



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

California Endangered Species Act
Incidental Take Permit No. 2081-2020-007-06

BLOSSOM TRAILS - TENTATIVE TRACT NO. 20090

Authority: This California Endangered Species Act (CESA) incidental take permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² 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: S-P Deerfield, LLC
Principal Officer: William Griffith
Contact Person: Camille Bahri, (951) 538-4140
Mailing Address: 31866 Camino Capistrano
San Juan Capistrano, California 92675

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 **April 23, 2025**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 5.7 of this ITP.

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

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

Project Location:

The Blossom Trails – Tentative Tract No. 20090 (Project) is a 25.5-acre site located within the City of Highland, in San Bernardino County (see Figure 1: Project Site). The Project site is depicted on the Redlands quadrangle of the United States Geological Survey’s (USGS) 7.5-minute topographic map series in Section 3, Township 1 south, Range 5 west. The Project site is bounded by Greenspot Road to the north, Church Street to the east, and undeveloped land to the south and west.

Project Description:

The Project includes the development of 23.19 acres (total acreage onsite is 25.61-acre, consisting of a 22.91- and 2.7-acre parcel) into 137 single-family residential homes and the associated infrastructure to support the residential units including the development of private roads and sidewalks, landscaping, and utilities throughout the Project site. The Project also includes various lots designated for open space and a recreational/pool area comprised of a restroom building, shade structures, and barbeque area. The southern 2.42 acres of the parcel is a part of the Metropolitan Water District (MWD) easement and will not be developed.

Project activities include clearing/grubbing, excavation, fill, grading, establishment and utilization of staging areas for equipment and materials, establishment of access roads, and the construction of residential units and associated infrastructure and utilities (see Figure 2: Site Plan).

Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

Name	CESA Status
1. San Bernardino Kangaroo Rat (<i>Dipodomys merriami parvus</i>)	Candidate ³

This species and only this species is 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 removal, clearing/grubbing, excavation, filling, grading, operation and staging of vehicles and heavy

³The species status may change following the decision of the Fish and Game Commission to designate the species as threatened or endangered but if there is such a designation, the species will remain a Covered Species.

equipment, and installation and/or construction of residential lots and associated infrastructure (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 crushing of individuals, collapse or damage of burrows, increased exposure, increased risk of predation, vehicle strikes, injury to individuals, and covering of individuals with soil. The area where authorized take of the Covered Species is expected to occur includes the 23.19-acre development site and 0.08 acres along the northern border of the MWD easement where a temporary fence will be installed, for a total of 23.27 acres, identified in Figure 2 (Project Area).

The Project is expected to cause the permanent loss of 23.19 acres of low-quality habitat for the Covered Species and a temporary loss of 0.08 acres. Impacts of the authorized taking also include adverse impacts to the Covered Species related to decreased movement, including the reduction of individuals’ nightly movements, home range pattern, and dispersal events; decreased connectivity and habitat fragmentation, including the increased risk of predation; heightened stress from the reduction or elimination of day burrows and food caches, interrupted behavioral dynamics and structural community (intra/inter competition, disruption of breeding and/or lower reproductive success); use of night lighting, including reduced movement, foraging, and breeding behavior, and increased risk of predation; and the Project’s incremental contribution to cumulative impacts (indirect impacts). These impacts include long-term effects due to increased competition for resources, a reduction in habitat values and connectivity, and disruption of breeding and/or lower reproductive success.

Incidental Take Authorization of Covered Species:

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

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. 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 Initial Study and Mitigated Negative Declaration (SCH No.: 2005121172) and the 2017 Addendum to the Initial Study and Mitigated Negative Declaration adopted by the City of Highland in March 28, 2006 and March 13, 2018, respectively, as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
4. **General Provisions:**
 - 4.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
 - 4.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology and natural history, and collecting and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
 - 4.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall immediately stop any activity that

does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.

- 4.4. 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 Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided 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.
- 4.5. Construction Monitoring Notebook. The Designated Biologist or Designated Representative 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.
- 4.6. Trash Abatement. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 4.7. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 4.8. Delineation of Property Boundaries. Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.

- 4.9. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 4.10. 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.

5. Monitoring, Notification and Reporting Provisions:

- 5.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 5.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.
- 5.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when the exclusionary fence is installed and while initial site clearance and rough grading occurs. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Designated Biologist shall conduct compliance inspections a minimum of once weekly during periods of inactivity and after clearing, grubbing, and grading are completed.

