



**California Department of Fish and Wildlife  
Inland Deserts Region  
3602 INLAND EMPIRE BLVD SUITE C-220  
ONTARIO, CA 91764  
California Endangered Species Act  
Incidental Take Permit No. 2081-2019-032-06**

**Major Amendment No. 2  
INTERSTATE 10 REPAVING PROJECT  
POST MILE (PM) 104.90 – 134.00 (08-1C082)**

**Authority:** This California Endangered Species Act (CESA) amended 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:** California Department of Transportation, District 8  
**Principal Officer:** Adam Compton, Senior Environmental Planner  
**Contact Person:** Maria Hamlett, Biologist  
**Mailing Address:** 464 West 4<sup>th</sup> Street, 6<sup>th</sup> Floor, MS 833  
San Bernardino, CA 92401-1400

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

On December 14, 2022, Permittee submitted a CESA ITP application with fees 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 Interstate 10 Repaving Project (08-IC082) (Project) in Riverside County, California.

On January 23, 2020, CDFW issued ITP No. 2081-2019-032-06 to California Department of Transportation, District 8 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 road improvements, road widening, installation of a guardrail system, regrading the median, upgrading of Americans with

<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.

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

Disabilities Act facilities, construction of temporary detour lanes and other covered activities. 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 November 24, 2021, the Permittee requested an amendment to their original ITP, as described above. The Minor Amendment changed the Project description to alter the construction of the Project's detour lanes. Amendment Number 1 additionally reduced both the acres of project impacts and the acres of mitigation needed from the original ITP. Amendment Number 1 was issued on December 16, 2021.

**Amendment No. 2**

The original submittal of the request to Amend the Amended ITP No. 1, was received on January 17, 2023. The amendment request was found to be incomplete on February 15, 2023. A revised Amendment Request No. 2 was received by CDFW on June 7, 2023. CDFW sent an "Application for Amendment Complete" letter on July 7, 2023, with a list of information that would be needed to draft the Major Amendment No. 2. The information from the July 7 letter was provided to CDFW on January 16, 2024.

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

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 Major 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 Major Amendment.

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

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **January 2, 2030**.

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 7.9 of this ITP.

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**Project Location:**

The Interstate 10 (I-10) Repaving Project Post Mile (PM)104.90 – 134.00 (08-1C082) (Project) is located 9 miles west of the city of Blythe, in an unincorporated portion of Riverside County. The project is within the U.S. Geological Survey (USGS) 7.5-minute series Desert Center, Corn Spring, Sidewinder Well, Ford Dry Lake, East of Aztec Mines, and Hopkins Well, California, topographic quadrangles in Township 5S and 6S (Table 1 Townships, Ranges, and Sections in the Survey Area) (Figure 1).

**Table 1. Townships, Ranges, and Sections in the Survey Area**

Township	Range	Sections
5S	15E	25, 26, 27
	16E	27, 28, 29, 30, 34, 35, 36
	17E	31
6S	17E	4,5,6,9,10,11,12,13
	18E	16, 17, 18, 21, 22, 23, 24, 25, 26
	19E	28, 29, 30, 33, 34, 35, 36
	20E	31, 32

**Project Description:**

The Project consists of the following construction features:

- a) Remove existing mainline asphalt concrete pavement and base.
- b) Remove existing inside and outside shoulders.
- c) Remove and replace existing drainage inlets, all dikes, and overside drains.
- d) Remove rumble strips.
- e) Remove guardrails.
- f) Install a Midwest Guardrail System (MGS) with vegetation control.
- g) Construct 1-foot-thick continuously reinforced concrete pavement (CRCP) or jointed plain concrete pavement (JPCP) and associated base for travel way and shoulders, including outside shoulder backing on both roadbeds.
- h) Regrade the median to accommodate temporary drainage during construction.
- i) Upgrade existing Americans with Disabilities Act (ADA) facilities at ramp termini.
- j) Cold plane and overlay existing ramps with Hot Mix Asphalt Type A hot mix asphalt type A (HMA-A).
- k) Construct three 12-foot wide temporary detour lanes and crossovers in the middle of the existing median. Use onsite cut material from the median to construct the subgrade and embankment slopes.
- l) Reconstruct the gore area at Corn Spring Road overcrossing and Ford Dry Lake Road overcrossing interchanges and realign the merging portion of the ramp to I-10.
- m) Construct tie back walls on the eastbound and westbound directions on the outside at the Corn Springs Road overcrossing bridge (#56-0544 PM R114.40) and Ford Dry

