b>Permittee:</b>	<b>Desert Breeze Solar, LLC</b>
<b>Principal Officer:</b>	<b>Andrew Krause, Director, Permitting – Solar &amp; BESS</b>
<b>Contact Person:</b>	<b>Andrew Krause, 661-747-1573</b>
<b>Mailing Address:</b>	<b>11455 El Camino Real, Ste. 160 San Diego, CA 92130</b>

### **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 **February 14, 2059**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.8 of this ITP.

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

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

### **III. Project Location:**

The Desert Breeze Solar Project (Project) is located in an unincorporated portion of the western part of San Bernardino County within the community of Hinkley, approximately seven miles northwest of the intersection of Harper Lake Road and Mojave-Barstow Highway 58 (Figure 1). The Project is located within County Assessor's Parcel numbers 0490-10-57 and 0490-223-40 and is bordered by existing and approved solar facilities to the south, Harper Lake Road to the east, Maltice Drive to the north, and Hoffman Road to the west.

### **IV. Project Description:**

The Project includes the construction and operation of a photovoltaic (PV) solar facility and associated infrastructure to generate up to 130 megawatts (MW) of alternating current (AC) power within an approximately 677-acre solar array development area (Figure 2). The Project will consist of the following components: Solar PV generating facilities and solar modules; overhead and underground electrical collector system and inverters; telecommunication facilities; interior access roads; permanent security fencing with desert tortoise exclusionary features; electronic gates; and lighting. A Shared Facilities Area (SFA) adjacent to the Project will include activities associated with the Project that will not be covered by this ITP. Within the SFA, a new Battery Energy Storage System will be constructed, and the Project will share existing support facilities with the adjacent Lockhart Solar PV and Lockhart Solar PV II facilities (e.g., operations and maintenance building, warehouse, employee building, water and septic systems, collector substation).

#### *Project Construction*

Construction activities generally fall into three main categories: 1) site preparation and demolition; 2) grading; and 3) construction/installation. Site grading and earthwork activities are expected to include mowing, excavation, and piledriving. Conventional grading would also be required, generally only for installation of solar field roads and preparation of equipment foundation pads. Earthwork scrapers, excavators, dozers, water trucks, paddlewheels, haul vehicles, and graders may all be used to perform grading. Land-leveling equipment, such as a smooth steel drum roller, may be used to even the surface of the ground and to compact the upper layer of soil to a value recommended by a geotechnical engineer for structural support.

Erection of the solar arrays would include support structures and associated electrical equipment and cabling. Solar panels are attached to driven piles and do not require foundation pads. Within the solar fields, trenching would be required for placement of underground electrical and communication lines; this may include the use of trenchers, backhoes, excavators, haul vehicles, compaction equipment, and water trucks.

During construction, non-potable water would be required for common construction-related purposes, including but not limited to dust suppression, soil compaction, and grading. Water usage is anticipated to be approximately 240 acre-feet (AF) during the construction period, and water is anticipated to be supplied by pumping groundwater from existing wells located within the SFA and off-site on the adjacent solar facility site.

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*Operation and Maintenance*

Once construction is completed, typical Operations and Maintenance (O&M) activities would include, but not be limited to, facility monitoring, administration and reporting, remote operations of inverters and other equipment, site security and management, communication protocol, repair and maintenance of solar facilities and related electrical equipment, and periodic solar panel washing. The facility would operate seven days per week, 24 hours per day. Maintenance activities may occur at night to help ensure PV panel output when solar energy is available during the day. Existing operations staff from the adjacent solar facilities would continue supporting operation of the Project; therefore, it is expected that the Project would not require any additional operational staff. Typically, most staff would work a day shift during typical business hours and days, and a smaller staff would work during swing shifts, night shifts and on weekends. During O&M, it is anticipated that water would be required for solar panel washing, equipment washing, non-sanitary uses, and other miscellaneous water uses. Solar panel washing is expected to occur one to four times per year. Water consumption for washing panels is expected to be approximately one AF of water per year. Solar panel water washing is by deluge and no chemicals or other materials will be used.

*Decommissioning*

At the end of the solar facility’s operational term, the solar facility may be decommissioned and deconstructed. Equipment would be de-energized prior to removal, and shipped offsite to be salvaged, recycled, or disposed of at an appropriately licensed disposal facility. Site infrastructure would be removed, including fences and concrete pads that may support the inverters, transformers, and related equipment. The exterior fencing and gates would be removed, and materials would be recycled to the extent feasible. Roads within the Project footprint would be restored to their preconstruction condition to the extent feasible unless the landowner elects to retain the improved roads for access throughout the property. Prior to decommissioning the site, a final restoration plan would be developed to meet the County requirements applicable at that time and would be sent to CDFW for review and approval. Decommissioning will be a covered activity under this ITP if it occurs within the 35-year term of the permit.