- 5.4. Quarterly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 5.3 into a Quarterly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Quarterly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Marina Barton (marina.barton@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.
- 5.5. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports for that year identified in Condition of Approval 5.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.
- 5.6. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 5.7. Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation

measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.

5.8. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist 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 Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Representative at (909) 948-9632. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

6. Take Minimization Measures:

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

- 6.1. Exclusionary Fencing Installation. Permittee shall erect temporary fencing at the eastern, western, and southern boundaries of the Project Area to exclude SBKR no more than 15 days prior to the initiation of Covered Activities. The Designated Biologist(s) shall be present during the fence installation.
- 6.2. Enhancement of Relocation Area. No less than 30 days prior to the initiation of Covered Activities, Permittee shall initiate non-native vegetation removal and treatment within the 2.42-acre southern portion of the property, outside of the Project Area (herein termed 'Relocation Area'). Initial treatment and removal efforts shall include the hand-removal of all dead thatch for disposal offsite in a landfill or other appropriate waste disposal area. Non-native vegetation control, using Fusilade II/DX (Active ingredient Fluazifop-P-butyl) or other CDFW-approved herbicide, shall continue to occur within this area quarterly, or less often if approved by CDFW, for no less than 3 years.

6.3. Trapping Inside Exclusion Fence. No more than 7 days prior to the initiation of Covered Activities, the Designated Biologist(s) shall conduct small mammal trapping within the exclusionary fenced area. Small mammal trapping shall continue for a minimum of 5 consecutive nights with at least 3 consecutive nights of no SBKR captures. To improve capture probabilities, the Designated Biologist shall pre-bait (seed) within the exclusionary fence for 3 days prior to onset of trapping. Seed will be microwaved for 1-3 minutes before broadcast at the release site to prevent seed germination and alteration of the native vegetation community. The Designated Biologist(s) shall conduct trapping only if the nightly low temperature is forecast to be 50 degrees Fahrenheit or above, and if no extended periods of wind, rain, fog, or other inclement weather will occur to make conditions unsuitable for trapping or will unduly imperil the lives of the animals.

6.3.1. If a SBKR lactating female is captured, she shall be released and followed to determine where her burrow is located before being recaptured. A fiber-optic scope or mini camera shall be immediately used within the located burrow or, if not found, all kangaroo burrows within a 20-meter (66 feet) radius. If no SBKR pups are observed within the burrow, it shall be hand excavated to ensure no occupancy. If SBKR pups are observed, CDFW shall be notified at once, and the pups shall be captured and placed in a rodent carrier with the female at temperature-controlled location where daylight is excluded.

6.3.2. The Designated Biologist(s) shall affix ear tags with a unique alphanumeric code to each captured SBKR (including lactating females but excluding pups) and each shall be placed in a standard rodent carrier for relocation outside of the Project Area.

6.3.3. The Designated Biologist(s) shall record captured kangaroo rats' age, gender, reproductive status, mass, trap location, and ear tag identification.

6.4. SBKR Relocation. The Designated Biologist shall relocate all SBKR trapped within the exclusion fence to the Relocation Area at southern edge of the property, outside of the Project Area as follows:

6.4.1. Prior to relocation of SBKR, the Designated Biologist shall dig burrows into the ground using a soil auger that is approximately the same diameter as a SBKR burrow (45 mm) at roughly a 30° angle to a length of 1 m (3.3 feet). To maintain the integrity of the created burrow, cardboard mailing tubes, or other structural material shall be placed in the burrow, as required.

