



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

*GAVIN NEWSOM, Governor*  
*CHARLTON H. BONHAM, Director*



July 21, 2022

Robbie Barker, Principal  
R&L Capital, Inc.  
Post Office Box 907  
Trona, California 93592

**Subject: Incidental Take Permit for RB Inyokern Solar Project ()**

Dear Mr. Barker:

Enclosed you will find an electronic copy of the incidental take permit for the above referenced Project, which has been digitally signed by the California Department of Fish and Wildlife (CDFW). Please read the permit carefully, sign the acknowledgement, and return the original **no later than 30 days from CDFW signature**, and prior to initiation of ground-disturbing activities. You may return a hard copy of the permit via mail to:

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

Alternatively, you may return an electronic copy of the permit with digital signature to [CESA@wildlife.ca.gov](mailto:CESA@wildlife.ca.gov). Digital signatures shall comply with Government Code section 16.5.

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

The permit will not take effect until the signed acknowledgement is received by CDFW. If you wish to discuss these instructions or have questions regarding the permit, please contact Carrie Swanberg, Senior Environmental Scientist (Specialist), at (559) 538-4110 or [carrie.swanberg@wildlife.ca.gov](mailto:carrie.swanberg@wildlife.ca.gov).

Sincerely,

DocuSigned by:

*Bob Stafford*

5343A684FF02469...

**FOR** Julie A. Vance, Regional Manager  
Central Region  
California Department of Fish and Wildlife

Enclosure

*Conserving California's Wildlife Since 1870*



**California Department of Fish and Wildlife  
Central Region  
1234 EAST SHAW AVENUE  
FRESNO, CALIFORNIA 93710**

California Endangered Species Act  
Incidental Take Permit No. 2081-2020-001-04

**RB INYOKERN SOLAR PROJECT**

**I. Authority:**

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

<b>Permittee:</b>	<b>R&amp;L Capital, Inc.</b>
<b>Principal Officer:</b>	<b>Robbie Barker, Principal</b>
<b>Contact Person:</b>	<b>Robbie Barker, (760) 372-4729</b> <b>rbservice@verizon.net</b>
<b>Mailing Address:</b>	<b>R&amp;L Capital, Inc</b> <b>Post Office Box 907</b> <b>Trona, California 93592</b>

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

This ITP shall become effective when signed by all parties and received by CDFW as described in the Notices section of this ITP. Unless renewed by CDFW, this ITP and its authorization to take the Covered Species shall expire on **September 1, 2057**.

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.

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

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

### III. Project Location:

The RB Inyokern Solar Project (Project) is located in the unincorporated community of Inyokern, Kern County, California, north of Highway 178 and is bordered by Highway 395 on the east and by Brown Road on the west. The Project is specifically located in Sections 19 and 20, Township 26 South, Range 39 East, Mount Diablo Base and Meridian, near Latitude 35.656262 and Longitude -117.811963 (FIGURE 1).

### IV. Project Description:

The Project includes the construction, operation, maintenance, and ultimate decommissioning of a single axis tracking photovoltaic solar facility on 166.5 acres. The solar infrastructure portions of the Project may be constructed in one or two phases, however a perimeter fence encompassing the entire Project area will be constructed initially. If separated into two phases, Phase 1 would encompass a southern 124.6-acre portion of the site and Phase 2 would encompass a northern 41.9-acre portion of the site (FIGURE 2). The Project would interconnect to an existing Southern California Edison pole onsite, that is part of a 33-kilovolt (kV) electrical distribution line that ties to a substation located approximately 0.5 mile east of the Project site.

Construction is anticipated to begin in late 2022 and will last 10 to 16 months, depending on whether phased or not. Operation and maintenance are anticipated to continue for 35 years after construction is complete and the site will be decommissioned at that time. Project activities are presented below as initial *Construction*, ongoing *Operations and Maintenance (O&M)* following construction, and ultimate *Decommissioning* of the site.

### Construction

The following are individual Project features of the initial construction:

- Grading and Site Preparation. This activity will include grading for the removal and offsite disposal of vegetation and debris that would interfere with Project construction. Land-leveling heavy equipment will be used to even the surface and compact the upper layer of native soils as needed for structural support. Construction access roads will be constructed of pervious, earthen and gravel materials. Water trucks will be used for dust suppression. Equipment laydown areas, access roads, temporary, and portable restroom facilities will be established to support construction activities.
- Solar Panels. Approximately 98,980 single axis tracker (or fixed) panels will be constructed in in 300-foot-long rows. The rows will be spaced up to 22 feet apart. Posts will be pile driven into the ground and photovoltaic (PV) modules will be attached to the posts, each spaced 10 to 20 feet apart, and will extend up to 10 feet from the ground.
- Battery Energy Storage Systems. Two prefabricated enclosures or steel buildings will be constructed to house energy storage systems. Each building will occupy an approximately 65-foot by 150-foot area and will house battery storage modules within electrical enclosures

and buried electrical conduit. Fire suppression equipment will be installed that automatically suppresses thermal emergencies. Batteries used will include lithium ion, lead acid, sodium sulfur, or sodium or nickel hydride.

- O&M Structures. Two prefabricated commercial coach 12-foot by 12-foot unmanned O&M structures will be constructed to house an automated field control system for monitoring performance of the solar site.
- Inverter Stations. Inverter stations will be constructed to convert the direct current that is produced by the solar panels into alternating current for connection to the transmission system.
- Switchyard. A switchyard will be constructed in both the Phase 1 area and the Phase 2 area. Each will house two sets of gear (customer-owned and utility-owned). The gear will include individual protection equipment to collect the electricity from the inverter stations, a breaker (recloser), and metering devices including potential and current transducers.
- Gen-Tie Line. Approximately 150 feet of 33 kV generation tie line (gen-tie) will be constructed using one or two poles within the solar development Project area, connecting the project transformers to the existing Sawmill circuit.
- Collector Lines. An electrical collector system will be constructed that includes cables and combiners to connect and deliver electricity from the PV modules to the inverters and from the inverters to the switchyard. Trenches will be excavated 2 feet wide by 2 feet deep along access roads and along the rows of PV modules to house part of the collection system. Above-grade raceways will also be mounted on supports 24 to 36 inches above ground to house part of the collection system. Drilling for foundation support of these features will be required. Excess soils from the drilling activity will be spread through the site.
- Telecommunication Equipment. Telecommunication equipment including onsite meters, relay control devices, communications gateways, and control computers housed in small control structures will be installed to transmit data collected in the automated field control system to offsite facilities for control of the solar operation. Installation will include fiber optic lines, telephone lines, and radio and/or microwave network. These systems may be installed in underground trenches or in overhead lines.
- Meteorological Station. A fifteen-foot-high on-site meteorological station including solar energy meters, an air temperature sensor, and wind anemometer will be constructed.
- Roads. A system of internal roads will be constructed for access to the Project site and for the long-term operation and maintenance of the site. Roads will generally be up to 20 feet wide, with some accommodating a 56-foot turning radius. The roads will be constructed with native soil, compacted rock, or crushed rock.
- Security Fencing and Lighting. Eight-foot-high chain-link security fencing will be installed along the perimeter of the Project area and other areas to restrict public access. Signs will be installed warning of high voltage and other dangers. The fence posts and signposts will be set in concrete. An illumination system including light fixtures mounted at the access entrance, and at each inverter station will be installed. Lighting will be directed downward and shielded to prevent light spillage outside of the intended area.

- Disturbed Areas. Disturbed areas, temporary roadways, equipment laydown sites, etc. not required for the long-term operation will be restored in accordance with the Project Landscape Revegetation and Restoration Plan.

### **Operation and Maintenance**

The following are activities that will occur on an on-going basis following the initial construction to support the year-round operation of the facility:

- Administrative. Liaison and remote monitoring, administration and reporting, semi-annual and annual services, remote operations of inverters, site security and management, and implementation of communication protocols. The O&M building on-site will be unmanned but will be monitored remotely 24 hours a day.
- Repair and Maintenance. The repair and maintenance of all above- and below-ground constructed facilities will occur as needed.
- Solar Panel Washing. PV module washing will be required up to 4 times per year and is expected to take 10 days per washing activity. The activity will use up to 5 staff and will use approximately 4 acre-feet of water per year. Water will come from an on-site water well or will be trucked in from the Inyokern Community Services District. This water may also be used to wash equipment or other non-sanitary uses.
- Vegetation Maintenance. Vegetation maintenance will occur as needed and will include the use of string trimmers, mowing, hand pulling of weeds, and herbicide use.
- Collection of Solid Waste. Production of solid and nonhazardous waste associated with O&M includes broken or rusted metal, defective or malfunctioning modules, electrical materials, empty containers, miscellaneous solid materials, and household-type refuse generated by workers. Some materials will be collected and delivered back to the manufacturer for recycling or otherwise disposed of by a local waste hauler service for disposal at an appropriate landfill.
- Hazardous Materials Containment. Hazardous materials including diesel fuel, gasoline, motor oil, mineral oil, lead acid-based and/or lithium-ion batteries, etc. will be stored and used on site. Spill containment and clean-up kits will be maintained on site and used in accordance with a *Spill Prevention, Containment, and Countermeasure Plan* that will be prepared for the site.

### **Decommissioning**

The solar facility life expectancy is 35 years at which time the site may be decommissioned and returned to its vacant and undeveloped state. The following work is expected to last 12 months:

- Staging Areas. A temporary storage and laydown area will be established within the Project area and will include an impermeable section to protect soils from contamination.

- Removal of Chemicals. Chemicals, fuels, oils, transformer oils, and other hazardous chemicals and wastes will be removed from the site and disposed of appropriately.
- Removal of Equipment. Above-ground and underground equipment including module posts and support structures, onsite transmissions poles (not-shared with third parties), overhead collection system, inverters, transformers, electrical wiring, and infrastructure concrete pads will be removed and disposed of appropriately. Internal roads may be removed and restored, depending on the future use of the site. The top layer of soil may be removed and stockpiled prior to excavating electrical conduit from trenches. The substation will be removed unless a public or private utility has assumed ownership, in which case it may remain to be used as a utility service. Materials and all debris will be removed and will be recycled and/or disposed of appropriately off site.
- Grading. Minor site grading will occur to return the land to preconstruction surface conditions and temporary erosion and sediment control measures will be applied such as sediment fences, hay bales, mulch, and soil stabilizers.
- Weed control and Soil Stabilization. Vegetation management will occur to control invasive grasses and weeds including the use of hand pulling, hand tools, power tools, and use of herbicides in accordance with an approved revegetation plan. Soil stabilizers will be applied to minimize fugitive dust.
- Revegetation. Following materials removal, grading, and soil stabilization, the site will be revegetated in accordance with an approved revegetation plan. A seed mix may be applied via seed drilling or hydroseeding in late fall/early winter following decommissioning activities that consists of local, native species that reflect the existing habitat in the region. Seed drilling would involve the mechanical application with the use of a tractor or truck towing a device that will cut shallow, narrow furrows in the soil for seed placement followed by press wheels to compact the soil over the seed. Hydroseeding would use water, mulch, and seeds formed into a slurry that is distributed via a spray hose.

The following equipment may be used during Project activities: backhoe, bulldozer, front-end loader, grader, roller, skid steer, trencher, forklifts, welders, aerial lifts, cranes, bull wheel puller, compressor, heavy-duty truck, and other similar heavy equipment.

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

This ITP covers the following species:

<u>Name</u>	<u>CESA Status</u> <sup>3</sup>
1. Desert tortoise ( <i>Gopherus agassizii</i> )	Threatened <sup>4</sup>
2. Mohave ground squirrel ( <i>Spermophilus mohavensis</i> )	Endangered <sup>5</sup>

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

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

<sup>5</sup>See *Id.*, subd. (b)(6)(A).

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

#### **VI. Impacts of the Taking on Covered Species:**

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The initial construction activities described above expected to result in incidental take of individuals of the Covered Species include: clearing, grubbing, and grading; leveling the site (cut/fill); backfilling and compacting the soil; pouring concrete; operation of motorized heavy equipment; drilling, pile driving, and/or vibrating piles or posts; construction and use of temporary staging and storage areas; construction of new access and perimeter roads; trenching and excavation; construction of O&M buildings, substations, BESS, inverters, and transformers; transporting construction materials and other Project-related traffic; and other Project-related activities described in the Project Description section of this ITP. The O&M activities described above expected to result in take of individuals of the covered Species include: operation of vehicles and equipment; repair or replacement of cables, piles, fencing, or other infrastructure; vegetation management; road maintenance; and washing of solar panels. Removal of all infrastructure during decommissioning activities, regrading of the site, and other restoration activities are also expected to result in take of the Covered Species (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 vehicle strikes; crushing by heavy equipment, soil, or materials; collapse or excavation of burrows; entombment of individuals during earthwork; and noise and ground vibration that could cause individuals to leave burrows at inappropriate times increasing stress, overheating, and exposure to 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 with entrapment of fallen individuals into trenches or excavations, with corralling by installation of species exclusion fencing, with live trapping of Covered Species, with burrow excavation, and with relocation or translocation Covered Species. The areas where authorized take of the Covered Species is expected to occur include the solar arrays, inverters, substations, collector lines, access road systems, energy storage systems, gen-tie poles, and all constructed facilities within the security fencing boundary (collectively, the Project Area).

Incidental take, estimated to be but not limited to 10 Mohave ground squirrels and up to 3 desert tortoises, may occur throughout the entire Project area. Approximately 166.5 acres of Covered Species habitat will be permanently impacted. 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 indirect impacts include: stress resulting from noise and vibrations; increased exposure or stress from disorientation; stress resulting from capture, and relocation; introduction or spread of invasive species; and long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, increased vulnerability to predation and disease; on-going O&M-related noise and lighting; changes in drainage patterns that favor different vegetative growth;

Incidental Take Permit  
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**R&L CAPITAL, INC.**  
**RB INYOKERN SOLAR PROJECT**

loss of burrowing habitat used for shelter and reproduction; and competition between displaced individuals into unsuitable areas or areas at carrying capacity.

**VII. Incidental Take Authorization of Covered Species:**

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

**VIII. Conditions of Approval:**

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

1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Environmental Impact Report (SCH No.: 2017071020 adopted by Kern County on March 24, 2021 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(s) and Biological Monitor(s).** Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) and Biological Monitor(s) using the Biologist Resume Form (ATTACHMENT 2) or another format containing the same information at least 30 days before starting Covered Activities. The Biological Monitor may assist the Designated Biologist in compliance monitoring under the direct supervision of the Designated Biologist.

Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, trapping, handling, and relocating of the Covered Species. Permittee shall also ensure that the Designated Biologist is experienced in the excavation of burrows actively used by the Covered Species and in the monitoring of construction activities under an ITP for the Covered Species. Permittee shall ensure that the Biological Monitor is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist and Biological Monitor 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 and Biological Monitor in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist or Biological Monitor must be changed.

- 4.3. Designated Biologist and Biological Monitor Authority.** To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist and Biological Monitor shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Site and otherwise facilitate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.

- 4.4. Education Program.** Permittee shall conduct an education program 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 prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.