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

This ITP covers the following species:

<u>Name</u>	<u>CESA Status</u> <sup>3</sup>
1. Agassiz’s desert tortoise ( <i>Gopherus agassizii</i> )	Threatened <sup>4</sup> /Candidate <sup>5</sup>
2. Mohave ground squirrel ( <i>Xerospermophilus mohavensis</i> )	Threatened <sup>6</sup>

These species and only these species are the “Covered Species” for the purposes of this ITP.

<sup>3</sup> Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species.

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

<sup>5</sup> See 2020 Cal. Reg. Notice Register, No. 44-Z, pp. 1445-1446 (October 30, 2020)

<sup>6</sup>See Cal. Code Regs. Tit. 14 § 670.5., subd. (b)(6)(A).

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

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as collision with or crushing by vehicles or heavy equipment; crushing or burial of individuals or eggs in burrows; destruction of burrows and refugia; and increased predation. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species from entrapment in holes or trenches, uncovering Covered Species through the excavation of burrows, and capture and relocation of Covered Species when required by this ITP. The areas where authorized take of the Covered Species is expected to occur include is limited to the land within the 677-acre Project boundary (collectively, the Project Area).

The Project is expected to cause the permanent loss of 662.14 acres of habitat for the Desert tortoise and 520.57 acres of Mohave ground squirrel habitat. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include stress resulting from noise and vibrations, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

**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 except for capture and relocation of Covered Species as authorized by this ITP.

**VIII. Conditions of Approval:**

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

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1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Environmental Impact Report (SCH No.: 2022090646) certified by San Bernardino County on January 18, 2024 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No. EPIMS-SBR-41233-R6 for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Habitat Conservation Plan for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
5. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
6. **General Provisions:**
  - 6.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
  - 6.2. Biological Monitor(s). Permittee shall designate Biological Monitor(s) knowledgeable and experienced in the biology and natural history of the Covered Species. The Biological Monitor(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat.
  - 6.3. Authorized Biologist. Permittee shall designate an Authorized Biologist(s) knowledgeable in the biology and natural history of the Covered Species. The Authorized Biologist(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate and avoid the incidental take of individual Covered Species and to minimize disturbance of Covered

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Species' habitat. Additionally, the Authorized Biologist(s) shall have experience with all activities that will be carried out for the Project including, but not limited to, excavating burrows, handling and temporarily holding the Covered Species, relocating/translocating the Covered Species, reconstructing Covered Species burrows, unearthing and relocating Covered Species eggs, locating, identifying, and recording all forms of Covered Species signs, collecting Covered Species blood samples, conducting Covered Species health assessments, conducting Covered Species protocol level surveys, and/or attaching and removing transmitters to and from the Covered Species.

- 6.4. Biologists and Veterinarians Approvals.** Permittee shall obtain CDFW approval of the Authorized Biologist(s), Biological Monitor(s), and if needed veterinarian(s), in writing before starting Covered Activities, and shall also obtain advance written approval if any of these entities are changed. For approval, the Designated Representative shall submit Attachment 2 of this ITP and an Excel spreadsheet listing in alphabetical order the names of the proposed Authorized Biologist(s), Biological Monitor(s), and veterinarian(s) to CDFW a minimum of 30 calendar days before starting Covered Activities or before any changes are made to these personnel. For each proposed Authorized Biologist(s) and Biological Monitor(s), the Excel spreadsheet shall include the activities outlined in this ITP and associated Desert Tortoise Translocation Plan (DTTP) that the Permittee is requesting approval for that individual to carry out.
- 6.5. Authorized Biologist(s) and Biological Monitor(s) Authority.** To ensure compliance with the Conditions of Approval of the ITP, the Biological Monitor(s) and/or Authorized Biologist(s) shall have authority and take necessary steps to immediately stop work if any activity does not comply with this ITP and/or Authorized Biologist(s) shall order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. If a Biological Monitor or Authorized Biologist stops work on the Project site, work shall not resume until an Authorized Biologist determines that all activities are in compliance with the ITP and communicates that determination to the onsite manager. Permittee shall inform all persons employed or otherwise working in the Project Area that the Biological Monitor(s) and Authorized Biologist(s) have the authority described in this subsection. Permittee shall provide unfettered access to the Project Site and otherwise facilitate the Authorized Biologist or Biological Monitor(s) in the performance of his/her duties. If the Authorized Biologist or Biological Monitor(s) is unable to comply with the ITP, then the Authorized Biologist or Biological Monitor(s) 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 Authorized Biologist or Biological Monitor(s) 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.

- 6.6. Education Program.** Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Biological Monitor(s), and/or Authorized Biologist(s) that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. 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. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.
- 6.7. Construction Monitoring Documentation.** The Biological Monitor(s), and/or Authorized Biologist(s) shall maintain construction-monitoring documentation on-site in either hard copy or digital format 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 documentation is available for review at the Project site upon request by CDFW.
- 6.8. 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.
- 6.9. Dust Control.** Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 6.10. Erosion Control Materials.** To minimize the risk of ensnaring and strangling Covered Species, Permittee shall not utilize erosion control materials containing synthetic (e.g., plastic or nylon) monofilament netting. Geotextiles, fiber rolls, and other erosion control measures shall be made of loose-weave mesh, such as jute, coconut (coir) fiber, or other products without welded weaves. Permittee shall utilize erosion control materials composed entirely of natural-fiber biodegradable materials. Permittee shall not use plastic “photodegradable” erosion control materials.