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- Lake Road overcrossing bridge (#56-0557 PM R129.90) to accommodate the required width for one detour lane in each direction.
- n) Remove all existing asphalt concrete bridge deck to expose the existing Portland cement concrete bridge deck.
  - o) Retrofit existing bridges, reconstruct approach slab, and replace existing bridge railing, scouring, and rock slope protection.
  - p) Hydroseed the median for erosion control and vegetation restoration.
  - q) Install temporary 84-inch and 66-inch reinforced concrete pipe drainage culverts at the existing bridge locations.
  - r) The temporary detour lanes will cross the ditches in the median over earthen fill with a 4:1 or flatter embankment slope and the temporary drainage pipe. The temporary detour lanes will also have an at-grade split where a single detour lane will be located on each side of the overcrossing bridge column in the median.
  - s) Remove existing detour pavement after completion of the mainline pavement construction and regrade the median.
  - t) A fiber optic system, including fiber optic conduit (FOC) and vaults, will be installed along the Eastbound direction in the outside embankment. The fiber optic conduit and underground vaults are proposed along a layout line located approximately ten (10) feet offset from the State Highway's edge of existing shoulder or near the Right of Way. The work will include plowing and trenching for conduit installation, excavation for underground vaults, and horizontal directional drilling under the pavement at approximately five (5) feet depth below finished ground surface. The approximate dimension of the trench is 12" wide x 50" deep. There will be excavation for the installation of two types of fiber optic vaults, Type 2 fiber optic splice vault is 30" wide by 48" length and 36" deep, and Type 3 fiber optic splice vault is 48" wide by 48" long and 48" deep. At existing bridge locations, the FOC conduit will be strapped to the existing bridge structure.
  - u) The outside shoulders of the highway have been graded during construction of the project occurred. The distance from the outside shoulders of I-10 varies from 5 to 120 feet from away from the pre-project location of the hardened surface of I-10. In addition, asphalt chips have been integrated into the graded surface in multiple locations.
  - v) Storage of earthen materials and associated grading has occurred both inside and outside of the Permittee right-of-way.
  - w) Partially grouted riprap has been installed at each of the bridge locations in the project area. The area covered at each of the locations covered the entire area between the outer edges of bridges including the entire median area.

To handle traffic during construction, three temporary crossovers will be constructed in the existing median. The Project will be split into two phases of approximately 15-mile-long detour segments.

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

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This ITP covers the following species:

Name	CESA Status
1. Agassiz's Desert Tortoise ( <i>Gopherus agassizii</i> )	Threatened <sup>4</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 have and are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include vegetation clearing; grading, leveling, and compaction; excavation; installation of fencing or barriers; installation and/or construction of temporary Project facilities and structures; general operation of vehicles and heavy equipment; noise, vibration, and dust generating activities; and capture and relocation activities (Covered Activities). Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as: collision with, or crushing by, vehicles or heavy equipment; crushing or burial of individuals or eggs in burrows; destruction of burrows and refugia; and increased predation. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species as well as, capture and relocation activities. More specifically, relocation of Covered Species to the translocation site may disrupt the behavior and social structure of resident individuals. Relocated adult Covered Species may continue to disperse and never establish a territory, resulting in no reproductive effort and the loss of offspring to maintain population viability. The areas where authorized take of the Covered Species is expected to occur include the median, overcrossing bridges, staging areas, and areas subject to section 1600 *et seq.* along I-10 between 104.90 and 134.00 (collectively, the Project Area).

The Project is expected to cause the permanent loss of **560.1 acres** of designated critical and suitable habitat for the Covered Species. Permanent impacts to the outer highway shoulders and the areas under bridge structures are **78.3 acres** to designated critical habitat and **107.6 acres** of suitable habitat for the covered species. Permanent impacts in the highway median outside of the streambed areas include **168.9 acres** of designated critical habitat and **205.3 acres** of suitable 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.

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

**Incidental Take Authorization of Covered Species:**

This ITP authorizes incidental take of the Covered Species and only the Covered Species. With respect to incidental take of the Covered Species, CDFW authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Covered Activities, subject to the limitations described in this section and the Conditions of Approval identified below. This ITP does not authorize take of Covered Species from activities outside the scope of the Covered Activities, take of Covered Species outside of the Project Area, take of Covered Species resulting from 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 Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following Conditions of Approval:

1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Mitigated Negative Declaration and Initial Study (SCH No.: 2019059099) adopted by the California Department of Transportation, District 8 on November 15, 2019, 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) for the Project, including a notification that serves as an LSAA by operation of law pursuant to Section 1602(a)(4)(D), pursuant to Fish and Game Code section 1600 et seq.
4. **FESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Caltrans Desert Tortoise Programmatic Biological Opinion, as issued November 5, 2013 (81440-2007-F-0270) 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.

