



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

California Endangered Species Act  
Amended Incidental Take Permit No. 2081-2021-015-06  
(Amendment No. 2)

**CRIMSON SOLAR PROJECT**

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

**Permittee:** Sonoran West Solar Holdings, LLC  
**Principal Officer:** Michael Arndt, Authorized Signatory  
**Contact Person:** Chinedu Oputa  
**Mailing Address:** 98 San Jacinto Blvd., Ste 750  
Austin, TX 78701  
[Chinedu.Oputa@recurrentenergy.com](mailto:Chinedu.Oputa@recurrentenergy.com)

**Permittee:** Sonoran West Solar Holdings 2, LLC  
**Principal Officer:** Michael Arndt, Authorized Signatory  
**Contact Person:** Chinedu Oputa  
**Mailing Address:** 98 San Jacinto Blvd., Ste 750  
Austin, TX 78701  
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**Permittee:** RE Cobalt, LLC  
**Principal Officer:** Michael Arndt, President

<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.

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### **Amended ITP<sup>3</sup> Background:**

On March 9, 2021, Permittee submitted a CESA ITP application to 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. Permittee sought take coverage authorization for a CESA listed species associated with project-related impacts from the Crimson Solar Project (Project) in Riverside County, California.

On June 21, 2021, CDFW issued ITP No. 2081-2021-015-06 to Sonoran West Solar Holdings, LLC authorizing take of Agassiz's Desert Tortoise (*Gopherus agassizii*; Covered Species) associated with and incidental to the Project. The Project as described in the ITP as originally issued by CDFW includes construction of a Battery Energy Storage System (BESS) and Photovoltaic (PV) solar facilities and associated infrastructure. The first phase consists of a BESS that would store up to 1400 megawatts of electricity located on 77 acres. The second phase consists of a PV solar facility that would generate up to 150 megawatts of electricity located on 1,228.1 acres. The third phase consists of a PV solar facility that would generate up to 250 megawatts of electricity located on 679.0 acres. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate Project impacts of the taking of the Covered Species and that issuance of the ITP would not jeopardize the continued existence of the Covered Species.

### **Amendment No. 1**

On August 6, 2021, the Permittee requested an amendment to their original ITP, as described above. The Minor Amendment No. 1 was issued on November 16, 2021, and made the following changes to the original ITP:

- (1) The Amendment added two additional Permittees and changes the original Permittee to only cover Phase 1A. The new Permittees are: Sonoran West Solar Holdings, LLC (Phase 1A), Sonoran West Solar Holdings 2, LLC (Phase 1B), and RE Cobalt LLC (Phases 2 and 3). Figure 2 is revised to show the amended Project phasing.
- (2) The Amendment reduces the acreage for Phase 1 from 77 acres to 76.5 acres and splits Phase 1 into two subphases, Phase 1A and Phase 1B. Phase 1A and Phase 1B share the overlapping footprints of the access roads, gen-tie line, operation and maintenance area, and onsite substation. The remainder acreage is split between the two subphases. Table 1 is also modified to reflect the split of Phase 1 and the additional Permittees.

<sup>3</sup> When this incidental take permit and attachments refer to the "ITP", it means the "Amended ITP" unless the context dictates otherwise.

- (3) The Amendment specifies that the operation and maintenance building will be shared by Phase 1A and Phase 1B.
- (4) The Amendment revises the first paragraph in the Condition of Approval section to note that each Permittee is responsible for complying with the conditions of approval and other requirement in the ITP applicable only to their individual phase for the Project.
- (5) The Amendment changes the Raven fee to match the adjusted acreage for Phase 1A and Phase 1B.
- (6) The Amendment modifies Table 2 to show the changes to compensation for each phase.
- (7) The Amendment changes the language of Condition of Approval 9.2 to specify that Covered Species credits will match Table 2 compensation acres for each phase and that they can be purchased prior to the start of construction for each phase.
- (8) The Amendment changes Condition of Approval 10.1 so Security is split for Phase 1. The security amount for Phase 1A is \$1,500 and Phase 1B is \$1,500.
- (9) The Amendment changes section 10.3 to specify the Security will be paid within 30 calendar days before Covered Activities for that Phase and not within 30 days before the effective date of the original ITP.

## **Amendment No. 2**

On July 25, 2023, Permittees submitted a request for an amendment to Amended ITP No. 2081-2021-015-06 (Amendment No.1) (See Cal. Code Regs., § 783.6(c)(5)). Permittees requested modifications to language within Condition of Approval 7. Notification, Monitoring, and Reporting Provisions, and Condition of Approval 8. Take Minimization Measures to clarify and differentiate the requirements of certain conditions during construction, operation and maintenance, and decommissioning due to the varied potential for take during the Covered Activities associated with each Project period. Specifically, the changes will include the following:

- (1) The on-site daily compliance monitoring requirements per Condition of Approval 7.6 are reduced during the operation and maintenance period of the Project to be once a month when occurring within desert tortoise exclusionary fencing.
- (2) Condition of Approval 8.6 is amended to clarify the condition is only for construction monitoring and excludes the operation and maintenance period of the Project.
- (3) The Covered Species exclusionary fencing requirements in Condition of Approval 8.14 is amended to allow detached sections of fencing for the Phase 1 surrounding the BESS to bring the Permittee into compliance. The Covered Species exclusion fencing was not attached to the perimeter security fencing as required. Due to the altered design, the requirement of maintaining the detached fence is added.
- (4) Modifications to Condition of Approval 8.15 to specify the frequency of Covered Species fence maintenance inspections during construction, operation and maintenance, and decommissioning- related Covered Activities are added.
- (5) Vehicle inspections per Condition of Approval 8.16 are clarified to be required unless the vehicle is surrounded by intact Covered Species exclusion fencing.