- 6.11. Delineation of Property Boundaries.** Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 6.12. Delineation of Habitat.** Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 6.13. Project Access.** Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 15 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.
- 6.14. Staging Areas.** Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.13 of this ITP.
- 6.15. Hazardous Waste.** Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 6.16. CDFW Access.** Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.17. Refuse Removal.** Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including,



but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

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

- 7.1. Notification Before Commencement.** The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Non-compliance.** The Designated Representative shall immediately notify CDFW if 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.
- 7.3. Notifying Procedures.** The Permittee or the Designated Representative shall provide all required notifications in this ITP by sending an email to the CDFW Regional Representative Rose Banks (Rose.Banks@wildlife.ca.gov) and as described in the Notices section of this ITP. All notifications shall be submitted via email to the Regional Representative and shall include the following information: ITP Number, the ITP Condition number that the notification is addressing, any necessary photos or attachments, and the name and phone numbers of the Biological Monitor(s) and/or Authorized Biologist(s) (if applicable).
- 7.4. Compliance Monitoring.** During the construction period, the Biological Monitor(s) and/or Authorized Biologist(s) shall be on-site daily when Covered Activities occur. The Biological Monitor(s) and/or Authorized Biologist(s) shall conduct compliance inspections a minimum of three times a day (once during the onset of the day's work, once mid-day, and once at the conclusion of that day's work. The Authorized Biologist(s) and/or Biological Monitor shall conduct compliance inspections to:
- (1) minimize incidental take of the Covered Species;
  - (2) prevent unlawful take of species;
  - (3) check for compliance with all measures of this ITP;
  - (4) check all exclusion zones; and
  - (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area.

The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring

activities required by this ITP. When all construction-related Covered Activities have completed and the Project enters the operation and maintenance period, an Authorized Biologist(s) shall be on-site to monitor any ground-disturbing operation and maintenance-related Covered Activities being performed outside the exclusionary fencing, and to conduct monthly compliance inspections for the term of this ITP and/or until Project decommissioning commences.

- 7.5. Quarterly Compliance Report.** During the construction period, the Designated Representative, Biological Monitor(s), and/or Authorized Biologist(s) shall compile the observation and inspection records identified in Condition of Approval 7.4 into a Quarterly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Quarterly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Rose Banks (Rose.Banks@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.
- 7.6. 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 permit termination date or CDFW determines they are no longer necessary. Each ASR shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports for that year identified in Condition of Approval 7.5; (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; and (6) information about other Project impacts on the Covered Species.
- 7.7. 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 Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 7.8. Final Mitigation Report.** No later than 45 days after completion of all mitigation measures performed during the construction period, Permittee shall provide CDFW with a Final Mitigation Report. The Biological Monitor(s) or Authorized Biologist(s) shall prepare the

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Final Mitigation Report which shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; (8) geographic information system (GIS) shapefiles in the format specified in Attachment 3; and (9) any other pertinent information.

**7.9. Notification of Take or Injury.** Permittee shall immediately notify the Biological Monitor(s) or Authorized Biologist(s) if a Covered Species is taken or injured/damaged by a Project-related activity, or if a Covered Species is otherwise found dead or injured/damaged within the vicinity of the Project. The Biological Monitor(s), Authorized Biologist(s) or Designated Representative shall provide initial notification to CDFW by following Condition of Approval 7.3. The initial notification to CDFW shall include information regarding the location, species, and number of animals/plants taken or injured/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 the animal/plant or carcass, and if possible, provide a photograph, explanation as to cause of take or injury/damage, and any other pertinent information.

**7.10. Future Take or Injury Prevention.** The Permittee shall develop and include measures that will be implemented to prevent or minimize future take or injury of Covered Species in all reports provided under Condition of Approval 7.9.

**8. Take Minimization Measures:** The following requirements are intended to ensure the minimization of incidental take of Covered Species in the Project Area during Covered Activities. Unless specified otherwise, take minimization measures shall be implemented throughout the life of this ITP. Permittee shall implement and adhere to the following conditions to minimize take of Covered Species:

**8.1. Herbicides.** Permittee shall only use herbicides containing a harmless dye and registered with the California Department of Pesticide Regulation (DPR). All herbicides shall be applied in accordance with regulations set by DPR. All herbicides shall be used according to labeled instructions. Labeled instructions for the herbicide used shall be made available to CDFW upon request. No herbicide application when winds are greater than five (5) miles per hour.

**8.2. Rodenticides and Insecticides.** Permittee shall not use rodenticides and/or insecticides on the Project Area without prior written permission from CDFW. Permittee shall not use any

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second-generation anticoagulant rodenticide (brodifacoum, bromadiolone, difethialone, and difenacoum) on the Project Area. Permittee shall not use any first-generation anticoagulant rodenticide (diphacinone, chlorophacinone, and warfarin) on the Project Area without prior written permission from CDFW.