- 4.5. Construction Monitoring Documentation.** The Designated Biologist and Biological Monitor shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project site upon request by CDFW.
- 4.6. Trash Abatement.** Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed, daily when possible but at least once a week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 4.7. Dust Control.** Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 4.8. Erosion Control Materials.** Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting, photodegradable mesh (erosion control matting) or similar material. Permittee shall only deploy erosion control mats, blankets, or coir rolls that consist of natural-fiber, biodegradable materials. Rock used for road improvement or other purposes shall be no greater than 4 inches in diameter unless the interstitial spaces are filled with 2-inch or smaller diameter rock to establish a passable surface for adult and juvenile desert tortoise.
- 4.9. Dogs.** Permittee shall prohibit domestic and working dogs from the Project Area and site access routes during Covered Activities, except those in the possession of authorized security personnel or federal, state, or local law enforcement officials.
- 4.10. Wildfire Avoidance.** Permittee or Permittee's contractors shall minimize the potential for human-caused wildfires by carrying water or fire extinguishers and shovels in all

Project-related vehicles and equipment. The use of shields, protective mats, or use of other fire preventative methods shall be used during grinding and welding to minimize the potential for fire. Personnel shall be trained regarding the fire hazard for wildlife as part of the worker education program described in Condition of Approval 4.4.

- 4.11. Delineation of Property Boundaries.** Permittee shall clearly delineate the boundaries of each area in active construction within the Project Area (Work Area), where the Covered Activities will occur, with fencing, stakes, or flags before starting Covered Activities. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged Work Area. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in each Work Area.
- 4.12. Project Access.** Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.
- 4.13. Staging Areas.** Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 4.12 of this ITP.
- 4.14. 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.

Permittee shall ensure that all fueling, or maintenance of vehicles or equipment shall occur within established O&M buildings or designated staging areas and shall not occur within 100 feet of Covered Species burrows.

- 4.15. CDFW Access.** Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control and shall otherwise fully cooperate with CDFW

efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.

- 4.16. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes. Following decommissioning activities, the above- and below-ground equipment removed shall be disposed of or recycled at an appropriate, legal off-site facility.
- 4.17. Lighting. All temporary and permanent outdoor lighting shall be aimed at the ground, shielded to prevent light from shining skyward, of minimum wattage necessary for safety and activity, and of motion-sensor type to prevent continuous nighttime lighting.
- 4.18. Rodenticide Prohibition. Permittee shall prohibit the use of rodenticides in the Project Area.
- 4.19. Herbicide Use. Permittee shall limit herbicide use to treat and control invasive plant species only and shall only apply herbicide after hand or mechanical efforts have been ineffective. Permittees shall ensure that all application of herbicide is done by a licensed applicator in accordance with all applicable federal, State, and local laws and regulations.

## 5. Monitoring, Notification and Reporting Provisions:

- 5.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting each period of Covered Activities (construction, O&M activities, and decommissioning) and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 5.2. Notification of Non-compliance. The Designated Representative or Designated Biologist shall immediately notify CDFW via e-mail if the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative or Designated Biologist shall follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.
- 5.3. Compliance Monitoring. The Designated Biologist shall be on-site daily, for the duration of the day, when Covered Activities occur during the entire construction and decommissioning periods and on site daily, for the duration of the day, when ground- or vegetation-disturbing Covered Activities occur during the O&M period, unless exclusion fencing has been installed and properly maintained, in accordance with Conditions of Approval 6.13 and 6.14 below. Ground- and vegetation-disturbing activities include any action that modifies the existing ground surface. Examples include the use of string trimmers, mowing,

application of herbicide, washing of solar panels, trenching, etc. Operation of vehicles on established roads that have been properly maintained is not considered ground- or vegetation-disturbing activity. The Designated Biologist or Designated Monitor shall otherwise be on-site during the construction and decommissioning periods a minimum of once every 14 days during periods of inactivity and after clearing, grubbing, and grading are completed. 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;
- (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area;
- (6) maintain an on-going account of the number of acres that are permanently and temporarily disturbed by the Project; and
- (7) document the Covered Activities that occurred.

The Designated Representative, Designated Biologist, or Biological Monitor 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.

**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 during the construction and decommissioning periods, and into an Annual Compliance Report (Condition of Approval 5.5) during the O&M period 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 via e-mail to CDFW's Regional Representative, Regional Office, and Headquarters CESA Program no later than the 15<sup>th</sup> day of the month following the reporting period. At the time of this ITP's approval, the CDFW Regional Representative is Carrie Swanberg ([carrie.swanberg@wildlife.ca.gov](mailto:carrie.swanberg@wildlife.ca.gov)), the Regional Office e-mail is R4CESA@wildlife.ca.gov, and the Headquarters CESA Program e-mail 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 record the Education Program training sessions provided over the reporting year; (3) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (4) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (5) a summary of findings from all pre-activity surveys conducted, including but not limited to, the number of times a Covered Species or their burrow was encountered, location, if avoidance was achieved, and if not, what measures were implemented; (6) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (7) all available information about Project-related incidental take of the Covered Species; (8) a written and mapped 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 (9) information about other Project impacts on the Covered Species. The ASR shall be submitted via e-mail to the entities identified in Condition of Approval 5.4 above.

- 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. As-Built Development Plans.** No later than 45 days after completion of all initial construction activities, Permittee shall submit as-built development plans. The as-built plan sheets shall delineate and quantify the extent of permanent Project features, including roads, utilities and all other facilities and features associated with the Project. The as-built plans shall include an estimate of the permanent disturbance during construction by highlighting the estimated disturbance areas on the as-built plan sheets. The plan scale

shall be 1":250' (one inch to 250 feet) or smaller. As-built plans shall be derived from survey data acquired after Project construction has been completed and shall be verified by the Designated Biologist. The as-built plans shall be submitted in electronic format (e-mail or other available document repository/share site) to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.

- 5.9. Desert Tortoise Mortality Reduction and Relocation Plan.** Permittee shall provide CDFW with a Desert Tortoise Mortality Reduction and Relocation Plan, prepared by the Designated Biologist, for CDFW review and written approval prior to the start of Covered Activities. The relocation plan shall include at a minimum: (1) avoidance and minimization measures including an option to work within established protective buffer of a burrow; (2) the proposed capture methods; (3) implementation timing; (4) burrow excavation methods (Condition of Approval 6.16 below); (5) measures to be taken when a nest is encountered; (6) release methods (i.e., soft release, hard release, or some other method); (7) artificial burrow design and installation methods; (8) a map and legal description of the proposed receiver sites; (9) a comparison of the proposed receiver sites and source sites soil, plant communities, and topography to demonstrate that the site is suitable; (10) a description of the existing desert tortoise (pre-Project) status on the proposed receiver site (including density and distribution); (11) a proposed one-year monitoring plan of the receiver site; and (12) identification of a wildlife rehabilitation center or veterinary facility where injured animals will be cared for. Once the Desert Tortoise Mortality Reduction and Relocation Plan is approved by CDFW, it may be used for all desert tortoise relocation activities for the duration of this ITP. Any proposed changes to the CDFW-approved Desert Tortoise Mortality Reduction and Relocation Plan shall be submitted in writing to CDFW and approved by CDFW in writing prior to implementation of any proposed modifications. The Draft Desert Tortoise Mortality Reduction and Relocation Plan shall be submitted via e-mail at least 30 days before starting Covered Activities to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.
- 5.10. Mohave Ground Squirrel Mortality Reduction and Relocation Plan.** Permittee shall submit a Mohave Ground Squirrel (MGS) Mortality Reduction and Relocation Plan, prepared by the Designated Biologist, for CDFW review and written approval prior to the start of Covered Activities. The MGS Mortality Reduction and Relocation Plan shall include, but not be limited to: (1) avoidance and minimization measures including option to work within an established protective buffer of a burrow; (2) trapping methodology (Condition of Approval 6.21 below); (3) implementation timing; (4) burrow identification and excavation methods (Condition of Approval 6.21 below); (5) measures to be taken when an active burrow and burrow with young is encountered; (6) release methods (i.e., soft release, hard release, or some other method); (7) artificial burrow design and installation methods; (8) a map and legal description of the proposed receiver sites; (9) a comparison of the proposed receiver sites and source sites soil, plant communities, and topography to demonstrate that the site is suitable; (10) a description of existing MGS (pre-Project) status on the proposed receiver

site (including density and distribution); (11) a proposed one-year monitoring plan of the receiver site; and (12) identification of a wildlife rehabilitation center or veterinary facility where injured animals will be cared for. The MGS Mortality Reduction and Relocation Plan shall restrict MGS squirrel relocation to only after young of the year are observed above ground and during the main activity period for the species (April 1 to September 1). The Permittees may request a 7-day extension to the relocation period if daytime temperatures (sunrise to sunset) are predicted by the National Weather Service to remain within the temperature criterion of 68 – 86 degrees Fahrenheit with no prediction of inclement weather (e.g., a predicted 40 percent or greater chance of precipitation). Subsequent 7-day extensions (through no later than November 1) may be requested and approved by CDFW so long as weather conditions are predicted by the National Weather Service to remain within the above temperature criterion. The relocation extension request(s) shall be approved in advance and in writing by CDFW (email will suffice). Once the MGS Mortality Reduction and Relocation Plan is approved by CDFW, it may be used for all MGS mortality reduction and relocation activities for the duration of this ITP. Any proposed changes to the MGS Mortality Reduction and Relocation Plan shall be submitted in writing to CDFW and approved by CDFW in writing prior to implementation of any proposed modifications. The Draft MGS Mortality Reduction and Relocation Plan shall be submitted via e-mail at least 30 days before starting Covered Activities to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.

- 5.11. Raven Management Plan.** Permittee shall prepare a Project-specific Raven Management Plan to minimize the potential for ravens to occupy the Project Area and for raven predation on desert tortoise. The plan shall address the construction, O&M, and decommissioning phases and shall include at a minimum: (1) baseline survey and results; (2) a plan for reduction of food, water, sheltering and nesting sites; (3) an evaluation of effectiveness and adaptive management strategies; and (4) an education and outreach program. The Raven Management Plan shall be submitted via e-mail for written approval at least 30 days before starting Covered Activities to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.
- 5.12. Landscape Revegetation and Restoration Plan.** Permittee shall provide the Landscape Revegetation and Restoration Plan to be used following initial construction activities to CDFW at least 14 days prior to beginning Covered Activities for written approval. A separate Landscape and Revegetation Plan shall be prepared for post-decommissioning stabilization and restoration and shall be submitted to CDFW for written approval at least six (6) months prior to beginning the decommissioning activities.
- 5.13. Decommissioning Plan.** Permittee shall prepare a Decommissioning Plan detailing the methods, equipment, process, and schedule of decommissioning of the Project, for CDFW review and approval prior to the start of decommissioning Covered Activities. Mass grading of the Project site shall not occur, and all ground disturbance shall be limited to that

required for the removal of Project infrastructure. The Decommissioning Plan shall include but not be limited to: (1) a detailed step-by-step written description detailing how the decommissioning activity will occur and what equipment will be used; (2) a set of maps and/or figures that identify the actions provided in the written description; (3) an engineered design grading plan that minimizes ground disturbance of the site; (4) a plan detailing how decommissioning Covered Activities will comply with this ITP; and (5) the Landscape and Revegetation Plan identified in Condition of Approval 5.12. The Draft Decommissioning Plan shall be submitted via e-mail at least 6 months before starting decommissioning Covered Activities to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.

**5.14. 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 Office at (559) 243-4005. 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. The written report shall be submitted via e-mail to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.

**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. Designated Biologist On Site.** The Designated Biologist shall be on site during all activities that may result in the take of Covered Species and in accordance with Condition of Approval 5.3 above.

**6.2. Work Hours.** Permittee shall conduct all Covered Activities during daylight hours (sunrise to sunset) except for the following activities as necessary: (1) planned and unplanned maintenance activities, repair and replacement, wiring, and testing that must occur after dark to ensure PV arrays are not energized; (2) interior use of the O&M facility; (3) unanticipated emergencies (in accordance with Section 21060.3 of the Public Resources Code), including forced outages and non-routine maintenance or repair requiring immediate attention; or (4) security patrols.

Permittee shall ensure: (1) that any vehicle traffic necessary during nighttime hours associated with these activities are conducted with extra caution to minimize impacts to Covered Species; (2) the speed limit during allowable night work is reduced to 10 mph for non-emergency activities; and (3) that CDFW is notified as soon as possible and no later than 24 hours after commencement of any emergency nighttime O&M activities, except those occurring inside the O&M facility.

- 6.3. Delineation of Ingress and Egress Routes.** Permittee shall flag or otherwise clearly mark all access roads in the field from the paved road and vehicle operation shall be limited to these designated ingress and egress routes.
- 6.4. Vehicle Parking.** Permittee shall not allow vehicles to park on top of Covered Species burrows, except within designated staging areas for which burrows have been excavated per Conditions of Approval 6.16 and 6.21. Vehicles left overnight shall be located at least 50 feet from of all Covered Species dens or burrows.
- 6.5. Vehicle and Equipment Inspection.** Workers shall inspect for Covered Species under vehicles and equipment every time before the vehicles and equipment are moved. If a Covered Species is present, the worker shall notify the Designated Biologist and wait for the Covered Species to move unimpeded to a safe location. Alternatively, the Designated Biologist shall move the Covered Species out of harm's way outside of the Project Area and in compliance with the approved Covered Species Mortality Reduction and Relocation Plans required in Conditions of Approval 5.9 and 5.10 above.
- 6.6. Pipe and Materials Inspection.** Workers shall thoroughly inspect all construction pipe, culverts, or other similar structures with a diameter of one inch or greater that are stored for one or more overnight periods for the Covered Species before the structure is subsequently moved, buried, or capped. If during inspection, a Covered Species is discovered inside a pipe, culvert, or similar structure, workers shall notify the Designated Biologist and wait for the Covered Species to move unimpeded to a safe location before moving and utilizing the structure. Alternatively, the Designated Biologist shall move the Covered Species out of harm's way outside of the Project Area and in compliance with the approved Covered Species Mortality Reduction and Relocation Plans required in Conditions of Approval 5.9 and 5.10 above.
- 6.7. Excavation Inspection.** The Designated Biologist or Biological Monitor shall inspect all trenches, open holes, sumps, and other excavations within the Project Area at the beginning and end of each day for trapped animals. All trenches, holes, sumps, and other excavations with sidewalls steeper than a 1:1 (45 degree) slope shall be covered when workers or equipment are not actively working in the excavation, which includes cessation of work overnight, or shall have an escape ramp of earth or a non-slip material with a less than 1:1 (45 degree) slope. To prevent inadvertent entrapment of the Covered Species, the

Designated Biologist or Biological Monitor shall oversee the covering of all such excavations with barrier material (such as hardware cloth) at the close of each working day such that animals are unable to dig or squeeze under the barrier and become entrapped. The outer two feet of excavation cover shall conform to solid ground so that gaps do not occur between the cover and the ground and secured with soil staples or similar means to prevent gaps. Each morning, end of each day (including weekends and any other non-work days), and immediately before trenches, holes, sumps, or other excavations are back filled, the Designated Biologist or Biological Monitor shall thoroughly inspect them for Covered Species. Designated Biologist or Biological Monitor shall also thoroughly inspect any trenches, holes, sumps, or other excavations that are covered long term at the beginning of each working day to ensure inadvertent entrapment has not occurred and shall make any necessary repairs to the cover. If any worker discovers a Covered Species has become trapped, Permittee shall cease all Covered Activities in the vicinity and notify the Designated Biologist immediately. Project workers and the Designated Biologist shall allow the Covered Species to escape unimpeded if possible before Covered Activities are allowed to continue. Alternatively, the Designated Biologist shall move the Covered Species out of harm's way outside of the Project Area and in compliance with the approved Covered Species Mortality Reduction and Relocation Plans required in Conditions of Approval 5.9 and 5.10 above.