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- (6) Staging and parking area requirements per Condition of Approval 8.17 clarify that inspections underneath vehicles must occur if they are not within an area enclosed by Covered Species exclusionary fencing.
- (7) Full time monitoring requirements per Condition of Approval 8.24 is amended to specify an Authorized Biologist can be on-call during operation and maintenance Covered Activities that are within Covered Species exclusion fence, or if outside the exclusion fence, are not ground-disturbing Covered Activities.
- (8) The timeline to complete the permanent protection and funding for perpetual management of compensatory habitat per Condition of Approval 9 is amended from 18 months to 28 months from the start of ground disturbance for each Phase if Security is provided per Condition of Approval 10.
- (9) The total acreage of the Project is corrected in the Project Description and Table 1 from 1,983.7 acres to 1,983.6 acres.
- (10) The acreage of the Project area and Covered Species habitat in the Impacts of the Taking on Covered Species section on Page 9 of this Amended ITP is corrected from 1,984 acres to 1,983.6 acres.
- (11) The acreage of the BESS is corrected in the Project Description from 1,228 acres to 1,228.1 acres.
- (12) The acreage of compensatory habitat was corrected in the Findings Pursuant to CESA Section on Page 35 of this Amended ITP.

CDFW finds that this Amendment is a Minor Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

Issuance of this Amendment will not increase the amount of take of the Covered Species compared to the Project as originally approved, nor will this Amendment increase other Project impacts on the Covered Species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

CDFW now reissues this ITP including the revised provisions in this second Minor Amendment (Collectively, the Amended ITP). The Amended ITP includes all of the operative provisions as of the effective date of this Amended ITP. Attachment 9 to this Amended ITP shows the specific red-line changes made to the ITP as a result of this Minor Amendment.

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

This Amended ITP supersedes and replaces the version issued on November 29, 2023. The original ITP was executed in duplicate original form and became effective when a duplicate original was acknowledged by signature of the Permittee on the last page of the original ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the

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Notices section of this ITP. The original ITP's effective date was June 21, 2021. This remains the effective date for the original take authorization. The Amended ITP shall be executed in the same manner and shall become effective when signed by all parties and received by CDFW as described in the Notices section of this Amended ITP. Unless renewed by CDFW, this Amended ITP's authorization to take the Covered Species shall expire on **July 1, 2061**.

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 7.10 of this ITP.

#### **Project Location:**

The proposed site consists of approximately 1,984 acres of Bureau of Land Management (BLM) administered land, approximately 13 miles west of the City of Blythe, California, and approximately 10 miles northwest of Palo Verde. The site is located immediately south of Interstate 10 (I-10) and approximately 9 miles west of State Route (SR) 78 (Figure 1). The site is located in a portion of Section 33 within Township 6 South, Range 20 East; portions of Sections 1, 2, 4, 11, 12, 13, 24, and 25 within Township 7 South, Range 20 East; and portions of Sections 6, 7, 8, 16, 17, and 18 within Township 7 South, Range 21 East, San Bernardino Meridian, California.

#### **Project Description:**

The Project would be constructed in three phases on a total of 1,983.6 acres (Figure 2) (Table 1). The first phase would cover a total of 76.5 acres. It would consist of a shared access road, gen-tie line, O&M area, and substation located on 47.6 acres and a Battery Energy Storage System (BESS) that would include up to 1,400 megawatt-hours (MWh) of integrated energy storage capacity on located on 28.9 acres. Phase 1A will include responsibility for the shared facilities (access road, gen-tie line, O&M area, and substation) along with its individual BESS location totaling 59.5 acres and Phase 1B, will include responsibility for the shared facilities (access road, gen-tie line, O&M area, and substation) along with its individual BESS location totaling 64.6 acres. Phase 2 would be a Solar Facility which would generate up to 150 megawatts (MWs) of renewable energy using photovoltaic (PV) technology and an optional BESS of up to 1,400MWh on 1,228.1 acres. Phase 3 would be a Solar Facility which would generate up to 250 MWs of additional renewable energy using PV technology and an optional BESS of up to 1,400MWh on approximately 679 acres. Access to the Project and each phase would be provided from I-10 along the existing paved Wiley's Well and Powerline roads to the Colorado River Substation (CRS).