- 8.3. Removal of Debris.** Permittee shall remove all hardened concrete and other loose debris in areas that need to be cleared by slowly removing stored material starting from the top and working down to ground level, rather than scooping from the ground up. This method will minimize the possibility of harming a Covered Species using the debris as shelter and will allow them to escape.
- 8.4. Entrapment Inspections.** Any pipes, culverts, or similar structures with a diameter greater than 3 inches and less than 8 inches aboveground shall be inspected by the Authorized Biologist(s) and/or Biological Monitor(s) for Covered Species' before the material is moved, buried, or capped. The Authorized Biologist(s) and/or Biological Monitor(s) shall inspect all open holes and trenches within Covered Species habitat at a minimum of twice a day and just prior to backfilling. At the end of each workday during construction, Permittee shall place an escape ramp at each end of trenches to allow any animals that may have become trapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degrees. If any worker discovers that Covered Species have become trapped, they shall halt Covered Activities and notify the Biological Monitor(s) and/or Authorized Biologist(s) immediately. Project workers and the Biological Monitor(s) and/or Authorized Biologist(s) shall allow the Covered Species to escape unimpeded if possible, or an Authorized Biologist(s) approved under Condition of Approval 6.4 of this ITP shall move the Covered Species out of harm's way before allowing work to continue.
- 8.5. Pre-Construction Surveys for Desert Tortoise.** No later than 30 days prior to start of Covered Activities, the Authorized Biologist(s) and/or Biological Monitor(s) approved under this ITP shall conduct pre-construction clearance surveys for Covered Species, using the methods described in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise (Mojave Population) Field Manual (hereinafter referred to as USFWS Field Manual). In addition to the guidance provided in the USFWS Field Manual, CDFW provides the following requirement(s):
- 8.5.1.** Pre-construction clearance surveys shall be completed using perpendicular survey routes within the Project Area. Pre-construction clearance surveys cannot be combined with other clearance surveys conducted for other species while using the same personnel. Covered Activities cannot start until two (2) negative results from consecutive surveys using perpendicular survey routes for the Covered Species are documented.

- 8.5.2. These surveys shall cover 100 percent of the Project Area and a 50-foot buffer zone around the Project site. The Biological Monitor(s) and/or Authorized Biologist(s) shall record all potential Covered Species and burrows within the pre-construction clearance survey area, using global positioning system (GPS) technology. The Biological Monitor(s) and/or Authorized Biologist(s) shall provide the results of the pre-construction clearance survey (including all information of the USFWS Protocol data sheet) to CDFW within 10 Calendar days of completing the surveys. The use of specialized equipment (e.g., fiber optics) may be necessary to thoroughly inspect all burrows in preparation for collapsing them.
- 8.5.3. Twenty-Four (24) hours prior to the start of any Covered Activities, except for areas already cleared within installation of desert tortoise exclusion fencing, the Biological Monitor(s) and/or Authorized Biologist(s) shall conduct a final clearance survey of Project Area. The use of specialized equipment (e.g., fiber optics) may be necessary to thoroughly inspect all burrows in preparation for collapsing them.
- 8.6. Pre-Construction Surveys for Mohave Ground Squirrels.** No more than 30 calendars days prior to the start of ground disturbing activities the Authorized Biologist(s)/Biological Monitor(s) shall be present onsite to perform a pre-construction survey for Mohave ground squirrel. These surveys shall cover the Project Area and a 50-foot buffer zone. All known or suspected Mohave ground squirrel burrows within the work areas shall be flagged to alert biological and work crews to their presence. A report documenting the results of the pre-construction surveys shall be submitted to CDFW within 30 calendar days after performing them.
- 8.7. Covered Species Observations.** If a Covered Species is observed during Covered Activities, all work within 300 feet of the Covered Species shall immediately stop and the observation shall be immediately reported to the Authorized Biologist(s). Covered Activities shall not resume until the Authorized Biologist(s) and/or Biological Monitor(s) has verified the Covered Species has left the Project Area OR an Authorized Biologist(s) approved under Condition of Approval 6.4 of this ITP relocates the Covered Species as described in this ITP and Desert Tortoise Translocation Plan. The Designated Representative shall notify CDFW of any Covered Species observations within the Project Area. Notification shall occur as described in Condition of Approval 7.3 within 24 hours. Notification and the written report shall include the date, location, and circumstances of the observation, the name of the Authorized Biologist(s) that relocated the individual, pictures, map and shapefiles with the location (including GPS coordinates) where the individual was moved as specified in the DTP.
- 8.8. Desert Tortoise Burrow Excavation.** Only Authorized Biologist(s) and Biological Monitor(s) approved by CDFW are authorized to conduct burrow excavation. Excavation of burrows shall follow the methods described the USFWS Field Manual.