- 6.4.2. The Designated Biologist shall place a combination of romaine lettuce, inoculated finch seed mix, and plant seeds native to the release site within the constructed burrow prior to SBKR relocation. Seed shall be microwaved for 1-3 minutes to prevent seed germination and alteration of the native vegetation community.
- 6.4.3. Once the burrow is established, the Designated Biologist shall place each relocated SBKR into its own burrow. The burrow entrance shall be plugged for 24 hours before unplugging the following night.
- 6.5. Supplemental Feeding. Permittee shall complete supplemental feeding following the relocation of the SBKR. Seed shall be broadcast within the Relocation Area 3 evenings per week for the first month following the relocation and one evening each week thereafter for the next 3 months. Seed will be microwaved for 1-3 minutes before broadcast at the release site to prevent seed germination and alteration of the native vegetation community.
- 6.6. Relocation Monitoring. Following the relocation, the Designated Biologist(s) shall conduct live small mammal trapping within the Relocation Area each month for the first 3 months following relocation, and annually thereafter for the duration of the project. Trapping shall be conducted for a minimum of 5 consecutive nights when the nightly low temperature is forecast to be 50 degrees Fahrenheit or above, and when no extended periods of wind, rain, fog, or other inclement weather will occur to make conditions unsuitable for trapping or unduly imperil the lives of the animals. To improve capture probabilities, the Designated Biologist shall pre-bait the Relocation Area for 3 days prior to onset of each trapping session. The Designated Biologist(s) shall record the age, gender, mass, trap location, new/recapture status, and tag identification, if applicable, for all captured SBKR. The Designated Biologist shall also note any injuries or signs of trauma. Permittee shall submit reports of the relocation monitoring findings to CDFW within 1 week of each trapping session.
- 6.7. Exclusionary Fence Maintenance. SBKR exclusionary fencing shall be inspected by the Designated Biologist(s) at the close of each workday during initial site clearing and rough grading, and weekly once the site becomes inhabitable, as determined by CDFW, to ensure that it is in place and properly maintained for the duration of Covered Activities.
- 6.8. SBKR Monitoring. Designated Biologist(s) shall perform daily visual surveys for all kangaroo rat burrows, sign, and individuals within a 100-foot buffer of the Project Area prior to and during implementation of the initial ground clearing and rough grading, and when other ground-disturbing Covered Activities will occur within 50

feet of avoided habitat. If Covered Activities are occurring within 100 feet of a potential SBKR burrow, the Designated Biologist(s) shall monitor the burrow for disturbance (e.g. debris or water accumulation) a minimum of 3 times daily. If the Designated Biologist(s) suspects or identifies evidence of disturbance, the Permittee shall immediately halt Covered Activities adjacent to the affected area, make adjustments to the location, type, and/or frequency of the Covered Activities occurring to preclude further potential impacts, and increase monitoring of the burrow to ensure the adjustments were effective. The Designated Biologist(s) shall use best professional judgement regarding the monitoring period and adjustment of the work buffer surrounding the burrow. If impacts beyond those authorized in this ITP are identified or suspected, Permittee shall cease the Covered Activities potentially responsible for those offsite impacts and submit to CDFW immediately a request to amend the ITP. Results of monitoring, including photographs and a brief assessment, the type of activity occurring (e.g. grading, building, etc.), distance from the burrow, impacts measured/noted, and any buffer adjustment made shall be provided to CDFW within 24 hours. Permittee may propose a reduced frequency of SBKR monitoring if the Designated Biologist(s) determines that remaining activities, including those within 100 feet of a burrow or 50 feet of avoided habitat, will not impact SBKR. Any reduction in monitoring shall be approved, in writing, by CDFW prior to implementation.

- 6.9. Light and Noise - Construction. Permittee shall ensure nighttime construction lighting and noise does not impact wildlife outside of the Project Area. If nighttime construction is required, Permittee shall submit to CDFW for review and approval a Light and Noise Attenuation Plan no later than 30 days prior to commencement of Covered Activities. The plan shall be prepared by the Designated Biologists and shall include project-specific avoidance and minimization measures designed to minimize impacts to wildlife adjacent to the Project Area, including having a Designated Biologist monitor the adjacent habitats during all nighttime construction and implementing shielding techniques such as the use of fence slats, netting, mesh, or tarps.
- 6.10. Lighting – Post Project. Permittee shall not install lighting (e.g., street lighting, trail lighting) that produces illuminance (lux) outside of the Project Area, onto adjacent habitats areas. No later than 30 days prior to commencement of Covered Activities, Permittee shall submit to CDFW for review and approval a Post-Project Lighting Plan. The lighting plan shall demonstrate that no post-project lighting (e.g., street lighting, trail lighting) that produces illuminance (lux) outside of the Project Area shall be installed. Permittee shall further ensure lighting installed in the future follows this guidance by including this Measure in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs).