- 6.8. Covered Species Injury.** If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to the CDFW approved wildlife rehabilitation or veterinary facility identified in the Covered Species Mortality Reduction and Relocation Plans required in Conditions of Approval 5.9 and 5.10. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species according to Condition of Approval 5.14.
- 6.9. Covered Species Observations.** All workers shall inform the Designated Biologist if the Covered Species is seen within or near the Project Area during implementation of any Covered Activity. All work in the vicinity of the Covered Species, which could harm the animal, shall cease until the Covered Species moves from the Project Area of its own accord or the Designated Biologist moves the Covered Species out of harm's way outside of the Project Area and in compliance with the approved Covered Species Mortality Reduction and Relocation Plans required in Conditions of Approval 5.9 and 5.10 above.
- 6.10. Covered Species Pre-Activity Surveys and Burrow Mapping.** The Designated Biologist shall perform pre-activity surveys for Covered Species no more than 14 calendar days prior to beginning Covered Activities in a Work Area, including access roads, within the Project Area. The pre-activity surveys shall cover the Work Area and 50 feet beyond the limits of the Work Area to identify Covered Species and flag all potential burrows used by Covered Species, whether they appear active or inactive. Permittee shall provide the pre-activity

surveys results and burrow map in a written report via email to CDFW's Regional Representative and Regional Office identified in Condition of Approval 5.4 above at least 5 days prior to beginning Covered Activities in the Project Area. The Pre-Activity Survey report shall include, but not be limited to, methodology, date and time of survey, results, discussion and map of the locations of each potential Covered Species burrow, and an estimated date of Covered Species relocation plans, if any, as described in Conditions of Approval 5.9 and 5.10.

- 6.11. Covered Species Burrow Avoidance.** The Designated Biologist shall establish a no-disturbance buffer of 50 feet or greater around suspected or known to be occupied Covered Species burrows in the Work Area within Project Area. If the 50-foot no-disturbance buffer cannot be established, an approved reduced buffer shall be imposed according to the Covered Species Mortality Reduction and Relocation Plans (Conditions Of Approval 5.9 and 5.10). If an approved buffer cannot be established, temporary exclusion fencing installation, live trapping, relocation, and burrow excavation shall occur in accordance with the *Desert Tortoise-Specific* and *Mohave Ground Squirrel-Specific* Conditions of Approval below.
- 6.12. Covered Species Habitat Fragmentation Avoidance.** Permanent security fencing shall be designed and installed to allow for the movement of Covered Species into and through the Project area. Security fencing shall be designed, installed, and maintained with a minimum 4-inch gap between the final grade and the bottom of the security fencing. The Fencing Design Plan shall be submitted in writing to CDFW and approved by CDFW in writing prior to installation. The Fencing Design Plan shall be submitted via email at least 30 days prior to installation to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.

**Desert Tortoise-Specific:**

- 6.13. Desert Tortoise Temporary Exclusion Fencing.** Permittee shall install temporary desert tortoise-proof exclusion fencing (Temporary Exclusion Fencing) around the perimeter of the Project Area immediately following surveys to flag all potential burrows in accordance with Condition of Approval 6.10 above and immediately prior to commencing burrow excavation in accordance with Condition of Approval 6.16 below. Temporary Exclusion Fencing may be installed around segments of work areas within the Project Area and may be installed and removed in a sequential manner along the gen-tie corridor to minimize fragmentation of habitat. Permittee shall submit an Exclusion Fencing Plan to CDFW for review and written approval. The Exclusion Fencing Plan shall include, but not be limited to, the fencing material, design, installation methods, and installation locations prior to installing fencing. Temporary Exclusion Fencing may be designed and installed in conjunction with the design and installation of permanent Project security fencing. Prior to the installation of the Temporary Exclusion Fencing, shrubs shall be removed by cutting/clipping them at the base

under the supervision of Designated Biologist with the use of hand tools to encourage Covered Species to move out of the area. Temporary Exclusion Fencing shall be removed immediately upon completion of Initial Construction within the fenced area to minimize habitat fragmentation caused by fencing. The Exclusion Fencing Plan shall be submitted via e-mail at least 14 days before starting Covered Activities to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.

- 6.14. Desert Tortoise Temporary Exclusion Fencing Installation and Removal.** The Designated Biologist shall accompany the exclusion fence installation, repair, and removal crews to ensure that Covered Species are not killed or injured during fence installation, repair, and removal. The Designated Biologist shall ensure all burrow entrances are avoided (i.e., not covered) by fencing material during fence installation. The Designated Biologist shall ensure the Temporary Exclusion Fencing is sufficiently supported to maintain its integrity under all conditions such as wind and heavy rain for the duration of the initial construction activities in the Project Area. The Designated Biologist or Biological Monitor shall check the Temporary Exclusion Fence daily for fence-walking or pacing tortoise's and shall maintain/repair the fence when necessary. Temporary Exclusion Fencing shall be removed immediately upon completion of initial construction activities within a fenced area to minimize habitat fragmentation caused by fencing.
- 6.15. Desert Tortoise Clearance Surveys.** After the installation of the Temporary Exclusion Fencing (Conditions of Approval 6.13 and 6.14) and prior to any ground disturbance within the fenced areas, the Designated Biologist shall examine the area within the fence for desert tortoises and desert tortoise burrows. The survey shall provide 100 percent coverage of the area within the exclusion fence and the area immediately outside of the exclusion fence. The use of specialized equipment (e.g., fiber optics) may be necessary to thoroughly inspect all burrows. The Designated Biologist, using the methods described in the United State Fish and Wildlife Service's *Desert Tortoise Field Manual* (ATTACHMENT 3) shall capture, collect measurement and identification data, permanently mark, and relocate any desert tortoises found within the fenced area in accordance with Desert Tortoise Mortality Reduction and Relocation Plan (Condition of Approval 5.9).
- 6.16. Desert Tortoise Burrow Excavation.** All potential desert tortoise burrows identified during pre-activity surveys (Condition of Approval 6.10) and clearance surveys (Condition of Approval 6.15) located within Temporary Exclusion Fencing or which cannot be avoided in work areas without Temporary Exclusion Fence, shall be fully excavated by hand under the direct supervision of the Designated Biologist in accordance with the Desert Tortoise Mortality Reduction and Relocation Plan (Condition of Approval 5.9).
- 6.17. Desert Tortoise Relocation.** The Designated Biologist shall relocate any desert tortoise found within the Project Area that cannot be avoided. Relocation methods shall be in accordance with the Desert Tortoise Mortality Reduction and Relocation Plan (Condition of

Approval 5.9). If a desert tortoise is found above ground, it shall be released above ground in the shade. Any desert tortoise removed from a burrow shall be relocated to an unoccupied burrow of similar size. If no such burrows are available for relocating, an artificial burrow shall be constructed that is approximately the same size, depth, and orientation as the original burrow. Protocols found in the *Desert Tortoise Field Manual* (ATTACHMENT 3) shall be followed for the construction of artificial burrows. The location of all tortoise burrows, tortoises, and relocation sites shall be recorded using Global Positioning System (GPS) technology. All potential or known desert tortoise burrows present within the permanent exclusion fence will be collapsed after establishing that they are not currently occupied by desert tortoise, to prevent re-occupancy. Burrows within the gen-tie corridor or access routes shall be left intact if ground-disturbing activities can avoid the burrows.

- 6.18. Desert Tortoise Handling Procedures.** The Designated Biologist shall follow handling procedures described in the *Guidelines for Handling Desert Tortoises – Mojave Population and their Eggs*, contained in the *Desert Tortoise Field Manual* (see ATTACHMENT 3).
- 6.19. Relocated Desert Tortoise Monitoring.** The Designated Biologist shall monitor desert tortoise's that are relocated just outside of the Temporary Exclusion Fencing, 3 times daily for 2 weeks, along the entire length of the fence to prevent mortality due to exhaustion from "fence walking" or pacing. If air temperatures are anticipated to reach 109 degrees Fahrenheit or greater, the Designated Biologist shall survey the entire length of all exclusion fence one hour before reaching said temperature to prevent mortality due to overexposure. If the Designated Biologist encounters desert tortoise fence-walking during temperatures of 109 degrees Fahrenheit or greater, the Designated Biologist shall move the desert tortoise to an alternate location in accordance with Desert Tortoise Mortality Reduction and Relocation Plan (Condition of Approval 5.9).
- 6.20. Desert Tortoise Handling Records.** The Designated Biologist shall maintain a record of all desert tortoises handled and include the record in Quarterly and Annual Reports (Conditions of Approval 5.4 and 5.5). This information shall include for each tortoise: (1) the locations (narrative and maps) and dates of observation; (2) general condition and health, including injuries, state of healing and whether desert tortoise voided their bladders; (3) location moved from and location moved to (using GPS technology); (4) diagnostic markings (i.e., identification numbers or marked lateral scutes); (5) ambient temperature when handled and released; and (6) digital photograph of each handled desert tortoise as described below. Desert tortoise moved from within the Project Area shall be marked for future identification. An identification number using the acrylic paint/epoxy covering technique shall be placed on the fourth left costal scute as described in the *Guidelines for Handling Desert Tortoises – Mojave Population and their Eggs* contained in the *Desert Tortoise Field Manual* (ATTACHMENT 3). Digital photographs of the carapace, plastron and fourth costal scute shall be taken. Notching of scutes shall not occur.

**Mohave Ground Squirrel-Specific:**

**6.21. Mohave Ground Squirrel Live Trapping, Burrow Excavation, and Relocation.** Burrows suspected or known to be occupied by Mohave ground squirrel that cannot be avoided shall be live trapped, fully excavated by hand, or both. After the installation of the Temporary Exclusion Fencing for desert tortoise (Conditions of Approval 6.13 and 6.14) and prior to any ground disturbance within the fenced areas, the Designated Biologist shall proceed with live trapping and/or burrow excavation in accordance with the Mohave Ground Squirrel Mortality Reduction and Relocation Plan (Condition of Approval 5.10). The Designated Biologist shall fully excavate by hand any potential Mohave ground squirrel burrows present within the fenced Area within the Project Area. Any Mohave ground squirrels encountered during burrow excavation shall be allowed to escape out of harm's way to the adjacent natural habitat or relocated to the approved release site identified in the Mohave Ground Squirrel Mortality Reduction and Relocation Plan by the Designated Biologist. Any dormant, lactating female, or dependent juvenile Mohave ground squirrels encountered shall be collected by the Designated Biologist and relocated to an artificial burrow installed at the approved release site.

**6.22. Mohave Ground Squirrel Handling Records.** The Designated Biologist shall maintain a record of all MGS handled and include the record in Quarterly and Annual Reports (Conditions of Approval 5.4 and 5.5). This information shall include for each Mohave ground squirrel individual: (1) the location (narrative and maps) and date of observation; (2) general condition and health, including injuries and state of healing; (3) location moved from, and location moved to (using GPS technology); (4) diagnostic markings where applicable; (5) ambient temperature when handled and released; and (6) digital photograph of each Mohave ground squirrel handled.

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

To meet this requirement, the Permittee shall either purchase 333 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 7.2 below OR shall provide for both the permanent protection and management of 333 acres of Habitat Management (HM) lands pursuant to Condition of Approval 7.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.4 below.

Purchase of Covered Species credits AND/OR permanent protection and funding for perpetual management of HM lands must be complete before starting Covered Activities in each phase, or within 24 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 8 below for all uncompleted obligations.

Permittee has proposed a 120-acre site to be partially used as HM lands for Phase 1 of the Project construction (FIGURE 3). CDFW has conceptually agreed to the appropriateness of the site as it appears to be comprised of appropriate desert habitat with historic occurrences of Mohave ground squirrel and desert tortoise. Following recent surveys of the site, one active desert tortoise burrow and one MGS have been identified on the site. Prior to CDFW final approval of the 120-acre area as suitable HM lands to partially meet the HM lands requirements, CDFW shall conduct a site visit and review and approve in writing the information submitted pursuant to Condition of Approval 7.3 and the calculation and deposit of the management funds pursuant to Condition of Approval 7.4 below.

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

- 7.1.1. Land acquisition costs for HM lands identified in Condition of Approval 7.3 below, estimated at \$1,100.00/acre for 333 acres: **\$366,300**. Land acquisition costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements;
- 7.1.2. All other costs necessary to review and acquire the land in fee title and record a conservation easement as described in Condition of Approval 7.3.1 and 7.3.2 below]: **\$4,762.00**;
- 7.1.3. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 7.3.6 below, estimated at **\$250,527.52**;
- 7.1.4. Interim management period funding as described in Condition of Approval 7.3.7 below, estimated at **\$290,401.06**;
- 7.1.5. Long-term management funding as described in Condition of Approval 7.4 below, estimated at \$5,227.20/acre for 333 acres: **\$1,740,658.31**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 7.1.6. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 7.5, estimated at **\$12,000**.

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7.1.7. All costs associated with CDFW engaging an outside contractor to complete the mitigation tasks, including but not limited to acquisition, protection, and perpetual funding and management of the HM lands and restoration of temporarily disturbed habitat. These costs include but are not limited to the cost of issuing a request for proposals, transaction costs, contract administration costs, and costs associated with monitoring the contractor's work **\$2,293,586.88**.

**7.2. Covered Species Credits.** Permittee shall purchase 333 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 24 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 8 below. Prior to purchase of Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project.

AND/OR

**7.3. Bill of Sale and Payment Receipt or Credit Transfer Agreement.** Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt or an executed Credit Transfer Agreement prior to Project activities or within 24 months from issuance of this ITP if Security is provided.

AND/OR

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

7.3.1. Fee Title. Transfer fee title of the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended.

7.3.2. Conservation Easement. If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW elects not to be named as the grantee for the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies

with Civil Code sections 815-816, as amended, and Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e). Because the “doctrine of merger” could invalidate the conservation interest, under no circumstances can the fee title owner of the HM lands serve as grantee for the conservation easement.

- 7.3.3. HM Lands Approval. Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, documentation identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project’s impacts on Covered Species;
- 7.3.4. HM Lands Documentation. Provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents (please contact CDFW for document list). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;
- 7.3.5. Land Manager. Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified. The grantee for the conservation easement cannot serve as the interim or long-term manager without the express written authorization of CDFW in its sole discretion.
- 7.3.6. Start-up Activities. Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=137386&inline>) (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;
- 7.3.7. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the

interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, vegetation and invasive species management, and Covered Species surveys.

Permittee shall either (1) provide Security to CDFW for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense, (2) establish an escrow account with written instructions approved in advance in writing by CDFW to pay the land manager annually in advance, or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager.

- 7.4. Endowment Fund.** If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 7.3, Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that is permanently restricted to paying the costs of long-term management and stewardship of the mitigation property for which the funds were set aside, which costs include the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with this ITP, the conservation easement, and the management plan required by Condition of Approval 7.3.6. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

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

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

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

Within thirty days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(3) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(3).

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

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

7.4.3. Transfer Long-term Endowment Funds. Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above.

7.4.4. Management of the Endowment. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

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

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

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

8. **Security:** The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 7 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

8.1. Security Amount. The Security shall be in the amount of **\$2,293,586.88** or in the amount

identified in 7.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 7.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.

- 8.2. Security Form.** The Security shall be in the form of an irrevocable letter of credit (see ATTACHMENT 4) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.
- 8.3. Security Timeline.** The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.
- 8.4. Security Holder.** The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 8.5. Security Transmittal.** Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see ATTACHMENT 5) or by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other.
- 8.6. Security Drawing.** The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.
- 8.7. Security Release.** The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:
  - Copy of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer Agreement for the purchase of Covered Species credits; and
  - Timely submission of all required reports.