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**8.9. Mohave Ground Squirrel Burrow Excavation.** The Authorized Biologist(s) shall fully excavate by hand all burrows OR scope each burrow within the Project Area that are suspected or known to be occupied by Mohave ground squirrels. The Authorized Biologist(s) shall allow Mohave ground squirrels encountered in the excavated burrows during their active period (March 15 – July 15) to escape out of harm's way. During the Mohave ground squirrel dormant period (September 1 – January 31), the Authorized Biologist(s) shall collect and immediately relocate the individuals to an artificial burrow in the following preferential order: 1.) relocate to the nearest public lands with suitable habitat from where the squirrel was originally captured; 2.) relocate outside of right-of-way, within existing parcel on private property. Mohave ground squirrels may not be relocated to private property unless the Permittee obtains written permission from the property owner prior to Covered Activities. The Mohave ground squirrel may only be relocated by the Authorized Biologist(s). The Authorized Biologist(s) shall prepare relocation burrows in the following manner: (1) A hole of at least two feet deep shall be dug; (2) Install a nine-inch diameter non-collapsible plastic container, which shall be connected to a three-inch diameter non-collapsible plastic pipe that runs to the ground surface at a 45-degree angle; (3) The Authorized Biologist(s) shall place the Mohave ground squirrel in the artificial burrow and lightly plug the burrow mouth with soil in a manner that is similar to a natural Mohave ground squirrel burrow.

**8.10. Desert Tortoise Translocation.** Regardless of the number of desert tortoise estimated to be moved out of harm's way the Permittee shall prepare a Desert Tortoise Translocation Plan (DTTP) 15 Calendar days prior to start of Covered Activities and submit it according to Condition of Approval 7.3 of this ITP. Covered Activities are not authorized to start until the DTTP is approved in writing by CDFW. The DTTP shall follow the most current guidelines provided by USFWS and CDFW regarding Covered Species translocation. Where guidance differs between USFWS and CDFW, verbal and/or written direction provided by CDFW always controls.

The list of items below are the most common examples of the differences between CDFW and USFWS guidelines. These shall be included in the DTTP along with the most recent USFWS translocation guidelines:

- Translocated tortoise are tortoises removed from the Project Area and/or have a radio transmitter attached.
- The Authorized Biologist shall determine when the creation of artificial burrows is needed.
- Ambient air temperature guidelines shall be followed as specified in Condition of Approval 8.11 of this ITP.

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- Tortoises <100 millimeters (mm) midline carapace length (MCL) shall be released immediately without being held, transmittered, or blood drawn for disease testing as long as the temperature requirements in Condition of Approval 8.11 of this ITP above are met.
- CDFW does not authorize the release of tortoises that test positive for disease even if it does not show outward signs of the disease. If a tortoise tests positive for disease it is the responsibility of the Permittee to locate a CDFW approved facility to place the tortoise in. Any exception to this determination will need to be approved in writing by CDFW on a case-by-case basis.
- Disease testing shall not be done between November 1 and May 14. If a tortoise >100 mm MCL is found between November 1 and May 14 or earlier with written approval from CDFW the tortoise shall be held in quarantine facilities and shall remain in quarantine until tested twice (once in the spring and once in the fall). If the tortoise tests negative for disease it can be released in accordance with the approved DTTP. Blood draw samples for *Mycoplasma agassizii* and *Mycoplasma testudineum* shall determine if a tortoise is negative or positive for disease. A combination of results from blood testing and visual inspection will be used to determine the health of a tortoise. Blood draw samples will be sent to: Dr. Mary Brown, University of Florida Mycoplasma Laboratory, 2015 SW Archer Road, Room V2-234, Gainesville Florida 32608, or other facility approved by CDFW. CDFW uses enzyme-linked immune assay (ELISA) test results to determine if a tortoise is positive for disease. The ELISA tests will be used to test for exposure to herpes virus (*Mycoplasma agassizii* and *Mycoplasma testudineum*).
- If a tortoise tests positive for or is suspected of disease, then the tortoise will be tested twice for disease (once in the spring after May 15 to and once in the fall). To determine results of blood testing use the most current guidelines provided by the University of Florida Mycoplasma Laboratory Department of Infectious Diseases and Pathology. The University of Florida Mycoplasma Laboratory Department of Infectious Diseases & Pathology 2013 criteria for classifying *Mycoplasma agassizii* and *Mycoplasma testudineum* is a titer <32 is negative, a titer > 64 is positive, and a titer of 32 is suspect (retesting in 6 weeks) or most current guidelines. All sample forms shall come from the University of Florida's guidance.
- The DTTP shall include a requirement that all translocated tortoises regardless of size be included in the translocation numbers and all reports.
- The DTTP shall propose one recipient site. Recipient sites shall have the vegetative structure to support all life stages of desert tortoises. In addition to the USFWS Field Manual guidelines the DTTP shall also include identifying the known threats or

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potential causes of population decline, how potential threats have been or would be addressed, complete physical examination and health assessments with sample collection, age-structure and sex ratios, protocol level surveys, vegetation classification and quality of habitat. The DTTP shall detail which characteristics are to be used to decide if a recipient site is similar enough to a Project Area including burrow aspects, and recovery needs such as habitat restoration and/or predator control.