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**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. 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 shall have experience with 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 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, or information similar to what is required in Attachment 2 in another format, to demonstrate the Authorized Biologist(s), Biological Monitor(s), and veterinarian(s) qualifications 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 45 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 Biological Monitor(s) and Authorized Biologist(s) shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.

- 6.8. 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.

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

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## 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 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 Jason Bill ( [Christopher.Bill@wildlife.ca.gov](mailto:Christopher.Bill@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 Covered Activities occur. The Biological Monitor(s) and/or Authorized Biologist(s) shall conduct compliance inspections to (1) minimize incidental

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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).

## Reporting Requirements

- 7.7. Monthly 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 Monthly Compliance Report and submit it by the 15<sup>th</sup> of each month to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to CDFW 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 Monthly 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; and (7) information about other Project impacts on the Covered Species.

- 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 Monthly 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 Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) 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.

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- 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 more than 7 calendar days prior to start of Covered Activities, the Authorized Biologist(s) and/or Biological Monitor(s) approved under this ITP shall conduct pre-construction clearance surveys for Covered Species, using the methods described in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise (Mojave Population) Field Manual (hereinafter referred to as USFWS Field Manual). In addition to the guidance provided in the USFWS Field Manual, CDFW provides the following requirement(s):
- 8.5.1. Pre-construction clearance surveys shall be completed using perpendicular survey routes within the Project Area. Pre-construction clearance surveys cannot be combined with other clearance surveys conducted for other species while using the same personnel. Covered Activities cannot start until two (2) negative results from consecutive surveys using perpendicular survey routes for the Covered Species are documented.
- 8.5.2. These surveys shall cover 100 percent of the Project Area and a 50-foot buffer zone around the Project 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 high-accuracy (< 1 meter) global positioning system (GPS) technology. The Biological Monitor(s) and/or

Authorized Biologist(s) shall provide the results of the pre-construction clearance survey (using 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, the Biological Monitor(s) and/or Authorized Biologist(s) shall conduct a final clearance survey 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 time during 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 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.

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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:

- Health Assessments shall start after May 15<sup>th</sup> or earlier with written approval from CDFW.<sup>5 6 7</sup> Any blood results that come back suspect or inconclusive shall 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, transmittered, nasal flush performed, 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.
- Linear Facilities: Tortoises >100 mm MCL that are moved due to their burrow being collapsed shall be transmittered (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 to the approved DTTP. Blood draw samples for *Mycoplasma agassizii* and *Mycoplasma testudineum* shall determine if a tortoise is negative or positive for disease. A combination of results from blood testing and visual inspection will be used to determine the health of a tortoise. Blood draw samples will be sent to: Dr. Mary Brown, University of Florida Mycoplasma Laboratory, 2015 SW Archer Road, Room V2-234, Gainesville Florida 32608, or other facility approved by CDFW.

<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.

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 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 characteristic 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 transmitterd and monitored for 5 years post translocation.
- Recipient sites shall be between 3 and 4 miles<sup>8</sup> 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.
- Translocation of tortoises and eggs shall only occur on land(s), when written authorization to bury the eggs and/or relocate the tortoises has been obtained from the landowner prior to the start of Covered Activities. The written permission from

<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.

the landowner will be included in the DTTP. If translocation 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. Covered Species shall not be translocated/released when forecasted daily low temperatures are cooler than 69° F (20.5° C) for two weeks post release. 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 less periods shall be monitored by the Authorized Biologist(s) for at least two days after placement in the new burrows to ensure their safety. During relocation, the Authorized

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

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.
- 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 lateral 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 monthly reports.
- 8.13. Covered Species Guards. The design of Covered Species guards shall include exit ramps and cleanout. The design shall be approved by CDFW 30 Calendar days prior to starting Covered Activities.
- 8.14. Covered Species Fencing and Maintenance. Temporary fencing shall be used adjacent to open habitat (e.g. ends of project; stockpile, water tank, and staging areas). Stakes shall be used 150 feet off the highway to present a visible marker for areas to be avoided around temporary project facilities. The temporary fence shall be constructed according to USFWS Field Manual and inspected at the end of each workday, during major rainfall events, and within 24 hours to ensure Covered Species is prohibited from entering the Project Area. The temporary fence shall be inspected by the Authorized Biologist(s) and/or Biological Monitor(s) approved by CDFW under Condition of Approval 6 of this ITP. 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.