AND/OR (for HM lands acquisition)

- 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 24 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM

lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

**IX. Amendment:**

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

**X. Stop-Work Order:**

If CDFW determines the Permittee has violated any term or condition of this ITP or has engaged in unlawful take, CDFW may issue Permittee a written stop-work order instructing the Permittee to suspend any Covered Activity for an initial period of up to 30 days or risk suspension or revocation of this ITP. CDFW can issue a stop-work order to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species, regardless of whether that species is a Covered Species under this ITP. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 30 additional days.

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

**XI. Compliance with Other Laws:**

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

**XII. Notices:**

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

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R&L CAPITAL, INC.  
RB INYOKERN SOLAR PROJECT

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

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email or registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2020-001-04) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Julie A. Vance, Regional Manager  
California Department of Fish and Wildlife  
1234 East Shaw Avenue  
Fresno, California 93710  
Telephone (559) 243-4005  
[R4CESA@wildlife.ca.gov](mailto:R4CESA@wildlife.ca.gov)

and a copy to:

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

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

Carrie Swanberg  
California Department of Fish and Wildlife  
1234 East Shaw Avenue  
Fresno, California 93710  
Telephone (559) 243-4005  
[Carrie.Swanberg@wildlife.ca.gov](mailto:Carrie.Swanberg@wildlife.ca.gov)

**XIII. Compliance with the 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, Kern

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County Planning and Natural Resources Department. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Conditional Use Permit Case No. 23, Map No. 47; Conditional Use Permit Case No. 27, Map No. 47; Specific Plan Amendment Case No. 4, Map No. 47 Environmental Impact Report (EIR), (SCH No. 2017071020) dated October 2020 that the Kern County Planning and Natural Resources Department certified for Conditional Use Permit Case No. 23, Map No. 47; Conditional Use Permit Case No. 27, Map No. 47; Specific Plan Amendment Case No. 4, Map No. 47 EIR on March 24, 2021. At the time the lead agency certified the EIR and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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

#### **XIV. Findings Pursuant to CESA:**

These findings are intended to document CDFW's compliance with the specific findings requirements set forth in CESA and related regulations. (Fish & G. Code § 2081, subs. (b)-(c); Cal. Code Regs., tit. 14, §§ 783.4, subds, (a)-(b), 783.5, subd. (c)(2).)

CDFW finds based on substantial evidence in the ITP application, Conditional Use Permit Case No. 23, Map No. 47; Conditional Use Permit Case No. 27, Map No. 47; Specific Plan Amendment Case No. 4, Map No. 47 EIR, consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Quarterly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the existing land modifications and disturbance within 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

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adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 333 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

**XV. Attachments:**

FIGURE 1	Project Vicinity Map
FIGURE 2	Project Area Map
FIGURE 3	Proposed HM Lands
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Biologist Resume Form
ATTACHMENT 3	Desert Tortoise (Mojave Population) Field Manual
ATTACHMENT 4	Letter of Credit Form
ATTACHMENT 5	Mitigation Payment Transmittal Form

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

on 7/22/2022

DocuSigned by:  
*Bob Stafford*  
5343A684FF02469...

FOR Julie A. Vance, Regional Manager  
Central 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:  709BEFA3DC8E414... Date: 7/22/2022

Printed Name: Robbie Barker Title: ceo

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**Attachment 1**

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

**INCIDENTAL TAKE PERMIT NO. 2081-2020-001-04**

**PERMITTEE: R&L Capital, Inc.**

**PROJECT: RB Inyokern Solar Project**

**PURPOSE OF THE MMRP**

The purpose of the MMRP is to ensure that the impact minimization and mitigation measures required by the Department of Fish and Wildlife (CDFW) for the above-referenced Project are properly implemented, and thereby to ensure compliance with section 2081(b) of the Fish and Game Code and section 21081.6 of the Public Resources Code. A table summarizing the mitigation measures required by CDFW is attached. This table is a tool for use in monitoring and reporting on implementation of mitigation measures, but the descriptions in the table do not supersede the mitigation measures set forth in the California Incidental Take Permit (ITP) and in attachments to the ITP, and the omission of a permit requirement from the attached table does not relieve the Permittee of the obligation to ensure the requirement is performed.

**OBLIGATIONS OF PERMITTEE**

Mitigation measures must be implemented within the time periods indicated in the table that appears below. Permittee has the primary responsibility for monitoring compliance with all mitigation measures and for reporting to CDFW on the progress in implementing those measures. These monitoring and reporting requirements are set forth in the ITP itself and are summarized at the front of the attached table.

**VERIFICATION OF COMPLIANCE, EFFECTIVENESS**

CDFW may, at its sole discretion, verify compliance with any mitigation measure or independently assess the effectiveness of any mitigation measure.

## **TABLE OF MITIGATION MEASURES**

The following items are identified for each mitigation measure: Mitigation Measure, ITP Condition of Approval (COA) Source, Implementation Schedule, Responsible Party, and Status/Date/Initials. The Mitigation Measure column summarizes the mitigation requirements of the ITP. The Source column identifies the ITP COA that sets forth the mitigation measure. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure. The Status/Date/Initials column shall be completed by the Permittee during preparation of each Status Report and the Final Mitigation Report and must identify the implementation status of each mitigation measure, the date that status was determined, and the initials of the person determining the status.

	<b>Mitigation Measure</b>	<b>ITP COA/ Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
1	<p><u>Designated Representative</u>. 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.</p>	4.1	Before the start of Covered Activities	Permittee	
2	<p><u>Designated Biologist(s) and Biological Monitor(s)</u>. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) and Biological Monitor(s) using the Biologist Resume Form (ATTACHMENT 2) or another format containing the same information at least 30 days before starting Covered Activities. The Biological Monitor may assist the Designated Biologist in compliance monitoring under the direct supervision of the Designated Biologist.</p> <p>Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, trapping, handling, and relocating of the Covered Species. Permittee shall also ensure that the Designated Biologist is experienced in the excavation of burrows actively used by the Covered Species and in the monitoring of construction activities under an ITP for the Covered Species. Permittee shall ensure that the Biological Monitor is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist and Biological Monitor 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 and Biological Monitor in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist or Biological Monitor must be changed.</p>	4.2	Before the start of Covered Activities	Permittee	
3	<p><u>Designated Biologist and Biological Monitor Authority</u>. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist and Biological Monitor shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Site and otherwise facilitate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.</p>	4.3	During covered activities	Permittee and Designated Biologist	

	ITP COA/ Source	Implementation Schedule	Responsible Party	Status / Date / Initials
<p>4     <u>Education Program</u>. 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 prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.</p>	4.4	Before the start of Covered Activities and ongoing	Permittee and Designated Biologist	
<p>5     <u>Construction Monitoring Documentation</u>. The Designated Biologist and Biological Monitor shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project site upon request by CDFW.</p>	4.5	During Covered Activities	Designated Biologist	
<p>6     <u>Trash Abatement</u>. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed, daily when possible but at least once a week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.</p>	4.6	Before the start of Covered Activities and ongoing	Permittee	
<p>7     <u>Dust Control</u>. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.</p>	4.7	During Covered Activities	Permittee	
<p>8     <u>Erosion Control Materials</u>. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting, photodegradable mesh (erosion control matting) or similar material. Permittee shall only deploy erosion control mats, blankets, or coir rolls that consist of natural-fiber, biodegradable materials. Rock used for road improvement or other purposes shall be no greater than 4 inches in diameter unless the interstitial spaces are filled with 2-inch or smaller diameter rock to establish a passable surface for adult and juvenile desert tortoise.</p>	4.8	During Covered Activities	Permittee	
<p>9     <u>Dogs</u>. Permittee shall prohibit domestic and working dogs from the Project Area and site access routes during Covered Activities, except those in the possession of authorized security personnel or federal, state, or local law enforcement officials.</p>	4.9	During Covered Activities	Permittee	

	<b>Mitigation Measure</b>	<b>ITP COA/ Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
10	<u>Wildfire Avoidance.</u> Permittee or Permittee's contractors shall minimize the potential for human-caused wildfires by carrying water or fire extinguishers and shovels in all Project-related vehicles and equipment. The use of shields, protective mats, or use of other fire preventative methods shall be used during grinding and welding to minimize the potential for fire. Personnel shall be trained regarding the fire hazard for wildlife as part of the worker education program described in Condition of Approval 4.4.	4.10	During Covered Activities	Permittee	
11	<u>Delineation of Property Boundaries.</u> Permittee shall clearly delineate the boundaries of each area in active construction within the Project Area (Work Area), where the Covered Activities will occur, with fencing, stakes, or flags before starting Covered Activities. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged Work Area. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in each Work Area	4.11	Before the start of Covered Activities and ongoing	Permittee	
12	<u>Project Access.</u> Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.	4.12	During Covered Activities	Permittee	
13	<u>Staging Areas.</u> Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 4.12 of this ITP.	4.13	During Covered Activities	Permittee	
14	<u>Hazardous Waste.</u> 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.  Permittee shall ensure that all fueling, or maintenance of vehicles or equipment shall occur within established O&M buildings or designated staging areas and shall not occur within 100 feet of Covered Species burrows.	4.14	During Covered Activities	Permittee	
15	<u>CDFW Access.</u> Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.	4.15	During Covered Activities	Permittee	

Mitigation Measure		ITP COA/ Source	Implementation Schedule	Responsible Party	Status / Date / Initials
16	<u>Refuse Removal</u> . Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes. Following decommissioning activities, the above- and below-ground equipment removed shall be disposed of or recycled at an appropriate, legal off-site facility.	4.16	Following Covered Activities	Permittee	
17	<u>Lighting</u> . All temporary and permanent outdoor lighting shall be aimed at the ground, shielded to prevent light from shining skyward, of minimum wattage necessary for safety and activity, and of motion-sensor type to prevent continuous nighttime lighting.	4.17	During Covered Activities	Permittee	
18	<u>Rodenticide Prohibition</u> . Permittee shall prohibit the use of rodenticides in the Project Area.	4.18	During Covered Activities	Permittee	
19	<u>Herbicide Use</u> . Permittee shall limit herbicide use to treat and control invasive plant species only and shall only apply herbicide after hand or mechanical efforts have been ineffective. Permittees shall ensure that all application of herbicide is done by a licensed applicator in accordance with all applicable federal, State, and local laws and regulations.	4.19	During Covered Activities	Permittee	
20	<u>Notification Before Commencement</u> . The Designated Representative shall notify CDFW 14 calendar days before starting each period of Covered Activities (construction, O&M activities, and decommissioning) and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.	5.1	Before the start of initial construction, O&M, and decommissioning Covered Activities	Permittee	
21	<u>Notification of Non-compliance</u> . The Designated Representative or Designated Biologist shall immediately notify CDFW via e-mail if the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative or Designated Biologist shall follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.	5.2	During Covered Activities	Permittee	

	<b>Mitigation Measure</b>	<b>ITP COA/ Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
22	<p><u>Compliance Monitoring.</u> The Designated Biologist shall be on-site daily, for the duration of the day, when Covered Activities occur during the entire construction and decommissioning periods and on site daily, for the duration of the day, when ground- or vegetation-disturbing Covered Activities occur during the O&amp;M period, unless exclusion fencing has been installed and properly maintained, in accordance with Conditions of Approval 6.13 and 6.14 below. Ground- and vegetation-disturbing activities include any action that modifies the existing ground surface. Examples include the use of string trimmers, mowing, application of herbicide, washing of solar panels, trenching, etc. Operation of vehicles on established roads that have been properly maintained is not considered ground- or vegetation-disturbing activity. The Designated Biologist or Designated Monitor shall otherwise be on-site during the construction and decommissioning periods a minimum of once every 14 days during periods of inactivity and after clearing, grubbing, and grading are completed. The Designated Biologist shall conduct compliance inspections to:</p> <ol style="list-style-type: none"> <li>(1) minimize incidental take of the Covered Species;</li> <li>(2) prevent unlawful take of species;</li> <li>(3) check for compliance with all measures of this ITP;</li> <li>(4) check all exclusion zones;</li> <li>(5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area;</li> <li>(6) maintain an on-going account of the number of acres that are permanently and temporarily disturbed by the Project; and</li> <li>(7) document the Covered Activities that occurred.</li> </ol> <p>The Designated Representative, Designated Biologist, or Biological Monitor 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.</p>	5.3	During Covered Activities	Designated Biologist	

	ITP COA/ Source	Implementation Schedule	Responsible Party	Status / Date / Initials
23 <u>Quarterly Compliance Report.</u> 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 during the construction and decommissioning periods, and into an Annual Compliance Report (Condition of Approval 5.5) during the O&M period 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 via e-mail to CDFW's Regional Representative, Regional Office, and Headquarters CESA Program no later than the 15 <sup>th</sup> day of the month following the reporting period. At the time of this ITP's approval, the CDFW Regional Representative is Carrie Swanberg ( <a href="mailto:carrie.swanberg@wildlife.ca.gov">carrie.swanberg@wildlife.ca.gov</a> ), the Regional Office e-mail is R4CESA@wildlife.ca.gov, and the Headquarters CESA Program e-mail 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.	5.4	During Covered Activities	Permittee	
24 <u>Annual Status Report.</u> 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 record the Education Program training sessions provided over the reporting year; (3) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (4) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (5) a summary of findings from all pre-activity surveys conducted, including but not limited to, the number of times a Covered Species or their burrow was encountered, location, if avoidance was achieved, and if not, what measures were implemented; (6) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (7) all available information about Project-related incidental take of the Covered Species; (8) a written and mapped 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 (9) information about other Project impacts on the Covered Species. The ASR shall be submitted via e-mail to the entities identified in Condition of Approval 5.4 above.	5.5	During Covered Activities	Permittee	
25 <u>CNDDDB Observations.</u> 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.	5.6	During Covered Activities	Designated Biologist	

Mitigation Measure		ITP COA/ Source	Implementation Schedule	Responsible Party	Status / Date / Initials
26	<u>Final Mitigation Report</u> . 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.	5.7	Following decommissioning Covered Activities	Permittee and Designated Biologist	
27	<u>As-Built Development Plans</u> . No later than 45 days after completion of all initial construction activities, Permittee shall submit as-built development plans. The as-built plan sheets shall delineate and quantify the extent of permanent Project features, including roads, utilities and all other facilities and features associated with the Project. The as-built plans shall include an estimate of the permanent disturbance during construction by highlighting the estimated disturbance areas on the as-built plan sheets. The plan scale shall be 1":250' (one inch to 250 feet) or smaller. As-built plans shall be derived from survey data acquired after Project construction has been completed and shall be verified by the Designated Biologist. The as-built plans shall be submitted in electronic format (e-mail or other available document repository/share site) to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.	5.8	Following initial construction Covered Activities		
28	<u>Desert Tortoise Mortality Reduction and Relocation Plan</u> . Permittee shall provide CDFW with a Desert Tortoise Mortality Reduction and Relocation Plan, prepared by the Designated Biologist, for CDFW review and written approval prior to the start of Covered Activities. The relocation plan shall include at a minimum: (1) avoidance and minimization measures including an option to work within established protective buffer of a burrow; (2) the proposed capture methods; (3) implementation timing; (4) burrow excavation methods (Condition of Approval 6.16 below); (5) measures to be taken when a nest is encountered; (6) release methods (i.e., soft release, hard release, or some other method); (7) artificial burrow design and installation methods; (8) a map and legal description of the proposed receiver sites; (9) a comparison of the proposed receiver sites and source sites soil, plant communities, and topography to demonstrate that the site is suitable; (10) a description of the existing desert tortoise (pre-Project) status on the proposed receiver site (including density and distribution); (11) a proposed one-year monitoring plan of the receiver site; and (12) identification of a wildlife rehabilitation center or veterinary facility where injured animals will be cared for. Once the Desert Tortoise Mortality Reduction and Relocation Plan is approved by CDFW, it may be used for all desert tortoise relocation activities for the duration of this ITP. Any proposed changes to the CDFW-approved Desert Tortoise Mortality Reduction and Relocation Plan shall be submitted in writing to CDFW and approved by CDFW in writing prior to implementation of any proposed modifications. The Draft Desert Tortoise Mortality Reduction and Relocation Plan shall be submitted via e-mail at least 30 days before starting Covered Activities to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.	5.9	Before the start of Covered Activities	Permittee and Designated Biologist	