- All tortoises >100 mm MCL removed off the Project Area shall be transmittered and monitored for 5 years post translocation.
- Recipient sites shall be a minimum of 4 miles (6.5 kilometers) away from highway/road right-of-way that does not include Covered Species fencing.
- All tortoise burrows within the Project Area shall be excavated following procedures outlined in the U. S. Fish and Wildlife Service Desert Tortoise Field Manual.
- Creation of artificial burrows, as well as translocation of tortoises and eggs shall only occur on land(s) (including Bureau of Land Management), when written authorization has been obtained from the landowner prior to the start of Covered Activities. The written permission from the landowner shall be included in the DTTP and the DTTP shall not be approved by CDFW until authorization is provide in writing. If creation of artificial burrows or translocation of tortoise or eggs is proposed to take place on private lands then in addition to written approval required above, some form of protection for the land such as a conservation easement shall be in place prior to translocation occurring.
- Cleaning and Disinfection Protocol. Trifectant and Rescue Ready to Use One Step Disinfectant Cleaner are the only products authorized under this ITP and its associated DTTP to be used as a disinfectant. These products are not authorized to be applied using a spray bottle or other spray methods.

Cleaning and Disinfection Protocol shall include the following:<sup>7</sup>

- Remove all grossly visible debris.
- Wash the area or item with water and mild detergent.
- Thoroughly rinse the cleaned area to remove any detergent residue.
- Allow the area to dry completely.
- Apply disinfectant mixture.
- Allow the full disinfectant product recommended contact time.

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<sup>7</sup> Brown, Mary. Cleaning and Disinfection Protocol. Department of Infectious Diseases and Pathology, College of Veterinary Medicine, Gainesville FL.



- Thoroughly rinse away any residual disinfectant and allow the area or item to air dry.

**8.11. Ambient Air Temperature for Desert Tortoise:** During all handling procedures, Covered Species shall be treated in a manner to ensure that they do not overheat or exhibit signs of overheating (e.g., gaping, foaming at the mouth, etc.), or are placed in a situation where they cannot maintain surface and core temperatures necessary to their well-being. Covered Species shall be kept shaded at all times until it is safe to release them. For the purposes of this permit, ambient air temperature shall be measured in the shade, protected from wind, at a height of 5 centimeters above the ground surface. For all Covered Activities no Covered Species shall be captured, moved, transported, released, or purposefully caused to leave its burrow for whatever reason when the ambient air temperature is above 95° Fahrenheit (F) (35° Celsius (C)). No Covered Species shall be captured if the ambient air temperature is anticipated to exceed 95° F (35° C) before handling or processing can be completed. If the ambient air temperature exceeds 95° F (35° C) during handling or processing, Covered Species shall be kept shaded in an environment that does not exceed 95° F (35° C), and not released until ambient air temperature declines to below 95°F (35°C). Covered Species moved during the less active season (June 1 to August 31 and November 1 to March 31) shall be monitored by the Authorized Biologist(s) for at least two days after placement in the new burrows to ensure their safety. During relocation, the Authorized Biologist(s) may hold a captured Covered Species overnight and move them the following morning within these temperature constraints.

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

**8.13. Covered Species Handling Records.** The Authorized Biologist(s) and/or Biological Monitor(s) shall maintain a record of all Covered Species handled. This information shall include: (a) the locations (narrative and maps) and dates of observation, including whether the individual(s) was found above ground or in a burrow; (b) ambient temperature when handled and released; (c) general condition and health of the individual(s), including injuries, state of healing, and whether the individual(s) voided its bladders; (d) identified diagnostic markings (i.e., identification numbers or marked marginal scutes); (e) location

moved from and location moved to (using GPS technology), including information on any burrow (natural or artificial) utilized; (f) whether any eggs were discovered and relocated; (g) digital photographs of any Covered Species and eggs handled; and (h) results of ongoing monitoring. The Designated Representative(s) shall provide CDFW with the information listed above submitted in the quarterly reports during construction.