**Table 1 - Project Phases**

<b>Phases</b>	<b>Permittee</b>	<b>Area (acres)</b>
Phase 1A and Phase 1B shared facilities	Sonoran West Solar Holdings, LLC &	47.6

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	Sonoran West Solar Holdings 2, LLC	
Phase 1A BESS – up to 800MWh BESS	Sonoran West Solar Holdings, LLC	11.9
Phase 1B BESS – up to 600 MWh BESS	Sonoran West Solar Holdings 2, LLC	17.0
Phase 2 – up to 150MW PV and 1,400MWh BESS	RE Cobalt, LLC	1,228.1
Phase 3 – up to 250MW PV and 1,400MWh BESS	RE Cobalt, LLC	679.0
Total		1,983.6

### Battery Energy Storage System (BESS)

Phase 1A and 1B would consist of the BESS, fenced Substation, Switchyard, and O&M area, and the generation tie (Gen-tie) and Gen-tie corridor. The BESS would be capable of storing up to 1,400 MWh of electricity. The BESS would consist of battery banks housed in enclosures and buried electrical conduit. The Project could use any commercially available battery technology, including but not limited to, lithium ion, lead acid, sodium sulfur, or sodium or nickel hydride. The BESS would be located at the northern end of the site near the site access gate and proposed substations.

### Substation and Gen-Tie Line

Up to four substations would collect consolidated intermediate voltage cables from the PV and BESS collector systems and transform the collection voltage from 34.5 kV to a transmission voltage of 230 kV. Each substation and associated equipment would have a footprint of approximately 150 feet by 200 feet and would be located near the CRS. The proposed gen-tie connecting to CRS would be up to 4,200 feet long and would be constructed with either monopoles, lattice steel structures, or wooden H-frame poles, for a total of up to 7 support structures. The up to 200-foot-wide corridor would comprise up to 23 acres including pull sites. For the overhead gen-tie line, structure foundations would be excavated to a depth of 20 feet or more and include concrete supports. Gen-tie structures would be up to 150 feet tall. The gen-tie line would consist of a three-phase 230 kV conductor, a ground wire, and a buried telecommunications fiber optic cable. An operation and maintenance (O&M) building would be located near one of the proposed substations.

### Solar Array Fields

The vegetation treatment in the module field would consist of mechanically mowing the vegetation and occasional grubbing of individual plants that may interfere with installation of specific components. About 5 percent of the module field acreage would be cut and filled (mass grading) to level the ground surface. Site ingress/egress would be accessed via locked gates located at multiple points around the solar plant site perimeter. Each unit would have at

least one point of access. The boundary around each unit would be secured by an 8-foot-high chain-link perimeter fence, topped with 1 foot of three-strand barbed wire. The security fence would be co-located with a permanent desert tortoise exclusion fence. The on-site roadway system would include a perimeter road approximate 12 feet on both sides of the fencing around each solar array field, as well as access roads and internal roads.

Modules would be arranged on the site in arrays consisting of multiple rows. For single-axis tracking systems, the length of each row would be approximately 350 feet along the north-south axis. For fixed-tilt systems, a row consists of multiple tables (4 modules high by 10 modules wide, depending on design), each table approximately 65 feet along the east-west axis, with up to 1-foot spacing between each table. Spacing between each row would be a minimum of 4 feet. Structures supporting the PV modules would consist of steel piles (e.g., cylindrical pipes, H beams, or similar), which would be driven into the soil using pneumatic techniques, such as a hydraulic rock hammer attachment on the boom of a rubber-tired backhoe excavator. The total height of the module system measured from the ground surface would be up to 12 feet, and piles would be driven up to 12 feet below the ground surface. For fixed-tilt systems, the modules would be fixed at a 20- to 60-degree angle or as otherwise determined necessary during final design.

## **Operation and Maintenance**

An operation and maintenance (O&M) building would be located near one of the proposed substations and would be shared by Phases 1A and 1B. The O&M building would be approximately 2,000 square feet in size (approximately 40 feet by 50 feet, and 15 feet high at its tallest point), which would accommodate operation and maintenance staff. Two equipment storage containers each measuring 40 feet by 8 feet, and 9 feet high also would be located at the substation area. The O&M building would be constructed on a concrete foundation.

The Project site will operate during daylight hours 7 days a week, 365 days a year. Routine operational and maintenance activities would include solar module repairs and washing; maintenance of support structures, transformers, inverters, energy storage systems, electrical collection systems, gen-tie lines and other electrical equipment as needed; road and fence repairs and maintenance; drainage control structure repairs and maintenance, vegetation, weed, and pest management performed in accordance with an approved Weed Management Plan and Pesticide Use Plan; security; responding to automated electronic alerts based on monitored data; and communicating with customers, transmission system operators, and other entities involved in facility operations.

The maximum number of staff on-site at any time would be 50 (40 temporary staff and 10 permanent staff). Approximately 7.3 million gallons of water (22 acre-feet) would be used annually, principally to wash modules and also for other uses such as substation restrooms. Any water supplied by an off-site source would be trucked to the site. Restrooms would

consist of one or two above-ground, self-contained portable restrooms with built-in holding tanks, and would remain on-site for the duration of the project.

## Decommissioning

The Project is anticipated to operate for a 40-year service life. In the event the Project ceases operation, the facilities would be decommissioned and dismantled, and the site restored to the original conditions described in the environmental setting. The Project phases may be decommissioned at different times depending upon commercial contracts and service life of the relevant facilities. It is estimated that decommissioning activities for the full Project would require 10,000 truck trips and a workforce of 320 workers and would take 17 months to complete. Upon decommissioning, the site could be converted to other uses in accordance with applicable land use regulations in effect at that time.