	<b>Mitigation Measure</b>	<b>ITP COA/ Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
29	<p><u>Mohave Ground Squirrel Mortality Reduction and Relocation Plan</u>. Permittee shall submit a Mohave Ground Squirrel (MGS) Mortality Reduction and Relocation Plan, prepared by the Designated Biologist, for CDFW review and written approval prior to the start of Covered Activities. The MGS Mortality Reduction and Relocation Plan shall include, but not be limited to: (1) avoidance and minimization measures including option to work within an established protective buffer of a burrow; (2) trapping methodology (Condition of Approval 6.21 below); (3) implementation timing; (4) burrow identification and excavation methods (Condition of Approval 6.21 below); (5) measures to be taken when an active burrow and burrow with young is encountered; (6) release methods (i.e., soft release, hard release, or some other method); (7) artificial burrow design and installation methods; (8) a map and legal description of the proposed receiver sites; (9) a comparison of the proposed receiver sites and source sites soil, plant communities, and topography to demonstrate that the site is suitable; (10) a description of existing MGS (pre-Project) status on the proposed receiver site (including density and distribution); (11) a proposed one-year monitoring plan of the receiver site; and (12) identification of a wildlife rehabilitation center or veterinary facility where injured animals will be cared for. The MGS Mortality Reduction and Relocation Plan shall restrict MGS squirrel relocation to only after young of the year are observed above ground and during the main activity period for the species (April 1 to September 1). The Permittees may request a 7-day extension to the relocation period if daytime temperatures (sunrise to sunset) are predicted by the National Weather Service to remain within the temperature criterion of 68 – 86 degrees Fahrenheit with no prediction of inclement weather (e.g., a predicted 40 percent or greater chance of precipitation). Subsequent 7-day extensions (through no later than November 1) may be requested and approved by CDFW so long as weather conditions are predicted by the National Weather Service to remain within the above temperature criterion. The relocation extension request(s) shall be approved in advance and in writing by CDFW (email will suffice). Once the MGS Mortality Reduction and Relocation Plan is approved by CDFW, it may be used for all MGS mortality reduction and relocation activities for the duration of this ITP. Any proposed changes to the MGS Mortality Reduction and Relocation Plan shall be submitted in writing to CDFW and approved by CDFW in writing prior to implementation of any proposed modifications. The Draft MGS Mortality Reduction and Relocation Plan shall be submitted via e-mail at least 30 days before starting Covered Activities to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.</p>	5.10	Before the start of Covered Activities	Permittee and Designated Biologist	
30	<p><u>Raven Management Plan</u>. Permittee shall prepare a Project-specific Raven Management Plan to minimize the potential for ravens to occupy the Project Area and for raven predation on desert tortoise. The plan shall address the construction, O&amp;M, and decommissioning phases and shall include at a minimum: (1) baseline survey and results; (2) a plan for reduction of food, water, sheltering and nesting sites; (3) an evaluation of effectiveness and adaptive management strategies; and (4) an education and outreach program. The Raven Management Plan shall be submitted via e-mail for written approval at least 30 days before starting Covered Activities to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.</p>	5.11	Before the start of Covered Activities	Permittee	

Mitigation Measure		ITP COA/ Source	Implementation Schedule	Responsible Party	Status / Date / Initials
31	<u>Landscape Revegetation and Restoration Plan</u> . Permittee shall provide the Landscape Revegetation and Restoration Plan to be used following initial construction activities to CDFW at least 14 days prior to beginning Covered Activities for written approval. A separate Landscape and Revegetation Plan shall be prepared for post-decommissioning stabilization and restoration and shall be submitted to CDFW for written approval at least six (6) months prior to beginning the decommissioning activities.	5.12	Before the start of initial construction and decommissioning Covered Activities	Permittee	
32	<u>Decommissioning Plan</u> . Permittee shall prepare a Decommissioning Plan detailing the methods, equipment, process, and schedule of decommissioning of the Project, for CDFW review and approval prior to the start of decommissioning Covered Activities. Mass grading of the Project site shall not occur, and all ground disturbance shall be limited to that required for the removal of Project infrastructure. The Decommissioning Plan shall include but not be limited to: (1) a detailed step-by-step written description detailing how the decommissioning activity will occur and what equipment will be used; (2) a set of maps and/or figures that identify the actions provided in the written description; (3) an engineered design grading plan that minimizes ground disturbance of the site; (4) a plan detailing how decommissioning Covered Activities will comply with this ITP; and (5) the Landscape and Revegetation Plan identified in Condition of Approval 5.12. The Draft Decommissioning Plan shall be submitted via e-mail at least 6 months before starting decommissioning Covered Activities to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.	5.13	Before the start of decommissioning Covered Activities	Permittee	
33	<u>Notification of Take or Injury</u> . 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 Office at (559) 243-4005. 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. The written report shall be submitted via e-mail to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.	5.14	During Covered Activities	Permittee and Designated Biologist	
34	<u>Designated Biologist on Site</u> . The Designated Biologist shall be on site during all activities that may result in the take of Covered Species and in accordance with Condition of Approval 5.3 above.	6.1	During Covered Activities	Designated Biologist	

Mitigation Measure		ITP COA/ Source	Implementation Schedule	Responsible Party	Status / Date / Initials
35	<p><u>Work Hours.</u> Permittee shall conduct all Covered Activities during daylight hours (sunrise to sunset) except for the following activities as necessary: (1) planned and unplanned maintenance activities, repair and replacement, wiring, and testing that must occur after dark to ensure PV arrays are not energized; (2) interior use of the O&amp;M facility; (3) unanticipated emergencies (in accordance with Section 21060.3 of the Public Resources Code), including forced outages and non-routine maintenance or repair requiring immediate attention; or (4) security patrols.</p> <p>Permittee shall ensure: (1) that any vehicle traffic necessary during nighttime hours associated with these activities are conducted with extra caution to minimize impacts to Covered Species; (2) the speed limit during allowable night work is reduced to 10 mph for non-emergency activities; and (3) that CDFW is notified as soon as possible and no later than 24 hours after commencement of any emergency nighttime O&amp;M activities, except those occurring inside the O&amp;M facility.</p>	6.2	During Covered Activities	Permittee	
36	<p><u>Delineation of Ingress and Egress Routes.</u> Permittee shall flag or otherwise clearly mark all access roads in the field from the paved road and vehicle operation shall be limited to these designated ingress and egress routes.</p>	6.3	Before the start of Covered Activities and ongoing	Permittee	
37	<p><u>Vehicle Parking.</u> Permittee shall not allow vehicles to park on top of Covered Species burrows, except within designated staging areas for which burrows have been excavated per Conditions of Approval 6.16 and 6.21. Vehicles left overnight shall be located at least 50 feet from of all Covered Species dens or burrows.</p>	6.4	During Covered Activities	Permittee	
38	<p><u>Vehicle and Equipment Inspection.</u> Workers shall inspect for Covered Species under vehicles and equipment every time before the vehicles and equipment are moved. If a Covered Species is present, the worker shall notify the Designated Biologist and wait for the Covered Species to move unimpeded to a safe location. Alternatively, the Designated Biologist shall move the Covered Species out of harm's way outside of the Project Area and in compliance with the approved Covered Species Mortality Reduction and Relocation Plans required in Conditions of Approval 5.9 and 5.10 above.</p>	6.5	During Covered Activities	Permittee	
39	<p><u>Pipe and Materials Inspection.</u> Workers shall thoroughly inspect all construction pipe, culverts, or other similar structures with a diameter of one inch or greater that are stored for one or more overnight periods for the Covered Species before the structure is subsequently moved, buried, or capped. If during inspection, a Covered Species is discovered inside a pipe, culvert, or similar structure, workers shall notify the Designated Biologist and wait for the Covered Species to move unimpeded to a safe location before moving and utilizing the structure. Alternatively, the Designated Biologist shall move the Covered Species out of harm's way outside of the Project Area and in compliance with the approved Covered Species Mortality Reduction and Relocation Plans required in Conditions of Approval 5.9 and 5.10 above.</p>	6.6	During Covered Activities	Permittee	

Mitigation Measure		ITP COA/ Source	Implementation Schedule	Responsible Party	Status / Date / Initials
40	<u>Excavation Inspection.</u> The Designated Biologist or Biological Monitor shall inspect all trenches, open holes, sumps, and other excavations within the Project Area at the beginning and end of each day for trapped animals. All trenches, holes, sumps, and other excavations with sidewalls steeper than a 1:1 (45 degree) slope shall be covered when workers or equipment are not actively working in the excavation, which includes cessation of work overnight, or shall have an escape ramp of earth or a non-slip material with a less than 1:1 (45 degree) slope. To prevent inadvertent entrapment of the Covered Species, the Designated Biologist or Biological Monitor shall oversee the covering of all such excavations with barrier material (such as hardware cloth) at the close of each working day such that animals are unable to dig or squeeze under the barrier and become entrapped. The outer two feet of excavation cover shall conform to solid ground so that gaps do not occur between the cover and the ground and secured with soil staples or similar means to prevent gaps. Each morning, end of each day (including weekends and any other non-work days), and immediately before trenches, holes, sumps, or other excavations are back filled, the Designated Biologist or Biological Monitor shall thoroughly inspect them for Covered Species. Designated Biologist or Biological Monitor shall also thoroughly inspect any trenches, holes, sumps, or other excavations that are covered long term at the beginning of each working day to ensure inadvertent entrapment has not occurred and shall make any necessary repairs to the cover. If any worker discovers a Covered Species has become trapped, Permittee shall cease all Covered Activities in the vicinity and notify the Designated Biologist immediately. Project workers and the Designated Biologist shall allow the Covered Species to escape unimpeded if possible before Covered Activities are allowed to continue. Alternatively, the Designated Biologist shall move the Covered Species out of harm's way outside of the Project Area and in compliance with the approved Covered Species Mortality Reduction and Relocation Plans required in Conditions of Approval 5.9 and 5.10 above.	6.7	During Covered Activities	Designated Biologist and Permittee	
41	<u>Covered Species Injury.</u> If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to the CDFW approved wildlife rehabilitation or veterinary facility identified in the Covered Species Mortality Reduction and Relocation Plans required in Conditions of Approval 5.9 and 5.10. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species according to Condition of Approval 5.14.	6.8	During Covered Activities	Designated Biologist and Permittee	
42	<u>Covered Species Observations.</u> All workers shall inform the Designated Biologist if the Covered Species is seen within or near the Project Area during implementation of any Covered Activity. All work in the vicinity of the Covered Species, which could harm the animal, shall cease until the Covered Species moves from the Project Area of its own accord or the Designated Biologist moves the Covered Species out of harm's way outside of the Project Area and in compliance with the approved Covered Species Mortality Reduction and Relocation Plans required in Conditions of Approval 5.9 and 5.10 above.	6.9	During Covered Activities	Permittee	

	ITP COA/ Source	Implementation Schedule	Responsible Party	Status / Date / Initials
<p>43 <u>Covered Species Pre-Activity Surveys and Burrow Mapping.</u> The Designated Biologist shall perform pre-activity surveys for Covered Species no more than 14 calendar days prior to beginning Covered Activities in a Work Area, including access roads, within the Project Area. The pre-activity surveys shall cover the Work Area and 50 feet beyond the limits of the Work Area to identify Covered Species and flag all potential burrows used by Covered Species, whether they appear active or inactive. Permittee shall provide the pre-activity surveys results and burrow map in a written report via email to CDFW's Regional Representative and Regional Office identified in Condition of Approval 5.4 above at least 5 days prior to beginning Covered Activities in the Project Area. The Pre-Activity Survey report shall include, but not be limited to, methodology, date and time of survey, results, discussion and map of the locations of each potential Covered Species burrow, and an estimated date of Covered Species relocation plans, if any, as described in Conditions of Approval 5.9 and 5.10.</p>	6.10	Before the start of Covered Activities and ongoing	Permittee and Designated Biologist	
<p>44 <u>Covered Species Burrow Avoidance.</u> The Designated Biologist shall establish a no-disturbance buffer of 50 feet or greater around suspected or known to be occupied Covered Species burrows in the Work Area within Project Area. If the 50-foot no-disturbance buffer cannot be established, an approved reduced buffer shall be imposed according to the Covered Species Mortality Reduction and Relocation Plans (Conditions of Approval 5.9 and 5.10). If an approved buffer cannot be established, temporary exclusion fencing installation, live trapping, relocation, and burrow excavation shall occur in accordance with the <i>Desert Tortoise-Specific</i> and <i>Mohave Ground Squirrel-Specific</i> Conditions of Approval below.</p>	6.11	Before the start of Covered Activities and ongoing	Permittee and Designated Biologist	
<p>45 <u>Covered Species Habitat Fragmentation Avoidance.</u> Permanent security fencing shall be designed and installed to allow for the movement of Covered Species into and through the Project area. Security fencing shall be designed, installed, and maintained with a minimum 4-inch gap between the final grade and the bottom of the security fencing. The Fencing Design Plan shall be submitted in writing to CDFW and approved by CDFW in writing prior to installation. The Fencing Design Plan shall be submitted via email at least 30 days prior to installation to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.</p>	6.12	Before the installation of permanent perimeter security fencing	Permittee	