6.11. Cat-Proof Fencing. Within 3 months of initiating Covered Activities, Permittee shall install cat-proof fencing around the eastern, western, and southern boundaries of the Project Area to ensure that domestic animals (including cats and dogs), residents, and the public cannot access adjacent conservation lands. No later than 30 days prior to commencement of Covered Activities, Permittee shall submit to CDFW for review and approval the specifications of the cat-proof fence. Specifications shall include, or be similar to, the following: include a 180 centimeter (cm) high solid or wire netting fence with foot apron and a 60 cm wide curved 'floppy' net overhang. The netting overhang should be curved in an arc toward the development and supported by lengths of heavy gauge wire. Appropriate data shall be provided to CDFW in this submittal that supports the conclusion that the fence specifications are sufficient to be cat-proof. Permittee shall also include in the CC&Rs the requirement for maintenance, including replacement, of the cat-proof fence, in-perpetuity.

7. Habitat Management Land Acquisition and Restoration:

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 provide for both the permanent protection and management of the 2.42-acre Relocation Area and 20.85 acres of off-site conservation lands within the Santa Ana River watershed (Conservation Lands), herein collectively called Habitat Management (HM) lands, pursuant to Condition of Approval 7.2 below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.3 below. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 12 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 8 below for all uncompleted obligations.

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

7.1.1. Land acquisition costs for Conservation Lands identified in Condition of Approval 7.2 below, estimated at \$135,000/acre for 20.85 acres: **\$2,814,750.00**. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;

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- 7.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 7.2.5 below, estimated at **\$322,732.79**;
- 7.1.3. Interim management period funding as described in Condition of Approval 7.2.6 below, estimated at **\$482,353.59**;
- 7.1.4. Long-term management funding as described in Condition of Approval 7.3 below, estimated at \$23,235.95/acre for 23.27 acres: **\$540,700.56**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 7.2. Habitat Acquisition and Protection. To provide for the acquisition of the Conservation Lands and perpetual protection and management of the Conservation Lands and Relocation Area (HM lands), the Permittee shall:
- 7.2.1. 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);
- 7.2.2. 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 (see Attachment 2A) identifying the land to be purchased or

property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;

- 7.2.3. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2B). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;
- 7.2.4. 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 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.
- 7.2.5. 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 long-term management plan for CDFW approval (see <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates>) (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;
- 7.2.6. 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.

- 7.3. Endowment Fund. 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 7.2.5. 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.

- 7.3.1. 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).;

- 7.3.2. 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.
- 7.3.2.1. 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.
- 7.3.2.2. 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:
- 7.3.2.2.1. 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.
- 7.3.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
- 7.3.2.2.3. Non-annualized Expenses. For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.
- 7.3.3. 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.

8. 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 7 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

- 8.1. Security Amount. The Security shall be in the amount of **\$4,160,536.94**. This amount is based on the cost estimates identified in Condition of Approval 7.1 above.
- 8.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.
- 8.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.
- 8.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 8.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.
- 8.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.
- 8.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:
 - 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 12 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 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 Designated 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:

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may

subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2020-007-06) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

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

and a copy to:

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

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

Marina Barton
3602 Inland Empire Blvd., Suite C-220
Ontario, CA 91764
Telephone (909) 948-9632
Fax (909) 481-2945

Compliance with CEQA:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, City of Highland. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the *2005 City of Highland Initial Study, PUD Amendments for Planning Areas 28, 39, 40, 42 and 45 – Including the Blossom Trails Community at the East Highlands Ranch* and the *2017 Addendum to the 2005 IS/MND for the Blossom Trails Community Project*, (SCH No.: 2005121172)] dated December 28, 2005 and December 2017, respectively, that the City of Highland adopted for the Blossom Trails – Tentative Tract No. 20090 Project on March 28,

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2006 and March 13, 2018. At the time the lead agency adopted the Mitigated Negative Declaration and the Addendum, 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 and the Addendum 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, the *2005 City of Highland Initial Study, PUD Amendments for Planning Areas 28, 39, 40, 42 and 45 – Including the Blossom Trails Community at the East Highlands Ranch*, and the *2017 Addendum to the 2005 IS/MND for the Blossom Trails Community Project*, 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 exclusionary fencing; (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

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perpetuity of 23.27 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	Project Site
FIGURE 2	Site Plan
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2A, 2B	Proposed Lands for Acquisition Form; Habitat Management Lands Checklist
ATTACHMENT 3	Letter of Credit Form
ATTACHMENT 4	Mitigation Payment Transmittal Form

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ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

9/18/2020

on _____

DocuSigned by:
Scott Wilson for
8091B1A9242F49C...

Leslie MacNair, Regional Manager
INLAND DESERTS REGION

ACKNOWLEDGMENT

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

By: _____ Date: _____

Printed Name: _____ Title: _____

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