Above-ground structures and equipment and any underground equipment would be removed, including module posts and support structures; gen-tie poles that are not shared with third parties; the overhead collection system within the solar plant site; inverters, transformers, electrical wiring, equipment on the inverter pads, and related equipment and concrete pads; and any O&M facilities and related equipment and infrastructure. The substation would be removed unless otherwise arranged in accordance with permits, agreements, and ROW grant, e.g., if another entity were to assume ownership of the substation.

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

This ITP covers the following species:

Name	CESA Status
1. Agassiz's Desert Tortoise ( <i>Gopherus agassizii</i> )	Threatened <sup>4a</sup> Candidate Endangered <sup>4b</sup>

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

## Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include: 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).

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

<sup>4b</sup>See 2020 Cal. Reg. Notice Register, No. 44-Z, pp. 1445-1446 (October 30, 2020).



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 as well as, capture and relocation activities. More specifically, relocation of Covered Species out of harm’s way may disrupt the behavior and social structure of resident individuals. The areas where authorized take of the Covered Species is expected to occur is within the 1,983.6-acre area for the Project site.

The Project is expected to cause the permanent loss of 1,983.6 acres of habitat for the Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project’s incremental contribution to cumulative impacts (indirect impacts). These impacts include stress resulting from noise and vibrations, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

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

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

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

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular ingress and egress, staging and parking, and noise and vibration generating activities that may/will cause take. CDFW’s issuance of this ITP and Permittees’ authorization to take the Covered Species are subject to Permittees’ compliance with and implementation of the following Conditions of Approval with regard to each individual Permittees’ respective Phase of the Project. Each Permittee shall be responsible for complying with the Conditions of Approval and other requirements and obligations of this ITP applicable to the activities undertaken for its individual phase of the Project.

- 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.

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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.: 2018031027) certified by the California Department of Fish and Wildlife on June 11, 2021 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. RIV-17451) for the Project executed by CDFW pursuant to Fish and Game Code §1600 et seq.
4. **FESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Biological Opinion, as issued February 19, 2020 (13B0074-20F0113) pursuant to the Federal Endangered Species Act (FESA), that encompasses the Project. 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 a minimum of 60 Calendar days 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) (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 Authorized Biologist(s) (Authorized Biologist(s)) knowledgeable in the biology and natural history of the Covered Species.

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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 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, 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.
- 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 Authorized Biologist(s) or Biological Monitor(s) that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-

specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually until this ITP expires. If the training program is presented as a prerecorded presentation, it shall be accompanied by a formal process that allows submission of questions that shall be answered by the Authorized Biologist(s) within 24 hours of submission.

- 6.7. Daily Construction Journal. The Biologist Monitor(s) and Authorized Biologist(s) shall maintain a construction-monitoring notebook 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 notebook is available for review at the Project site upon request by CDFW.
- 6.8. Ongoing Trash Removal. Permittee shall ensure that all food and trash that could attract predators will be properly disposed of in self-closing, sealable containers, with lids that latch to prevent wind, common ravens (*Corvus corax*), and other scavengers from opening the containers. Permittee shall ensure all trash receptacles are regularly inspected, emptied, and removed from the Project Area at least once a week to prevent spillage and maintain sanitary conditions.
- 6.9. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Biological Monitor(s) and/or Authorized Biologist(s). Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles. Tackifier and soil stabilizers may be used only if approved by CDFW prior to the start of Covered Activities.
- 6.10. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 6.11. General Habitat and Species Avoidance. Permittee shall, to the greatest extent feasible, avoid impacts/disturbances to sensitive plants, plant communities, and animals within the Project Area. In addition, Permittee shall avoid, to the maximum extent practicable, impacts/disturbance to perennial, native vegetation within the

Project Area. To the maximum extent practicable, Permittee shall limit access-related Covered Activities to “drive and crush” rather than vegetation removal or grubbing.

- 6.12. Firearms and Dogs. Permittee shall prohibit Project personnel and any other individuals associated with the Project from bringing any firearms or dogs on the Project Area during Covered Activities, except those in the possession of authorized security personnel or local, state, or federal law enforcement officials, dogs that may be used to aid in official and approved monitoring procedures/protocols, or service dogs under Title II and Title III of the American with Disabilities Act.
- 6.13. Delineation of Project Boundaries. Before starting Covered Activities along each part of the route in active construction, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 6.14. 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.
- 6.15. Vehicular Traffic Restrictions. Permittee shall restrict Project-related vehicle traffic to established roads and the delineated Project Area; cross-country (off-road) vehicle travel shall be prohibited unless specifically accounted for as a Covered Activity. Project-related vehicle traffic shall not exceed 25 miles per hour, except in Covered Species habitat where vehicle speed shall not exceed 15 miles per hour. If a Covered Species is encountered, drivers shall stop, wait for the Covered Species to move off the road, and immediately notify the Biological Monitor(s) and/or Authorized Biologist of the Covered Species location. If handling of a Covered Species is required, the Biological Monitor(s) shall halt Project-related activities and immediately notify the Authorized Biologist(s). Project activities may not resume until the Covered Species has moved, on its own accord, out of harm’s way, or until the Authorized Biologist(s) has relocated the Covered Species.
- 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. 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.