	Mitigation Measure	ITP COA/ Source	Implementation Schedule	Responsible Party	Status / Date / Initials
46	<p><u>Desert Tortoise Temporary Exclusion Fencing.</u> Permittee shall install temporary desert tortoise-proof exclusion fencing (Temporary Exclusion Fencing) around the perimeter of the Project Area immediately following surveys to flag all potential burrows in accordance with Condition of Approval 6.10 above and immediately prior to commencing burrow excavation in accordance with Condition of Approval 6.16 below. Temporary Exclusion Fencing may be installed around segments of work areas within the Project Area and may be installed and removed in a sequential manner along the gen-tie corridor to minimize fragmentation of habitat. Permittee shall submit an Exclusion Fencing Plan to CDFW for review and written approval. The Exclusion Fencing Plan shall include, but not be limited to, the fencing material, design, installation methods, and installation locations prior to installing fencing. Temporary Exclusion Fencing may be designed and installed in conjunction with the design and installation of permanent Project security fencing. Prior to the installation of the Temporary Exclusion Fencing, shrubs shall be removed by cutting/clipping them at the base under the supervision of Designated Biologist with the use of hand tools to encourage Covered Species to move out of the area. Temporary Exclusion Fencing shall be removed immediately upon completion of Initial Construction within the fenced area to minimize habitat fragmentation caused by fencing. The Exclusion Fencing Plan shall be submitted via e-mail at least 14 days before starting Covered Activities to the Regional Representative and Regional Office identified in Condition of Approval 5.4 above.</p>	6.13	Before the start of Covered Activities	Permittee	
47	<p><u>Desert Tortoise Temporary Exclusion Fencing Installation and Removal.</u> The Designated Biologist shall accompany the exclusion fence installation, repair, and removal crews to ensure that Covered Species are not killed or injured during fence installation, repair, and removal. The Designated Biologist shall ensure all burrow entrances are avoided (i.e., not covered) by fencing material during fence installation. The Designated Biologist shall ensure the Temporary Exclusion Fencing is sufficiently supported to maintain its integrity under all conditions such as wind and heavy rain for the duration of the initial construction activities in the Project Area. The Designated Biologist or Biological Monitor shall check the Temporary Exclusion Fence daily for fence-walking or pacing tortoise's and shall maintain/repair the fence when necessary. Temporary Exclusion Fencing shall be removed immediately upon completion of initial construction activities within a fenced area to minimize habitat fragmentation caused by fencing.</p>	6.14	Before the start of Covered Activities, ongoing, and following initial construction Covered Activities	Permittee and Designated Biologist	
48	<p><u>Desert Tortoise Clearance Surveys.</u> After the installation of the Temporary Exclusion Fencing (Conditions of Approval 6.13 and 6.14) and prior to any ground disturbance within the fenced areas, the Designated Biologist shall examine the area within the fence for desert tortoises and desert tortoise burrows. The survey shall provide 100 percent coverage of the area within the exclusion fence and the area immediately outside of the exclusion fence. The use of specialized equipment (e.g., fiber optics) may be necessary to thoroughly inspect all burrows. The Designated Biologist, using the methods described in the United State Fish and Wildlife Service's <i>Desert Tortoise Field Manual</i> (ATTACHMENT 3) shall capture, collect measurement and identification data, permanently mark, and relocate any desert tortoises found within the fenced area in accordance with Desert Tortoise Mortality Reduction and Relocation Plan (Condition of Approval 5.9).</p>	6.15	Before the start of Covered Activities and ongoing	Designated Biologist	

Mitigation Measure		ITP COA/ Source	Implementation Schedule	Responsible Party	Status / Date / Initials
49	<u>Desert Tortoise Burrow Excavation</u> . All potential desert tortoise burrows identified during pre-activity surveys (Condition of Approval 6.10) and clearance surveys (Condition of Approval 6.15) located within Temporary Exclusion Fencing or which cannot be avoided in work areas without Temporary Exclusion Fence, shall be fully excavated by hand under the direct supervision of the Designated Biologist in accordance with the Desert Tortoise Mortality Reduction and Relocation Plan (Condition of Approval 5.9).	6.16	Before the start of Covered Activities and ongoing	Designated Biologist	
50	<u>Desert Tortoise Relocation</u> . The Designated Biologist shall relocate any desert tortoise found within the Project Area that cannot be avoided. Relocation methods shall be in accordance with the Desert Tortoise Mortality Reduction and Relocation Plan (Condition of Approval 5.9). If a desert tortoise is found above ground, it shall be released above ground in the shade. Any desert tortoise removed from a burrow shall be relocated to an unoccupied burrow of similar size. If no such burrows are available for relocating, an artificial burrow shall be constructed that is approximately the same size, depth, and orientation as the original burrow. Protocols found in the <i>Desert Tortoise Field Manual</i> (ATTACHMENT 3) shall be followed for the construction of artificial burrows. The location of all tortoise burrows, tortoises, and relocation sites shall be recorded using Global Positioning System (GPS) technology. All potential or known desert tortoise burrows present within the permanent exclusion fence will be collapsed after establishing that they are not currently occupied by desert tortoise, to prevent re-occupancy. Burrows within the gen-tie corridor or access routes shall be left intact if ground-disturbing activities can avoid the burrows.	6.17	Before the start of Covered Activities and ongoing	Designated Biologist	
51	<u>Relocated Desert Tortoise Monitoring</u> . The Designated Biologist shall monitor desert tortoise's that are relocated just outside of the Temporary Exclusion Fencing, 3 times daily for 2 weeks, along the entire length of the fence to prevent mortality due to exhaustion from "fence walking" or pacing. If air temperatures are anticipated to reach 109 degrees Fahrenheit or greater, the Designated Biologist shall survey the entire length of all exclusion fence one hour before reaching said temperature to prevent mortality due to overexposure. If the Designated Biologist encounters desert tortoise fence-walking during temperatures of 109 degrees Fahrenheit or greater, the Designated Biologist shall move the desert tortoise to an alternate location in accordance with Desert Tortoise Mortality Reduction and Relocation Plan (Condition of Approval 5.9).	6.19	Before the start of Covered Activities and ongoing	Designated Biologist	

	ITP COA/ Source	Implementation Schedule	Responsible Party	Status / Date / Initials
52 <u>Desert Tortoise Handling Records.</u> The Designated Biologist shall maintain a record of all desert tortoises handled and include the record in Quarterly and Annual Reports (Conditions of Approval 5.4 and 5.5). This information shall include for each tortoise: (1) the locations (narrative and maps) and dates of observation; (2) general condition and health, including injuries, state of healing and whether desert tortoise voided their bladders; (3) location moved from and location moved to (using GPS technology); (4) diagnostic markings (i.e., identification numbers or marked lateral scutes); (5) ambient temperature when handled and released; and (6) digital photograph of each handled desert tortoise as described below. Desert tortoise moved from within the Project Area shall be marked for future identification. An identification number using the acrylic paint/epoxy covering technique shall be placed on the fourth left costal scute as described in the <i>Guidelines for Handling Desert Tortoises – Mojave Population and their Eggs</i> contained in the <i>Desert Tortoise Field Manual</i> (ATTACHMENT 3). Digital photographs of the carapace, plastron and fourth costal scute shall be taken. Notching of scutes shall not occur.	6.20	Before the start of Covered Activities and ongoing	Designated Biologist	
53 <u>Mohave Ground Squirrel Live Trapping, Burrow Excavation, and Relocation.</u> Burrows suspected or known to be occupied by Mohave ground squirrel that cannot be avoided shall be live trapped, fully excavated by hand, or both. After the installation of the Temporary Exclusion Fencing for desert tortoise (Conditions of Approval 6.13 and 6.14) and prior to any ground disturbance within the fenced areas, the Designated Biologist shall proceed with live trapping and/or burrow excavation in accordance with the Mohave Ground Squirrel Mortality Reduction and Relocation Plan (Condition of Approval 5.10). The Designated Biologist shall fully excavate by hand any potential Mohave ground squirrel burrows present within the fenced Area within the Project Area. Any Mohave ground squirrels encountered during burrow excavation shall be allowed to escape out of harm's way to the adjacent natural habitat or relocated to the approved release site identified in the Mohave Ground Squirrel Mortality Reduction and Relocation Plan by the Designated Biologist. Any dormant, lactating female, or dependent juvenile Mohave ground squirrels encountered shall be collected by the Designated Biologist and relocated to an artificial burrow installed at the approved release site.	6.21	Before the start of Covered Activities and ongoing	Designated Biologist	
54 <u>Mohave Ground Squirrel Handling Records.</u> The Designated Biologist shall maintain a record of all MGS handled and include the record in Quarterly and Annual Reports (Conditions of Approval 5.4 and 5.5). This information shall include for each Mohave ground squirrel individual: (1) the location (narrative and maps) and date of observation; (2) general condition and health, including injuries and state of healing; (3) location moved from, and location moved to (using GPS technology); (4) diagnostic markings where applicable; (5) ambient temperature when handled and released; and (6) digital photograph of each Mohave ground squirrel handled.	6.22	Before the start of Covered Activities and ongoing	Designated Biologist	

	<b>ITP COA/ Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
<p>55</p> <p><u>Habitat Management Land Acquisition</u>. CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result from implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the protected acreage required to provide for adequate compensation.</p> <p>To meet this requirement, the Permittee shall either purchase 333 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 7.2 below OR shall provide for both the permanent protection and management of 333 acres of Habitat Management (HM) lands pursuant to Condition of Approval 7.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.4 below.</p> <p>Purchase of Covered Species credits AND/OR permanent protection and funding for perpetual management of HM lands must be complete before starting Covered Activities in each phase, or within 24 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 8 below for all uncompleted obligations.</p> <p>Permittee has proposed a 120-acre site to be partially used as HM lands for Phase 1 of the Project construction (FIGURE 3). CDFW has conceptually agreed to the appropriateness of the site as it appears to be comprised of appropriate desert habitat with historic occurrences of Mohave ground squirrel and desert tortoise. Following recent surveys of the site, one active desert tortoise burrow and one MGS have been identified on the site. Prior to CDFW final approval of the 120-acre area as suitable HM lands to partially meet the HM lands requirements, CDFW shall conduct a site visit and review and approve in writing the information submitted pursuant to Condition of Approval 7.3 and the calculation and deposit of the management funds pursuant to Condition of Approval 7.4 below.</p>	<p>7</p>	<p>Before the start of Covered Activities (or within 24 months of issuance of the ITP if Security is provided)</p>	<p>Permittee</p>	

	Mitigation Measure	ITP COA/ Source	Implementation Schedule	Responsible Party	Status / Date / Initials
56	<p><u>Security.</u> 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:</p> <p><u>Security Amount.</u> The Security shall be in the amount of <b>\$2,293,586.88</b> or in the amount identified in 7.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 7.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.</p> <p><u>Security Form.</u> The Security shall be in the form of an irrevocable letter of credit (see ATTACHMENT 4) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.</p> <p><u>Security Timeline.</u> 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.</p> <p><u>Security Holder.</u> The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.</p> <p><u>Security Transmittal.</u> Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see ATTACHMENT 5) or by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other.</p> <p><u>Security Drawing.</u> The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.</p> <p><u>Security Release.</u> The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:</p> <ul style="list-style-type: none"> <li>• Copy of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer Agreement for the purchase of Covered Species credits; and</li> <li>• Timely submission of all required reports.</li> </ul> <p>AND/OR (for HM lands acquisition)</p> <ul style="list-style-type: none"> <li>• Written documentation of the acquisition of the HM lands;</li> <li>• Copies of all executed and recorded conservation easements;</li> <li>• Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and</li> <li>• Timely submission of all required reports.</li> </ul> <p>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 24 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.</p>	8	Before the start of Covered Activities if COA 7 not complete	Permittee	<p style="text-align: right;">Rev. 2013.1.1</p>