- 8.14. Covered Species Guards.** The design of Covered Species guards shall include exit ramps and cleanout. Guards shall be installed along the Existing Right-of-Way fence. Guard locations and design shall be provided to CDFW and shall be approved by CDFW in writing prior to starting Covered Activities.
- 8.15. Permanent Security Fencing with Attached Desert Tortoise Fencing.** The permanent desert tortoise exclusion fencing shall be attached to the 7-foot-high standard chain link security fencing. This fencing shall be installed around the northern, western, and eastern boundaries of the solar facility development footprint, in addition to the existing fencing along the shared boundary between the solar facility and the adjacent facilities to the south. The fence shall be constructed according to Chapter 8 of the USFWS Field Manual, but if any tortoises <100mm MCL are translocated within 500 meters of the Project site, tortoise fencing shall be 16 gauge or heavier galvanized after welded wire with mesh opening of ½ inch horizontal by ½ inch vertical (Attachment 4). The fence shall include the installation of shade structures along the outer fence perimeter placed at regular intervals. To prevent potential access at site access points, all gates would be installed with desert tortoise exclusion fencing affixed along the bottom portion of the gate structure.
- 8.16. Covered Species Fence Maintenance Inspection.** The Biological Monitor(s) and/or Authorized Biologist(s) shall inspect the Covered Species fencing during the Covered Activities, at the end of each workday during the construction period, monthly during O&M, and during major rainfall and high wind events within 24 hours to ensure Covered Species is prohibited from entering the Project Area. If the fence is compromised, repairs shall be completed immediately, and clearance protocol level surveys shall be conducted as described in Condition of Approval 8.5.
- 8.17. Vehicle Inspection.** Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall contact the Biological Monitor(s) or Authorized Biologists(s) and wait for the Covered Species to move unimpeded to a safe location or the Authorized Biologist(s) shall relocate the Covered Species as described in Condition of Approval 8.10 before moving vehicles and equipment.
- 8.18. Staging Area and Parking Area.** The Permittee shall enclose all staging areas and parking areas with Covered Species exclusion fencing. All parked vehicles and equipment shall be inspected prior to being moved. If a Covered Species is found within a staging or parking

area the worker shall immediately contact a Biological Monitor(s) and/or Authorized Biologist(s) approved in Condition of Approval 6.4 of this ITP. A biologist approved in Condition of Approval 6.4 of this ITP shall relocate the Covered Species in accordance with Condition of Approval 8.10 of this ITP and the DTTP.

- 8.19. Raven Management.** The Permittee shall prepare a Raven Management Plan to minimize the potential to attract common ravens to the site and submit it to CDFW for review and approval. In addition, the Permittee shall provide funds to the Renewable Energy Action Team (REAT) account established with the National Fish and Wildlife Foundation (NFWF) to contribute to a region-wide raven control plan to help address raven predation on the tortoise. This contribution shall be used to address raven predation on a regional basis and shall be calculated as a one-time payment of \$105 per acre of project disturbance. Based on this calculation the Permittee shall provide a one-time payment at \$105.00/acre for 677 acres at **\$71,085.00** to the REAT account established with NFWF's Raven Management Plan fund. A minimum of 15 days prior to the start of Covered Activities these funds shall be provided to NFWF using appropriate deposit document (Attachment 5) and proof of paying this fee shall be provided to CDFW within 24 hours after the funds have been provided to NFWF.
- 8.20. Erosion Control Materials.** To minimize the risk of ensnaring and strangling Covered Species, Permittee shall not use erosion control materials containing synthetic (e.g., plastic or nylon) monofilament netting. Geotextiles, fiber rolls, and other erosion control measures shall be made of loose-weave mesh, such as jute, coconut (coir) fiber, or other products without welded weaves. Permittee shall use erosion control materials composed entirely of natural-fiber biodegradable materials. Permittee shall not use plastic "photodegradable" erosion control materials.
- 8.21. Invasive Plant Management Plan.** Permittee shall develop an Invasive Plant Management Plan focused on controlling or eradicating existing invasive plants within the project site and preventing the introduction of new nonnative and invasive plants into the project site. The Plan shall include a list of plant species targeted for control or eradication, a description of the methods that will be used for control or eradication, a list of Best Management Practices to prevent the introduction and spread of invasive plant species into and out of the project site, monitoring requirement, success criteria, and a rapid response plan in the event that a new plant species invades the project site. The Plan shall be implemented during Covered Activities and monitored for the time specified in the Plan. The Plan shall be submitted to CDFW for review and approval no later than 60 days prior to the commencement of Covered Activities.
- 8.22. Full time monitoring.** An Authorized Biologist(s) or Biological Monitor(s) shall be present during all Covered Activities that occur outside a permanent fenced area during the

construction period. During the operations and maintenance period of the Project, an Authorized Biologist(s) shall be on-site to address any compliance-related issues.

**8.23. Revegetation.** Plantings and seed mix shall be approved by CDFW prior to application. Plantings and seed mix shall be comprised of only native plant material from the same geographic range as the Project.

**8.24. Covered Species Injury.** If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately by telephone and e-mail followed by a written incident report as described in Condition 7.9. Notification shall include the name of the facility where the animal was taken.

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

To meet this requirement, the Permittee shall either purchase 1,336 acres of desert tortoise credits and 536 acres of Mohave ground squirrel credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 9.2 below AND/OR shall provide for both the permanent protection and management of 1,336 acres of desert tortoise and 536 acres of Mohave ground squirrel Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. Mitigation credit purchase and/or HM lands acquisition may be nested such that the mitigation lands for one species may cover the mitigation requirements for the other species if it meets the selection criteria for each. Purchase of Covered Species credits and/or 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 10 below for all uncompleted obligations.