- 6.18. 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, hardened concrete, and boxes.
- 6.19. Concrete Washout. Permittee shall not conduct concrete washout within the Project Area.
- 6.20. 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.
- 6.21 Delineation of Project Site. Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Site 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.

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

### **Notification Requirements**

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours or as soon as email is available.
- 7.3. Notification of Take or Injury. Permittee shall immediately notify the Biological Monitor(s) and/or Authorized Biologist(s) if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured

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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 7.5. Following initial notification, Permittee shall send CDFW a written report within three calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

- 7.4. 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 Section 7.3 above.
- 7.5. 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 Ashley Rosales ([Ashley.Rosales@wildlife.ca.gov](mailto:Ashley.Rosales@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).

## Monitoring Requirements

- 7.6. Compliance Monitoring. The Biological Monitor(s) and/or Authorized Biologist(s) shall be on-site daily when construction and decommissioning-related Covered Activities occur. The Biological Monitor(s) and/or Authorized Biologist(s) shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative, Biological Monitor(s), and/or Authorized Biologist(s) shall each 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 Authorized Biologist(s) and/or Biological Monitor 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). When all construction-related Covered Activities have been completed and the Project enters the operation and maintenance period, an Authorized Biologist(s) shall be on-site daily to monitor any ground-disturbing operation and maintenance-related Covered Activities being performed outside of the exclusionary fencing, and to conduct monthly compliance inspections within the exclusionary fencing for the term of this ITP and/or until Project decommissioning commences.

## Reporting Requirements

- 7.7. Quarterly Compliance Report. The Designated Representative, Biological Monitor(s), and/or Authorized Biologist(s) shall compile the observation and inspection records identified in Condition of Approval 7.6 and 7.3 into a Quarterly Compliance Report and submit it by the 15<sup>th</sup> of March, June, September, and December of each year to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Quarterly Compliance Reports shall be submitted to CDFW as identified in Condition of Approval 7.5 and via e-mail to the Headquarters CESA Program. 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.
- 7.8. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports for that year as identified in Condition of Approval 7.7; (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.
- 7.9. CNDDDB Observations. The Designated Representative 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 Representative shall include copies of the submitted forms with the next Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation. More information is available at <https://www.wildlife.ca.gov/Data/CNDDDB>.
- 7.10. Final Mitigation Report. No later than 45 calendar days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Compliance Report. The Biological Monitor(s) and/or Authorized Biologist(s) shall prepare the Final



Compliance 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) a final calculation of Covered Species habitat impacts, including geographic information system (GIS) shapefiles in the format specified in Attachment 3 of this ITP; (7) 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; (8) 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 (9) any other pertinent information.

## **8. Take Minimization Measures:**

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

- 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 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 work day, Permittee shall place an escape ramp at each end of trenches to allow any animals that may have become trapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degrees. If any worker discovers that Covered Species have become trapped, they shall halt Covered Activities and notify the 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 Clearance Surveys. No later than **30 days** prior to start of Covered Activities for each phase of the Project, the Authorized Biologist(s) and/or Biological Monitor(s) approved under this ITP shall conduct pre-construction clearance surveys for Covered Species for the applicable phase(s), 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 relevant phase of 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 relevant phase of the Project Area and a 50-foot buffer zone around the phase area. 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 Covered Activities, except for areas already cleared inside the permanent desert tortoise exclusion fencing

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(Condition of Approval 8.14), the Biological Monitor(s) and/or Authorized Biologist(s) shall conduct a final clearance survey of the relevant phase of the Project Area. The use of specialized equipment (e.g., fiber optics) may be necessary to thoroughly inspect all burrows in preparation for collapsing them.

- 8.6. Construction Monitoring. Biological Monitor(s) and/or Authorized Biologist(s) shall monitor and be present at all times during construction-related Covered Activities.
- 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 of this ITP relocates the Covered Species as described in this ITP and Desert Tortoise Translocation Plan. The Designated Representative shall immediately notify CDFW of any Covered Species observations, except for Covered Species that are transmittered, within the Project Area. Notification shall occur as described in Condition of Approval 7.5 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 DTTP.
- 8.8. Excavating Burrows. Only Authorized Biologist(s) and Biological Monitor(s) approved by CDFW under Condition of Approval 6.4 of this ITP are authorized to conduct burrow excavation. Excavation of burrows shall follow the methods described the USFWS Field Manual.
- 8.9. Covered Species Translocation. Regardless of the number of Covered Species estimated to be translocated the Permittee shall prepare a Desert Tortoise Translocation Plan (DTTP) 60 Calendar days prior to start of Covered Activities and submit it according to condition of approval 7.5 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.
- Health Assessments shall start after May 15<sup>th</sup> or earlier with written approval from CDFW.<sup>5 6 7</sup> Any blood ELISA test results that come back suspect or inconclusive shall require the tortoise be resampled and the blood/plasma aliquot be retested.
- Ambient air temperature guidelines shall be followed as specified in Condition of Approval 8.10 of this ITP.
- Tortoises <100 millimeters (mm) midline carapace length (MCL) shall be released immediately without being held, transmitted, or blood drawn for disease testing as long as the temperature requirements in Condition of Approval 8.10 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.
- Linear Facilities: Tortoises >100 mm MCL that are moved due to their burrow being collapsed shall be transmitted (duration of monitoring shall be determined on an individual project basis and shall be included in the DTTP) and disease tested.
- 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,