KERN COUNTY PLANNING AND NATURAL RESOURCES DEPARTMENT  
RB INYOKERN SOLAR PROJECT

CUP 23, Map 47; CUP 27,  
Map 47; SPA 4, Map 47

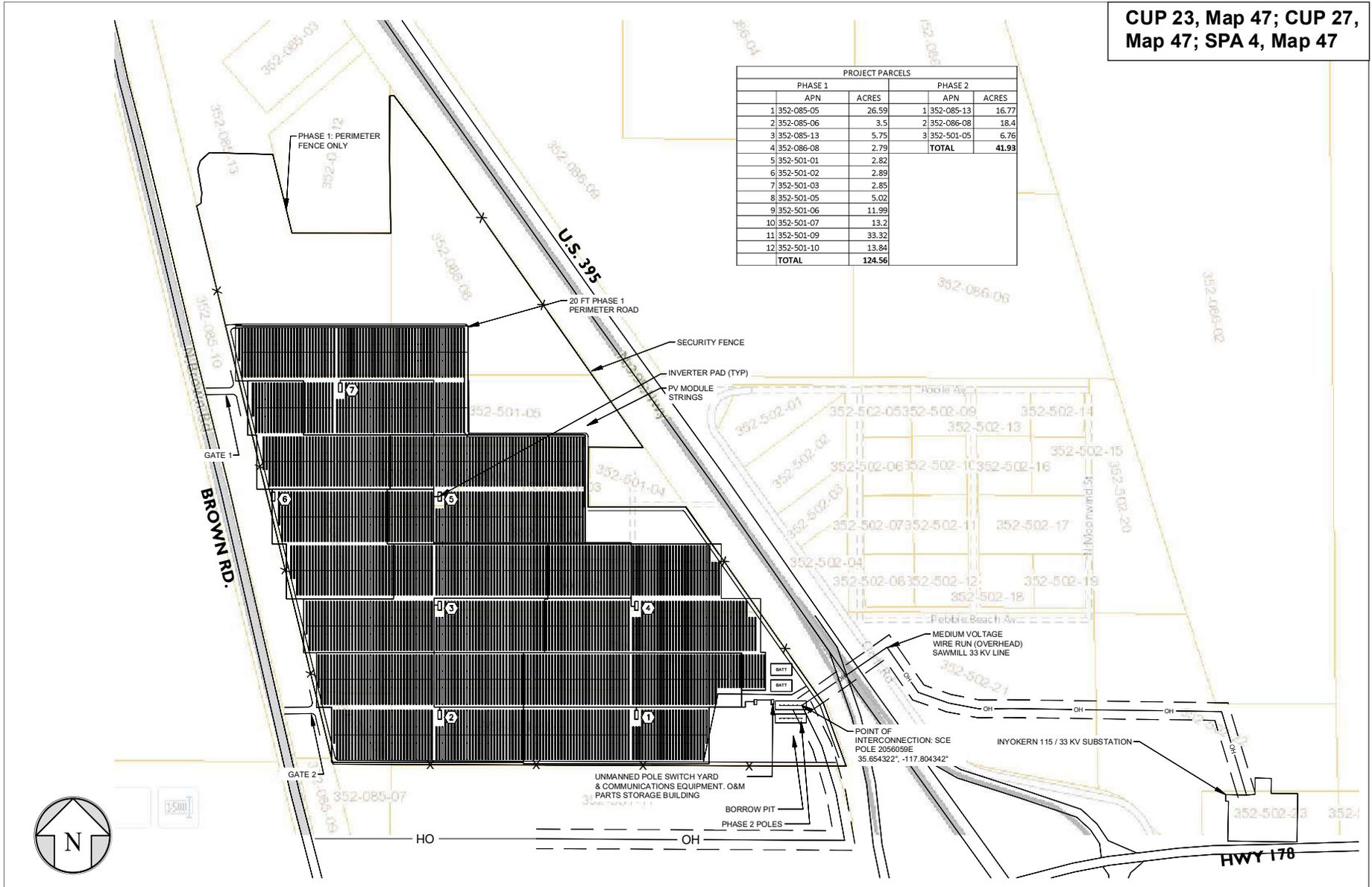


Figure 3-10: PHASE 1 SITE PLAN



KERN COUNTY PLANNING AND NATURAL RESOURCES DEPARTMENT  
RB INYOKERN SOLAR PROJECT

CUP 23, Map 47; CUP 27,  
Map 47; SPA 4, Map 47

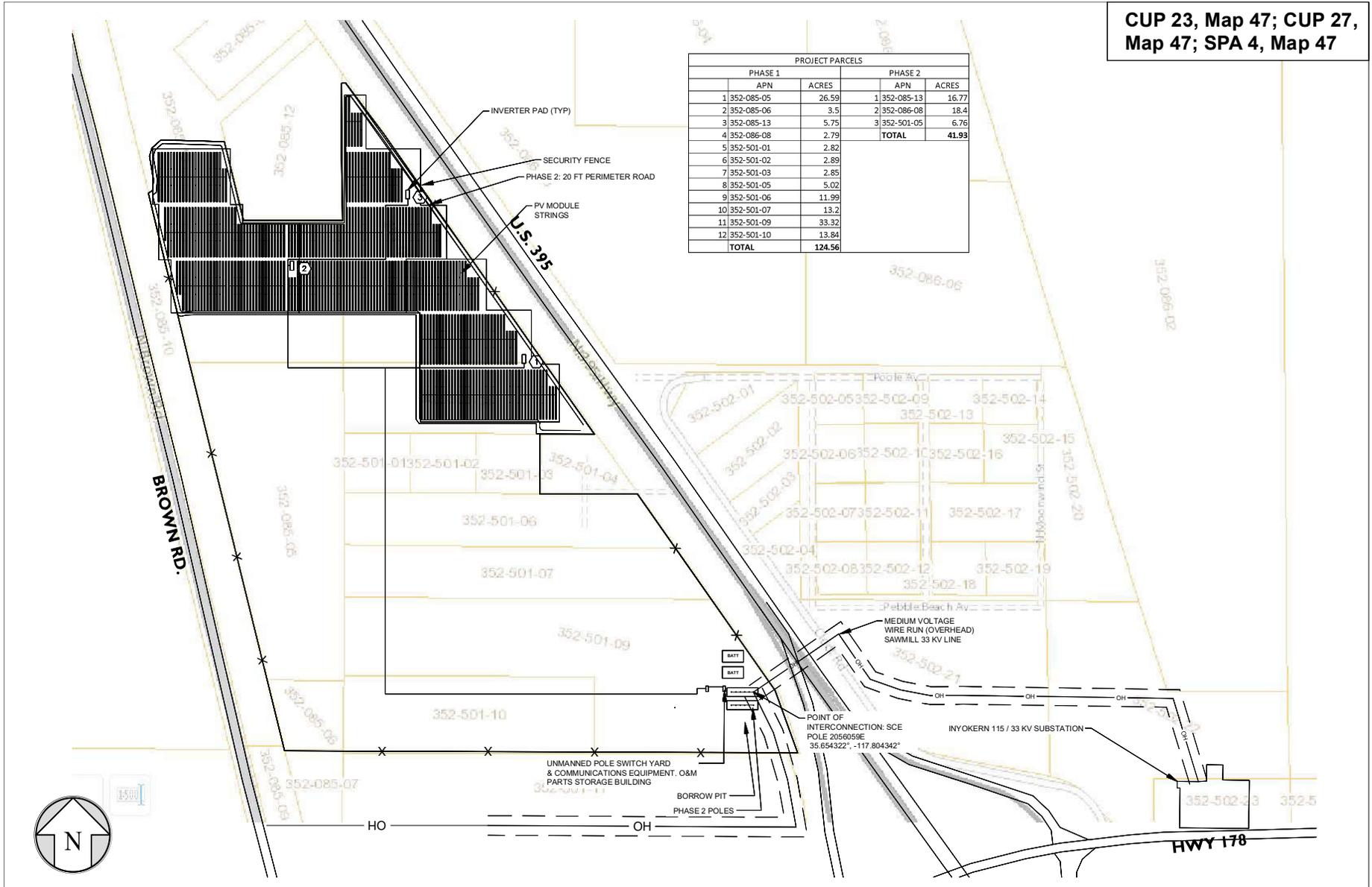
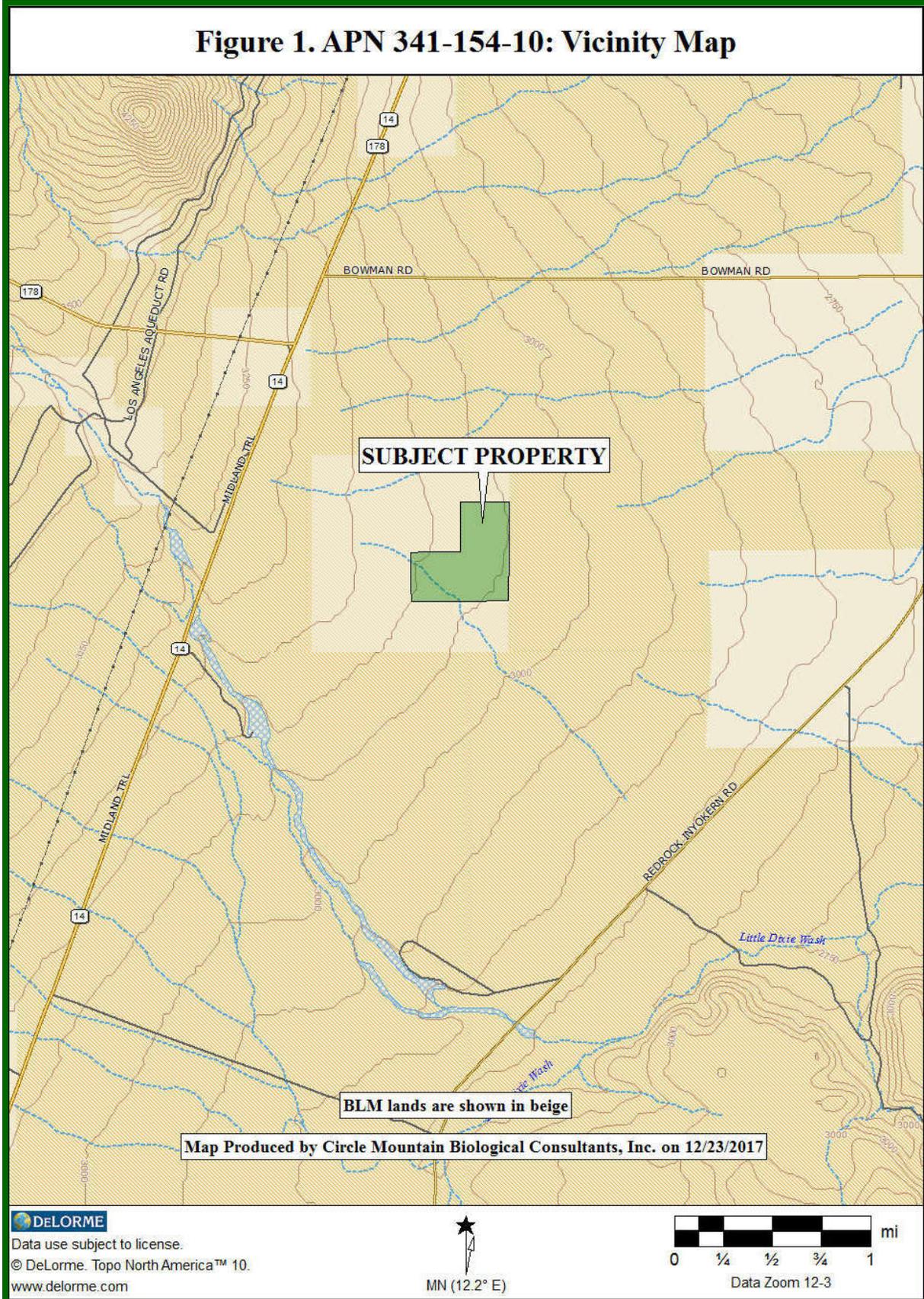


Figure 3-11: PHASE 2 SITE PLAN

**FIGURE 3**







Department of Fish and Wildlife

**BIOLOGIST RESUME FORM**

*This form requests information about the qualifications of the Qualified Biologist, Designated Biologist and Biological Monitor specified in California Endangered Species Act Incidental Take Permits (ITP) and Lake or Streambed Alteration (LSA) Agreements issued by California Department of Fish and Wildlife (CDFW).*

***Completing this form will ensure the receipt of adequate information and expedite CDFW review of qualifications.***

**SECTION I. NAME AND CONTACT INFORMATION**

Name:		Title:	
Company Name & Address:		Phone:	
		Email:	

**SECTION II. EDUCATION**

College/University & Degree Type Related to Natural Resource Science:	
Other Relevant Workshops & Training:	

**SECTION III. ROLE(S) AND PERMIT REQUIREMENTS**

Requested Role(s):	
Relevant LSA Agreement Measures or ITP Conditions <sup>2</sup> :	

**SECTION IV. SPECIES AND RESOURCE EXPERIENCE – SUMMARY**

*This section summarizes experience by special status species and other resource. Use one row for each species or other resource where surveys or special protections are required in the CESA ITP or LSA Agreement for which biologist approval is requested.<sup>3</sup> If more space is needed, add rows to this table. Provide details in Section 5.*

Species or Resource	Number of Field Seasons & Hours, Life Stages Observed <i>Provide project details in Section 5</i>	Life History Knowledge <i>Describe formal workshops &amp; training with dates, or informal training details</i>	CDFW SCP, MOU, & USFWS 10a1a Authorization Number & Authorized Activities <i>This form does not fulfill SCP, MOU, &amp; USFWS 10a1a reporting requirements</i>
Insert Species or Resource 1	Field seasons: Hours: Life Stages:		Issued to: Expiration: Agency contact:
Insert Species or Resource 2	Field seasons: Hours: Life Stages:		Issued to: Expiration: Agency contact:
Insert Species or Resource 3	Field seasons: Hours: Life Stages:		Issued to: Expiration: Agency contact:

<sup>2</sup> List all measures and conditions from the LSA Agreement or ITP requiring biological staff (i.e., Qualified Biologist, Designated Biologist, or Biological Monitor).

<sup>3</sup> Often LSA Agreements/ITPs require surveys and other protections for multiple species and other resources. Include only those for which the biologist has experience and is requesting approval.

**SECTION V. SPECIES AND RESOURCE EXPERIENCE – DETAILS**

*This section details experience from the three most recent and relevant projects for each species and resource identified in Section 4. If more space is needed, attach additional pages in the same table format (i.e., copy/paste format).*

<b>A. Species or Resource:</b>			
Project 1 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s) <sup>4</sup> :	
Survey Type(s) <sup>5</sup> :		Construction Monitoring <sup>6</sup> :	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB <sup>7</sup> (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 2 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 3 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:

<sup>4</sup> Insert the role as described in the associated LSA Agreement, ITP or other agency permit. If these permits were not issued, describe the role based on the duties, e.g., “lead biologist with handling authorization” or “biological monitor.”

<sup>5</sup> For example, pre-construction survey or description of the protocol or guideline followed.

<sup>6</sup> Include the number of days and describe the types of activities monitored (e.g., heavy equipment operation).

<sup>7</sup> CNDDDB is the abbreviation for California Natural Diversity Database.

**Project Name:**  
**LSA Agreement/ITP Number(s):**

Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Additional Information:			

<b>B. Species or Resource:</b>			
Project 1 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 2 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 3 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:

**Project Name:**  
**LSA Agreement/ITP Number(s):**

Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Additional Information:			

<b>C. Species or Resource:</b>			
Project 1 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 2 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 3 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:

**Project Name:**  
**LSA Agreement/ITP Number(s):**

Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Additional Information:			

Attachment 3

**DESERT TORTOISE (MOJAVE POPULATION)  
FIELD MANUAL  
(*Gopherus agassizii*)**

[December 2009]

**prepared by:**

U.S. Fish and Wildlife Service

***Warning: This Manual does not authorize individuals to handle desert tortoises. Such authorization comes from both Federal and State wildlife resource agencies, including, at least, those listed above. This document supersedes what was previously titled Guidelines for Handling Desert Tortoises during Construction Projects (Desert Tortoise Council 1994, revised 1999).***

Cite as: U.S. Fish and Wildlife Service. 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*). Region 8, Sacramento, California.

## ACKNOWLEDGEMENTS

The Desert Tortoise Council provided desert tortoise handling guidelines in 1994. Edward L. LaRue, Jr. assembled the information and drafted these guidelines on behalf of the Council with input from the U.S. Fish and Wildlife Service (USFWS) field offices in California, Arizona, Nevada, and Utah. Mr. LaRue initiated review of these guidelines in April 1996 and revised them in July 1999. Information was provided by the Desert Tortoise Council, the USFWS, California Department of Fish and Game (CDFG), Utah Division of Wildlife Resources (UDWR), Nevada Department of Wildlife (NDOW), Arizona Game and Fish Department (AGFD), U.S. Bureau of Land Management (BLM), U.S. Geological Survey (USGS), private consultants, universities, Tortoise Group, and other individuals and organizations. The latest document, the Desert Tortoise Field Manual, is a revision of the handling guidelines and assembly/revision of other documents that provide regulatory guidance and requirements for the desert tortoise. The Desert Tortoise Field Manual is a compilation of efforts by many offices of the USFWS with input and review by the CDFG, NDOW, AGFD, UDWR, and consultants. We appreciate the efforts of all involved in this evolving document from the first version in 1994 to the current version.

## AGENCY/ORGANIZATION CONTACT INFORMATION

### U.S. Fish and Wildlife Service

Desert Tortoise Recovery Office  
Nevada Fish and Wildlife Office  
1340 Financial Boulevard  
Reno, Nevada 89502  
(775) 861-6300

Nevada Fish and Wildlife Office-Las Vegas  
4701 North Torrey Pines Drive  
Las Vegas, Nevada 89130  
(702) 515-5230

In California, for Inyo, Kern, Los Angeles, and San Bernardino Counties:

U.S. Fish and Wildlife Service  
Ventura Fish and Wildlife Office  
2493 Portola Road, Ste. B  
Ventura, California 93003  
(805) 644-1766

In California, for Imperial and Riverside Counties, and Joshua Tree National Park and the San Bernardino National Forest in San Bernardino Co:

Carlsbad Fish and Wildlife Office  
6010 Hidden Valley Road  
Carlsbad, California 92009  
(760) 431-9440

Utah Fish and Wildlife Office  
2369 West Orton Circle  
West Valley City, Utah 84119  
(801) 975-3330

Arizona Fish and Wildlife Office- Flagstaff  
323 North Leoux Street, Suite 101  
Flagstaff, Arizona 86001  
(928) 226-0614

Nevada Department of Wildlife

Southern Region  
4747 Vegas Drive  
Las Vegas, Nevada 89108  
(702) 486-5127

California Department of Fish and Game

Region 4 (Kern County)  
1234 East Shaw Avenue  
Fresno, California 993710  
(559) 243-4005

Region 5 (Los Angeles and  
San Diego Counties)  
4949 Viewridge Avenue  
San Diego, California 92123  
(858) 467-4201

Region 6 (Imperial, Inyo, Riverside,  
and San Bernardino Counties)  
3602 Inland Empire Boulevard  
Suite C-220  
Ontario, California 91764  
(909) 484-0167

Utah Division of Wildlife Resources

Southern Region  
1470 N Airport Rd  
Cedar City, Utah 84720  
(435) 865-6100

Washington County Field Office  
344 East Sunland Drive, Suite #8  
St. George, Utah 84790  
(435) 688-1426

Arizona Game and Fish Department

State Headquarters--Nongame  
Branch  
5000 W. Carefree Highway  
Phoenix, Arizona 85086  
(623) 236-7767

Bureau of Land Management- Nevada

Southern Nevada District Office  
4701 North Torrey Pines Drive  
Las Vegas, Nevada 89130  
(702) 515-5000

Ely District Office  
702 N. Industrial Way  
HC 33 Box 33500  
Ely, Nevada 89301  
(775) 289-1800

Caliente Field Office  
U.S. Highway 93  
P.O. Box 237  
Caliente, Nevada 89008  
(775) 726-8100

Tonopah Field Office  
1553 South Main Street  
PO Box 911  
Tonopah, Nevada 89049  
(775) 482-7800

Bureau of Land Management - California

California Desert District Office  
22835 Calle San Juan de Los Lagos  
Moreno Valley, California 92553  
(951) 697- 5200

Ridgecrest Field Office  
300 South Richmond Road  
Ridgecrest, California 93555  
(760) 384-5400

Barstow Field Office  
2601 Barstow Road  
Barstow, California 92311  
(760) 252-6000

Palm Springs Field Office  
1201 Bird Center Drive  
Palm Springs, California 92262  
(760) 833-7100

BLM- Utah

St. George Field Office  
345 East Riverside Drive  
St. George, Utah 84790  
(435) 688-3200

Needles Field Office  
1303 South Hwy 95  
Needles, California 92363  
(760) 326-7000

El Centro Field Office  
1661 South 4<sup>th</sup> Street  
El Centro, California 92243  
(760) 337-4400

BLM- Arizona

Arizona Strip Field Office  
345 East Riverside Drive  
St. George, Utah 84790  
(435) 688-3200

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Chapter 8 Desert Tortoise Exclusion Fence

## CHAPTER 1. PURPOSE

The purpose of the Desert Tortoise Field Manual (Manual) is to update and consolidate existing survey and handling protocols, procedures, and applicable Federal regulations related to the federally-threatened desert tortoise – Mojave population (*Gopherus agassizii*) into one document. This Manual supersedes all previous handling guidelines and procedures documents for the Mojave population of the desert tortoise. This Manual was developed specifically for the Mojave population of the desert tortoise. Additional information on the desert tortoise, including its biology, ecology, and Federal status, can be downloaded at [http://www.fws.gov/nevada/desert\\_tortoise/](http://www.fws.gov/nevada/desert_tortoise/)

This Manual is a consolidation and revision of the following documents:

- Procedures for Endangered Species Act Compliance for the Mojave Desert Tortoise (USFWS 1992a)
- Field Survey Protocol for Any Federal Action that May Occur Within the Range of the Desert Tortoise (USFWS 1992b)
- Field Survey Protocol for Any Non-Federal Action that May Occur Within the Range of the Desert Tortoise (USFWS 1992c)
- Guidelines for Handling Desert Tortoises during Construction Projects, previously prepared by the Desert Tortoise Council (July 1994, revised July 1999)
- Desert Tortoise Exclusion Fence Specifications, prepared by the USFWS (Chapter 8).