**9.1. 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:

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- 9.1.1. Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$2,500/acre for 1,336 acres: **\$3,340,000.00**. Land acquisitions costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements.
  - 9.1.2. All other costs necessary to review and acquire the land in fee title and record a conservation easement as described in Condition of Approval 9.3.1 and 9.3.2 below: **\$17,440**.
  - 9.1.3. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.6 below, estimated at \$2,000/acre for 1,336 acres **\$2,672,000.00**.
  - 9.1.4. Interim management period funding as described in Condition of Approval 9.3.7 below, estimated at \$600/acres for 1,336 **\$801,600**.
  - 9.1.5. Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$3,100/acre for 1,336 acres: **\$4,141,600.00**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
  - 9.1.6. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at **\$6,000**.
  - 9.1.7. All costs associated with CDFW engaging an outside contractor to complete the mitigation tasks, including but not limited to acquisition, protection, and perpetual funding and management of the HM lands and restoration of temporarily disturbed habitat. These costs include but are not limited to the cost of issuing a request for proposals, transaction costs, contract administration costs, and costs associated with monitoring the contractor's work **\$75,000.00**.
- 9.2. Covered Species Credits.** If the Permittee elects to purchase Covered Species credits to complete compensatory mitigation obligations, then Permittee shall purchase 1,336 acres of desert tortoise credits and 536 acres of Mohave ground squirrel credits (or portion thereof to make up difference in addition to HM Lands) from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below. 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. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment

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Receipt prior to initiating Covered Activities or within 18 months from issuance of this ITP if Security is provided.

**9.3. Habitat Management Lands Acquisition and Protection.** If the Permittee elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the Permittee shall:

- 9.3.1. **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.
- 9.3.2. **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 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.
- 9.3.3. **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.
- 9.3.4. **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.

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9.3.5. 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.

9.3.6. 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; (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage.

9.3.7. 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.

9.4. Endowment Fund. If the Permittee elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining

CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that 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 9.3.5. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.

- 9.4.1. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended.

Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e).

Within 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).

- 9.4.2. Calculate the Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall



prepare 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.

- 9.4.2.1. 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.
- 9.4.2.2. 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:
  - 9.4.2.2.1. 10 Percent Contingency. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.
  - 9.4.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
  - 9.4.2.2.3. Non-annualized Expenses. For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.
- 9.4.3. Transfer Long-term Endowment Funds. Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above.
- 9.4.4. 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.

**9.5. 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.

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

**10.1. Security Amount.** The Security shall be in the amount of **\$11,053,640.00** or in the amount identified in 9.1 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 9.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.

**10.2. Security Form.** The Security shall be in the form of an irrevocable letter of credit (see Attachment 6), or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.

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

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

**10.5. Security Transmittal.** Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 7) or by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other.

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

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Approval of this ITP.

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

#### **Credit Purchase**

- 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.

#### **Habitat Management Land Acquisition (HMLA)**

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

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

#### **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

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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 sign and return this ITP to CDFW. A manual or digital signature is acceptable, provided a digital signature complies with Government Code section 16.5. Digital signatures facilitated by CDFW will be automatically returned. Manual (wet) signatures on duplicate original paper copies shall be returned by the Permittee via registered first-class mail or overnight delivery to the following address:

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

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email or registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2023-026-06) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Heidi Calvert, Regional Manager  
California Department of Fish and Wildlife  
3602 Inland Empire Boulevard, Suite C-220  
Ontario, CA

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Telephone (909) 484-1067  
AskRegion6@wildlife.ca.gov

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](mailto: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:

Rose Banks, Senior Environmental Scientist (Specialist)  
Inland Deserts Region  
787 North Main Street, Suite 220  
Telephone (760) 218-0022  
[Rose.Banks@wildlife.ca.gov](mailto:Rose.Banks@wildlife.ca.gov)

**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, San Bernardino County. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Desert Breeze Solar Project Environmental Impact Report, (SCH No.: 202209046) dated January 5, 2024 that the County certified for Desert Breeze Solar on January 18, 2024. At the time the lead agency certified the EIR 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 EIR 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.

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**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, Desert Breeze Solar Project Environmental Impact Report, the results of site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Quarterly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 1,336 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

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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:**

Figure 1	Project Location
Figure 2	Project Footprint
Attachment 1	Mitigation Monitoring and Reporting Program
Attachment 2	Biologist Resume Form
Attachment 3	GIS Data Collection Requirements
Attachment 4	Exclusion Fence
Attachment 5	Raven Management Renewable Deposit Document
Attachment 6	Irrevocable Letter of Credit
Attachment 7	Mitigation Payment Transmittal Form

**ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE ON 02/23/2024**

DocuSigned by:

*Alisa Ellsworth*

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FOR Heidi Calvert, Regional Manager  
Inland Deserts Region

#### **ACKNOWLEDGMENT**

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

DocuSigned by:

*Andrew Krause*

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

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

3/5/2024

Printed Name: Andrew Krause

Title: Director of Permitting

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