<sup>5</sup> Elliott R. Jacobson, Mary B. Brown, Lori Wendland, Daniel R. Brown, Paul A. Klein, Mary M. Christopher, Kristin H. Berry, Mycoplasmosis and upper respiratory tract disease of tortoises: A review and update, The Veterinary Journal (2014), <http://dx.doi.org/doi:10.1016/j.tvjl.2014.05.039>.

<sup>6</sup> Henen, B.T., Peterson, C.C., Wallis, I.R., Berry, K.H., and Nagy, K.A., 1998, Effects of climatic variation on field metabolism and water relations of desert tortoises: Oecologia, v. 117, p. 365–373.

<sup>7</sup> Peterson, C.C., 1996, Anhomeostasis: seasonal water and solute relations in two populations of the desert tortoise (*Gopherus agassizii*) during chronic drought: Physiological Zoology, v. 69, p. 1,324–1,358.

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 or suspect for 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 a minimum of 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 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<sup>8</sup> (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

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<sup>8</sup> U.S. Fish and Wildlife Service. 2018. Translocation of Mojave Desert Tortoises from Project Sites: Plan Development Guidance. U.S. Fish and Wildlife Service, Las Vegas, Nevada.

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>9</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.
- Thoroughly rinse away any residual disinfectant and allow the area or item to air dry.

8.10. Ambient Air Temperature: During all handling procedures, Covered Species shall be treated in a manner to ensure that they do not overheat or exhibit signs of overheating (e.g., gaping, foaming at the mouth, etc.), or are placed in a situation where they cannot maintain surface and core temperatures necessary to their well-being. Covered Species shall be kept shaded at all times until it is safe to release them. For the purposes of this permit, ambient air temperature shall be measured in the shade, protected from wind, at a height of 5 centimeters above the ground surface. For all Covered Activities no 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

<sup>9</sup> Brown, Mary. Cleaning and Disinfection Protocol. Department of Infectious Diseases and Pathology, College of Veterinary Medicine, Gainesville FL.

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.

- 8.11. Covered 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. Authorized Biologist(s) who have appropriate training and approval to rehydrate Covered Species via epicoelomic injection may do so following the methods in the USFWS Field Manual or more recent guidelines.
- 8.12. 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.
- 8.13. 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 where Bureau of Land Management (BLM) designated roads enter the Right-of-Way. Guard locations and design shall be provided to CDFW and shall be approved by CDFW in writing prior to starting Covered Activities.
- 8.14. Permanent Security Fencing with Attached Desert Tortoise Fencing. The permanent desert tortoise exclusion fencing shall be attached to the 8-foot-high standard chain link security fencing associated with Phase 2 and 3 of the Project. This fencing shall be installed around the array fields, operation and maintenance facilities, warehouses, switchyard, and interconnection facilities. The permanent desert tortoise exclusion

fencing shall be detached from the north side of the 8-foot-high standard chain link security fencing of the substation and BESS facility. The permanent desert tortoise exclusionary fencing shall be installed on the north side of the access road with permanent desert tortoise guards within the access road where there is a gap for vehicle passage (Figure 3). The desert tortoise exclusionary fencing shall be attached to the security fencing on the east, south, and west sides of the substation and BESS facility. The Permittee shall construct the desert tortoise fence according to Chapter 8 of the USFWS Field Manual, but if any tortoises  $\leq 100$  mm 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  $\frac{1}{2}$  inch horizontal by  $\frac{1}{2}$  inch vertical.

- 8.15. Covered Species Fence Maintenance Inspection. The Biological Monitor(s) and/or Authorized Biologist(s) shall inspect the Covered Species fencing during construction and decommissioning-related Covered Activities, at the end of each workday, and within 24 hours of major rainfall and high wind events to ensure Covered Species is prohibited from entering the relevant phase of the Project Area. Fence inspections shall be performed a minimum of twice per day in areas where known home ranges overlap the fence alignment following installation and until the end of the subsequent Covered Species active season. Once all Project phases are in operation and maintenance, the permanent desert tortoise exclusion fencing shall be inspected by the Biological Monitor(s) and/or Authorized Biologist(s) at least once monthly and within 24 hours of major rainfall and high wind events. Permittee shall inspect and maintain the detached exclusionary fence and permanent desert tortoise guards for Phase 1 daily. 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. Should a Covered Species become entrapped in the desert tortoise guard, an Authorized Biologist shall be immediately notified.
- 8.16. Vehicle Inspection. Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved unless surrounded by intact Covered Species exclusionary fencing. 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 8.9 before moving vehicles and equipment.
- 8.17. Staging Area and Parking Area. During construction and decommissioning-related Covered Activities, the Permittee shall enclose all staging areas and parking areas with Covered Species exclusion fencing. All parked vehicles and equipment within an unfenced area of the Project (e.g. gen-tie line) during the operation and maintenance period shall be inspected underneath for Covered Species presence prior to being moved per Condition of Approval 8.16. 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 of this ITP. A biologist approved in Condition of Approval 6 of this ITP shall relocate the Covered Species in accordance with Condition of Approval 8.9 of this ITP and the DTP.