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- 8.15. Covered Species Fence Maintenance Inspection. The Biological Monitor(s) and/or Authorized Biologist(s) shall inspect the Covered Species fencing during the Covered Activities, at the end of each workday, and during major rainfall events and within 24 hours to ensure Covered Species is prohibited from entering the Project Area. If the fence is compromised, repairs shall be completed immediately, and clearance protocol level surveys shall be conducted as described in Condition of Approval 8.5.
- 8.16. Vehicle Inspection. Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall contact the Biological Monitor(s) or Authorized Biologists(s) and wait for the Covered Species to move unimpeded to a safe location or the Authorized Biologist(s) shall relocate the Covered Species as described in Condition of Approval 8.9 before moving vehicles and equipment.
- 8.17. Staging Area and Parking Area. The Permittee shall enclose all staging areas and parking areas with Covered Species exclusion fencing. All parked vehicles and equipment shall be inspected prior to being moved. If a Covered Species is found within a staging or parking area the worker shall immediately contact a Biological Monitor(s) and/or Authorized Biologist(s) approved in Condition of Approval 6 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 DTTP.
- 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 at \$105.00 for **560.1 acres** for a total of **\$58,810.50** to the REAT account established with NFWF's Raven Management Plan fund. A minimum of 30 days prior to the start of Covered Activities 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. Covered Activities Outside Permanent Covered Species Exclusion Fencing. Covered activities are not authorized to occur outside Covered Species exclusion fencing.
- 8.20. Borrow Pit. Removal of material from borrow pits or dumping of construction material into borrow pits is not covered by this ITP.

## 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 **985.7 acres** of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of **985.7 acres** 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. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within **18 months** of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10.1 below for all uncompleted obligations.

- 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 \$1,500.00/acre for **985.7 acres: \$1,478,550.00.** Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;
  - 9.1.2. *Start-up costs.* 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 \$300.00/acre for **985.7 acres: \$295,710.00;**
  - 9.1.3. *Interim management.* Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at \$300.00/acre for **985.7 acres: \$295,710.00;**
  - 9.1.4. *Long-term management.* Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$1,550.00/acre for **985.7 acres: \$1,527,835.00.** 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 **985.7 acres** of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than **18 months** from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10.1 below.

OR:

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, documentation identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;

9.3.3. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see

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Attachment 5). 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).;

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- 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:
- 9.4.2.3. 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.
- 9.4.2.4. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
- 9.4.2.5. Non-annualized Expenses. For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.
- 9.4.3. Transfer Long-term Endowment Funds. Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

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

## 10. Performance Security

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

- 10.1. Security Amount. The Security shall be in the amount of . **\$3,600,805.00**. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.
- 10.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 6), or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.
- 10.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 Calendar days after the effective date of this ITP, whichever occurs first.
- 10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 10.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 7) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.
- 10.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.
- 10.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:
- Written documentation of the acquisition of the HM lands;
  - Copies of all executed and recorded conservation easements;
  - Written confirmation from the approved Endowment Manager of its receipt of

- the full Endowment; and
- Timely submission of all required reports.

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

**Amendment:**

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable law. This ITP may be amended without the concurrence of the Permittee as required by law, including if CDFW determines that 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 deliver a fully executed duplicate original ITP by registered first class mail or overnight delivery to the following address:

Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program

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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 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 (2081-2019-032-06) 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:

[Christopher.Bill@wildlife.ca.gov](mailto:Christopher.Bill@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:

Jason Bill  
3602 Inland Empire Boulevard, Suite C-220  
Ontario, CA 91764  
Telephone (909) 549-5878

**Compliance with CEQA:**

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, California Department of Transportation. (See generally Pub. Resources Code, §§ 21067, 21069.) The California Department of Transportation, District 8's prior

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environmental review of the Project is set forth in the I-10 Repaving Project, for the Mitigated Negative Declaration (SCH No.: 2019059099) that the California Department of Transportation, District 8 adopted on November 15, 2019. At the time the California Department Transportation, District 8 adopted the Mitigated Negative Declaration and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

This ITP, along with CDFW's related CEQA findings, which are available as a separate document, provide evidence of CDFW's consideration of the lead agency's Mitigated Negative Declaration for the Project and the environmental effects related to issuance of this ITP (CEQA Guidelines, § 15096, subd. (f)). CDFW finds that issuance of this ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, and that adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. CDFW consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

#### **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, I-10 Repaving Project Mitigated Negative Declaration, Natural Environment Study for the I-10 Repaving Project PM 104.90 to 134.00, the results of site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of **985.7acres** of compensatory habitat that is contiguous with other protected Covered

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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
ATTACHMENT 1	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	HMLA Lands Checklist
ATTACHMENT 6	Irrevocable Letter of Credit
ATTACHMENT 7	Mitigation Payment Transmittal Form

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ATTACHMENT 8

Major Amendment No.2 with Track Change

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

on 4/29/2024

DocuSigned by:

*Heidi Calvert*

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Heidi Calvert, Regional Manager  
INLAND DESERTS REGION

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