- 8.18. 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 for each phase at \$105.00/acre (Phase 1 76.5 acres at \$8,032.50 (Phase 1A, \$3,748.50 and Phase 1B \$4,284.00), Phase 2 1,228.0 acres at \$128,940.00, and Phase 3 679.0 acres at \$71,295.00) to the REAT account established with NFWF's Raven Management Plan fund. A minimum of **30 days** prior to the start of Covered Activities for each phase these funds shall be provided to NFWF using appropriate deposit document (Attachment 4) and proof of paying this fee shall be provided to CDFW within 24 hours after the funds have been provided to NFWF.
- 8.19. Borrow Pit. Removal of material from borrow pits or dumping of construction material into borrow pits is not covered by this ITP.
- 8.20. Erosion Control Materials – Monofilament Netting. 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.
- 8.21. Natural and Biodegradable Erosion Control Materials. Permittee shall utilize erosion control materials composed entirely of natural-fiber biodegradable materials. Permittee shall not use plastic "photodegradable" erosion control materials.
- 8.22. 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 BMPs 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.

- 8.24. Full time monitoring. An Authorized Biologist(s) shall be present on-site during all construction and decommissioning-related Covered Activities. An Authorized Biologist(s) and/or Biological Monitor(s) shall be present at all times while ground-disturbing Covered Activities occur outside a permanent fenced area. During the operation and maintenance period of the Project, an Authorized Biologist shall be on-call to address any compliance related issues.
- 8.25. 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.

## 9. Habitat Management Land Acquisition:

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

To meet this requirement, the Permittee shall either purchase **2,767.5 acres** of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) that correspond to their respective Phases in Table 2 OR shall provide for both the permanent protection and management of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below that correspond to their respective Phases in Table 2. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities within each phase, or within **28 months** from the start of ground disturbance for each Phase if Security is provided pursuant to Condition of Approval 10.1 below for all uncompleted obligations.

**Table 2 – Compensation Acreage by Phase**

Phase	Compensation (acres)
Phase 1A	0.0
Phase 1B	0.0
Phase 2	730.5

Phase 3	2,037.0
Total	2,767.5

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

- 9.1.1. *Land acquisition.* Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$4,000.00/acre for **2,767.5 acres: \$11,070,000.00.** Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements, and all other costs necessary to review and acquire the land in fee title and record a conservation easement.
- 9.1.2. *Start-up costs.* Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at \$4,000.00/acre for **2,767.5 acres: \$11,070,000.00.**
- 9.1.3. *Interim management.* Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at \$600.00/acre for **2,767.5 acres: \$1,660,500.00.**
- 9.1.4. *Long-term management.* Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$3,100.00/acre for **2,767.5 acres: \$8,579,250.00.** Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 9.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at **\$3,000.00.**

9.2. Covered Species Credits. Permittee shall purchase Covered Species credits in the amounts according to Table 2 from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities within each Phase, or no later than **28 months** from the start of Covered Activities within each Phase if Security is provided pursuant to Condition of Approval 10.1 below.

OR:

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9.3. Habitat Acquisition and Protection. To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:

- 9.3.1. Fee Title/Conservation Easement. Transfer fee title to the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW does not hold the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e);
- 9.3.2. HM Lands Approval. Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, a formal Proposed Lands for Acquisition Form (PLFAF, Attachment 6a/6b) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;
- 9.3.3. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 6b). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;
- 9.3.4. Land Manager. Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 Calendar days of the change. If CDFW will hold fee title to the mitigation land, CDFW will

also act as both the interim and long-term land manager unless otherwise specified.

- 9.3.5. Start-up Activities. Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see <http://www.dfg.ca.gov/habcon/conplan/mitbank/>); (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;
- 9.3.6. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management. Permittee shall either (1) provide a security to CDFW for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense, (2) establish an escrow account with written instructions approved in advance in writing by CDFW to pay the land manager annually in advance, or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager.
- 9.4. Endowment Fund. If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 9.3, the Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 9.3.5. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and

appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

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

9.4.1. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended. Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). Within 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)(4) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(4).

9.4.2. Calculate the Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) [or PAR-equivalent analysis] (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.

9.4.2.1 Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the PAR and adjust for any additional administrative, periodic, or annual fees.

9.4.2.2 Endowment Buffers/Assumptions. Permittee shall include in PAR assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:

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

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

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

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

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

## 10. Performance Security

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

10.1. Security Amount. The total Security shall be in the amount of **\$32,382,750.00**. This

amount is based on the cost estimates identified in Condition of Approval 9.1 above. The Permittee shall provide security in Phases prior to ground disturbance occurring for that phase based on the acreage in Table 1. Phase 1A will be in the amount of **\$1,500.00**, Phase 1B will be in the amount of **\$1,500.00**, Phase 2 will be in the amount of **\$8,546,850.00** and Phase 3 will be in the amount of **\$23,832,900.00**.

- 10.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 7) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.
- 10.3. Security Timeline. The Security by Phase shall be provided to CDFW within 30 Calendar Days before Covered Activities begin for that Phase.
- 10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 10.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 8) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.
- 10.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.
- 10.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:
  - Written documentation of the acquisition of the HM lands;
  - Copies of all executed and recorded conservation easements;
  - Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and
  - Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than **28 months** from the effective date of this ITP or within **28 months** of start of ground disturbance for each phase. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete



these requirements within the specified timeframe.

**Amendment:**

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

**Stop-Work Order:**

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

**Compliance with Other Laws:**

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

**Notices:**

The Permittee shall sign and return this ITP to CDFW. Digital signatures facilitated by CDFW will be automatically returned and shall comply with Government Code section 16.5. 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 registered first class mail at the following address, or at addresses CDFW may

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subsequently provide the Permittee and by electronic mail at the following address. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2021-015-06) 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 91764  
Telephone (909) 484-0167  
Fax (909) 941-7364

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

and a copy to:

Ashley.Rosales@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:

Ashley Rosales  
3602 Inland Empire Boulevard, Suite C-220  
Ontario, CA 91764  
Telephone (760) 219-9452

### **Compliance with CEQA:**

CDFW's issuance of this ITP constitutes the approval of a discretionary project subject to CEQA. (Pub. Resources Code, § 21080, subd. (a).) CDFW complied with CEQA prior to approving the ITP as a lead agency, with preparation and certification of an environmental impact report (EIR) (SCH No. 2018031027). (*Id.*, § 21067; CEQA Guidelines, § 15367; see also Cal. Code Regs., tit. 14, §§ 783.3, subd. (b), 783.5, subd. (d).)<sup>10</sup> CDFW prepared the EIR as a joint environmental impact statement (EIS) with BLM serving as federal co-lead

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<sup>10</sup> The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

agency under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). (BLM Case File No. CACA-51967.) BLM approved the Project May 3, 2021, with an amendment to the California Desert Conservation Area Plan, a right-of-way authorization, and other action under federal law. (See 86 Fed. Reg. 24663 (May 7, 2021).) The Project is located entirely on federal land.

CDFW approved the Project as CEQA lead agency June 11, 2021. CDFW certified the Final EIR as part of that approval and adopted Findings of Fact (Findings) and a Mitigation Monitoring and Reporting Program (MMRP) as required by CEQA. (Pub. Resources Code, §§ 21081, 21081.6; CEQA Guidelines, §§ 15090-15092.) CDFW also approved the Project under CEQA with the adoption of a Statement of Overriding Considerations (Override). (Pub. Resources Code, § 21081, subds. (a)(3), (b); CEQA Guidelines, §§ 15092, subd. (b)(2)(B), 15093.) With approval, CDFW filed a Notice of Determination (NOD) with the State Clearinghouse at the Governor's Office of Planning and Research (OPR), including with a receipt from the Permittee documenting payment of the CEQA environmental filing fee required by Fish and Game Code section 711.4. (Pub. Resources Code, § 21108, subd. (a); CEQA Guidelines, § 15094; Cal. Code Regs., tit. 14, § 783.5, subd. (d)(6); see also Pub. Resources Code, § 21089, subd. (b).) The Final EIR and CDFW's Findings, Override, MMRP, NOD, and other documents related to the Project are available to the public at the CDFW Inland Deserts Regional Office.

None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.

### **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, Crimson Solar Project Environmental Impact Report, the results of 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

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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 **2,767.5 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.

#### **Attachments:**

FIGURE 1	Map of Project
FIGURE 2	Map of Phases
FIGURE 3	Substation & BESS Facility Detail

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ATTACHMENT 1	Amended Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Biologist Qualifications Form
ATTACHMENT 3	GIS Data Collection Requirements
ATTACHMENT 4	Raven Management Renewable Deposit Document
ATTACHMENT 5	Exclusion Fence
ATTACHMENT 6a	Proposed Lands for Acquisition Form
ATTACHMENT 6b	HMLA Lands Checklist
ATTACHMENT 7	Irrevocable Letter of Credit
ATTACHMENT 8	Mitigation Payment Transmittal Form
ATTACHMENT 9	Minor Amendment No. 2 with Track Changes

## ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 2/23/2024

DocuSigned by:

*Alisa Ellsworth*

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FOR Heidi Calvert, Regional Manager  
INLAND DESERTS REGION

### SONORAN WEST SOLAR HOLDINGS, LLC 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:

*Michael Arndt*

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

3/7/2024

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

Printed Name: Michael Arndt

Title: President and General Manager

### SONORAN WEST SOLAR HOLDINGS 2, LLC 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:

*Michael Arndt*

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

3/7/2024

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

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**CRIMSON SOLAR PROJECT**

Printed Name: Michael Arndt Title: President and General Manager

**RE COBALT, LLC 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:  8599D8DFE617454... Date: 3/7/2024

Printed Name: Michael Arndt Title: President and General Manager

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