This Manual provides guidance for pre-project survey methods to determine the status of the desert tortoise for projects occurring within the species' range on Federal and non-Federal lands. The purpose of this guidance is to provide technical assistance to entities to determine whether a biological opinion or incidental take permit may be needed prior to project implementation. This Manual is also intended for use by Authorized Biologists and desert tortoise Monitors (section 3.1) conducting activities under an Endangered Species Act (ESA) section 7 biological opinion or section 10 incidental take permit and provides guidance on handling desert tortoises that need to be moved out of harm's way or prevented from re-entering a project site.

This Manual does not authorize desert tortoise handling/capturing or any other form of take (See Chapter 2 for definition of "take") without appropriate Federal and State authorizations. The responsible Federal and State agencies will review the qualifications statement for each potential desert tortoise biologist and authorize him/her to serve as an Authorized desert tortoise Biologist for a given project. The Manual includes methods that are effectively used by professional desert tortoise researchers; as field protocols evolve, they will be updated with new information as it becomes available and posted on-line.

We encourage comments on this Manual; please submit problems encountered and recommendations for improvement to the USFWS (see AGENCY/ORGANIZATION CONTACT INFORMATION section above). In subsequent years, the USFWS will use your input to revise and incorporate new information and methods.

## **Literature Cited**

Desert Tortoise Council. 1994. Guidelines for handling desert tortoises during construction projects. Edward L. LaRue, Jr., editor. San Bernardino, California. Revised 1999.

U.S. Fish and Wildlife Service. 1992a. Procedures for Endangered Species Act compliance for the Mojave desert tortoise. Regions 1, 2, and 6. October 1992. 18 pages plus appendices.

U.S. Fish and Wildlife Service. 1992b. Field survey protocol for any federal action that may occur within the range of the desert tortoise. January 1992. 16 pages.

U.S. Fish and Wildlife Service. 1992c. Field survey protocol for any non-federal action that may occur within the range of the desert tortoise. January 1992. 22 pages.

## CHAPTER 2. PROCEDURES FOR FEDERAL ENDANGERED SPECIES ACT COMPLIANCE FOR THE DESERT TORTOISE

On August 4, 1989, the USFWS published an emergency rule listing the Mojave population of the desert tortoise as endangered (54 FR 42270). On April 2, 1990, the USFWS determined the Mojave population of the desert tortoise to be threatened (55 FR 12178). Section 9 of the ESA prohibits the "take" of any federally listed threatened or endangered species without first obtaining the necessary take exemption from the USFWS and state permits where applicable. Take is defined as: "harming, harassing, pursuing, hunting, shooting, wounding, killing, capturing, collecting, or attempting to engage in any such conduct" (Section 3(18), ESA). Harm is defined as: "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or shelter" (50 CFR § 17.3(c)). Take also includes modification of habitat that would result in harm to the desert tortoise. There are two ways to legally take a threatened or endangered species; one is through an incidental take statement in a USFWS biological opinion under section 7 of the ESA and the other is through a permit issued by the USFWS under section 10 (refer to Section 2.1.1 for more information on biological opinions and section 2.2 and Chapter 3 for section 10 permits).

For purposes of the ESA, desert tortoise habitat is defined as 1) areas with presence of desert tortoises or desert tortoise sign (*e.g.*, shells, bones, scutes, scats, sheltersites, tracks, egg shell fragments, courtship rings, drinking sites, etc.) that are likely to be part or all of a lifetime home range, 2) dispersal areas (*i.e.*, habitat corridors), or 3) areas suitable for desert tortoises as identified by the USFWS or in the most recent recovery plan for the Mojave population of the desert tortoise ([http://www.fws.gov/nevada/desert\\_tortoise/](http://www.fws.gov/nevada/desert_tortoise/)).

Pre-project surveys for the desert tortoise following the USFWS guidance in Chapter 4 are not expected to result in take and therefore do not require surveyors to first obtain a recovery permit. However, to ensure quality control and reduce the likelihood of USFWS non-concurrence with survey results, we recommend that each potential surveyor complete and sign the Desert Tortoise Authorized Biologist Request Form ([http://www.fws.gov/ventura/speciesinfo/protocols\\_guidelines/](http://www.fws.gov/ventura/speciesinfo/protocols_guidelines/)) and submit it to USFWS and the appropriate State agency for review prior to initiating any survey. Upon receiving the survey results, if the USFWS determines that the methods implemented or qualifications of the surveyors were inadequate, the USFWS may not accept the survey results. In such cases, surveys would need to be repeated using approved methods and qualified surveyors.

### 2.1. Federal Actions

#### 2.1.1. Consultation under Section 7 of the ESA

Section 7(a)(1) of the ESA requires all Federal agencies, in consultation with the Secretary of the Interior (delegated to the USFWS), to utilize their authorities in furtherance of recovering federally listed species by carrying out programs for the conservation of endangered and threatened species.

Section 7(a)(2) of the ESA and implementing regulations (50 CFR § 402) require all Federal agencies to consult with the USFWS for certain actions. There are two types of consultations, informal and formal. Informal consultation with the USFWS occurs when the Federal agency determines that an action they propose to authorize, fund, or carry out “may affect” a federally endangered or threatened species or critical habitat. Through the informal consultation process, the Federal agency, in coordination with the USFWS, may develop changes to the proposed action that result in no effect to the listed species, only beneficial effects to the listed species, or may affect but is not likely to adversely affect the listed species. In the first two situations, the consultation process is documented and terminated. In the last situation, the informal consultation process is completed with the USFWS issuing a letter of concurrence.

Section 7(a) regulations of the ESA require each Federal agency to review its actions at the earliest possible time to determine whether any action they propose to authorize, fund, or carry out may adversely affect listed species or adversely modify designated critical habitat. If such a determination is made, formal consultation is required with the USFWS; please contact the USFWS to determine the type of consultation required.

Through completion of the formal section 7 process, the USFWS may issue a biological opinion to the Federal agency stating "no jeopardy/adverse modification" is expected as a result of the proposed action for listed plants and animals, and exempting incidental take of listed animals. A no jeopardy/adverse modification biological opinion concludes that the proposed action will not jeopardize the continued existence of the species or result in adverse modification of designated critical habitat. Without this exemption, the Federal agency would violate section 9 of the ESA if the proposed project were implemented and resulted in take of a listed species.

Federal actions that are nondiscretionary, entirely beneficial to the listed species, or have no adverse effects on listed species are not subject to formal consultation. All actions which require approval by the Federal action agency are considered discretionary. The “may affect” standard applies to those activities that occur in suitable habitat, or habitat considered necessary for the conservation of a listed species. It is the responsibility of the Federal action agency to determine which actions may affect threatened or endangered species or critical habitat, and to initiate consultation accordingly with the USFWS.

Once a Federal agency has determined that its action may adversely affect a listed species or critical habitat, the Federal agency should submit a written request to the USFWS for formal consultation. This request should be accompanied by a biological assessment/evaluation of the action and its impacts (Section 2.3).

The Federal agency requesting formal consultation is responsible for providing the USFWS with the best scientific and commercial data available and relevant to the consultation. The “best data” mean data that are available and/or can be obtained during consultation, and are needed for an adequate review of the effects that an action may have on listed species or critical habitat (50 CFR § 402.14(d)).

Should the Federal action agency determine that the effect to the desert tortoise is entirely beneficial, then formal consultation may not be required. In this case, the action agency may

request concurrence from the USFWS that the action is not likely to adversely affect the desert tortoise through informal consultation. Beneficial actions that are part of a larger action which has not undergone section 7 consultation cannot be considered under informal consultation if the larger action includes adverse effects to the desert tortoise (*e.g.*, construction of a pasture fence within an allotment in desert tortoise habitat which has not yet undergone section 7 consultation). In such instances, grazing within the allotment is considered to be an “interrelated” and “interdependent” action of the proposed fence. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration. Both interrelated and interdependent actions are considered “effects of the action” (50 CFR § 402.02).

Formal consultation results in a biological opinion issued by the USFWS to the action agency. The biological opinion makes a determination on whether or not the proposed action subject to consultation is likely to jeopardize the continued existence of the listed species or result in destruction or adverse modification of critical habitat. The finding takes into account the: 1) rangewide status of the species, 2) the environmental baseline condition of the listed species in the action area; 3) the direct, indirect, interrelated, and interdependent effects attributable to the Federal action at hand; and 4) the cumulative effects of State and private actions reasonably certain to occur in the area of the Federal action.

Biological opinions issued by the USFWS will contain the following information:

1. An assessment of the status of the species, both rangewide and within the action area.
2. An analysis of the direct and indirect effects, as well as the effects of interrelated and interdependent activities (50 CFR § 402) and cumulative effects of future non-Federal activities that are reasonably certain to occur in the action area.
3. A determination whether the action is likely or not likely to jeopardize the continued existence of the species, or will result in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives will be provided, if at all possible, if the biological opinion indicates that the proposed action is likely to jeopardize the continued existence of the species (jeopardy opinion) or result in the destruction or adverse modification of critical habitat (adverse modification opinion).
4. An incidental take statement that identifies the anticipated level of incidental take that is expected to occur and provides mandatory reasonable and prudent measures and mandatory terms and conditions for minimizing any incidental take exempted in the biological opinion. This includes monitoring and reporting requirements.
5. Conservation recommendations that, if implemented, would minimize impacts and promote the conservation of the species. Conservation recommendations are not mandatory but are intended to provide an opportunity for the agency to further

the conservation of the desert tortoise as mandated under section 7(a)(1) of the ESA.

Confusion often arises concerning the difference between reasonable and prudent alternatives and reasonable and prudent measures. “Reasonable and prudent alternatives,” part of a jeopardy or adverse modification opinion, are modifications to the proposed action that will avoid jeopardizing the continued existence of a listed species and/or destroying or adversely modifying the listed species’ critical habitat. The Federal agency decides whether or not to implement reasonable and prudent alternatives. Failure to implement these alternatives, however, can lead to a violation of section 7(a)(2), if the action at any point in time causes a listed species to become jeopardized or results in the destruction or adverse modification of critical habitat. A Federal agency must notify the USFWS of its final decision regarding implementation of reasonable and prudent alternatives. The Federal agency can apply for an ESA exemption if it determines that it cannot comply with the requirements of section 7(a)(2) after consultation with the USFWS.

“Reasonable and prudent measures,” along with terms and conditions that implement them, are mandatory elements that minimize incidental take. Reasonable and prudent measures cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes (50 CFR § 402.14(i)(2)). They include monitoring and reporting requirements. The Federal action agency must comply with the terms and conditions that implement the reasonable and prudent measures, which the USFWS considers necessary to minimize incidental take, to be in compliance with the ESA.

It is not possible to determine an exact point at which the continued existence of a species would be jeopardized or adverse modification of critical habitat would occur without fully analyzing proposed actions in relation to the existing environmental baseline. Therefore, the USFWS will analyze each Federal action submitted for formal consultation on a case-by-case basis.

Formal consultation is initiated on the date the Federal agency’s request is received by the USFWS if the Federal agency provides all relevant data required by 50 CFR § 402.14(c). Within 10 working days, the USFWS will acknowledge receipt of the consultation request in writing. Upon reviewing the biological assessment provided by the Federal action agency, the USFWS will advise the Federal agency if insufficient information has been provided, and request additional information needed to complete the formal consultation process.

Formal consultation concludes within 90 days after its initiation unless suspended because of insufficient information or extended in accordance with 50 CFR § 402.14(e). The USFWS may use an additional 45-day period (total of 135 days) to issue the biological opinion to the Federal agency. The USFWS is responsible for ensuring that biological opinions are prepared and delivered within 135 days of initiation of consultation. The USFWS may request an extension of the consultation period.

When the Federal agency asks to review the draft biological opinion, the above time frames continue to apply. However, no final opinion will be issued before 135 days while the agency is reviewing the draft. Once comments on the draft are received by the USFWS, the biological

opinion is finalized and delivered to the Federal agency. If comments on the draft opinion result in major changes or clarifications, a time extension can be sought by the USFWS from the Federal agency.

If relevant data are known to be available to the Federal agency or will be available as a result of ongoing or imminent studies, the USFWS may request the data and any other analyses in accordance with 50 CFR § 402.14(c) or suggest that consultation be postponed until those data or analyses are available. The USFWS has the responsibility to alert the Federal agency (and any applicant) of areas where additional data would provide a better information base from which to formulate a biological opinion. The advice from the USFWS is intended to help the Federal agency to better satisfy its duty to ensure that its proposed action is not likely to jeopardize listed species or adversely modify/destroy critical habitat.

If the Federal agency insists that consultation be completed without the requested data or analyses, the USFWS will document in the biological opinion that certain analyses or data were not provided and why the information would have been helpful in conducting the consultation. In cases where gaps occur in the data base, the USFWS will evaluate the worst-case scenario and provide the benefit of the doubt to the species concerned.

#### 2.1.2. Incidental Take under Section 7 of the ESA

In cases where the USFWS concludes through consultation procedures that an action and the resultant take of listed species is not likely to jeopardize the continued existence of the listed species, the USFWS must provide an incidental take statement that specifies the anticipated level (amount or extent) of such taking and those reasonable and prudent measures considered necessary or appropriate to minimize such impact (50 CFR § 402.14(i)). There are two types of take under the ESA, incidental and intentional. An incidental take situation would exist if an otherwise lawful activity would result in the direct loss of a individual desert tortoise, or a sheltersite with a desert tortoise inside. An example would be the unintentional crushing of a desert tortoise by heavy equipment used for the otherwise lawful purpose of constructing a house. The take of the desert tortoise would be “incidental” to construction of the house. Conversely, intentional take is the purposeful take of a listed species, such as hunting, or capturing a listed species. Because the definition of “fish and wildlife” in the ESA includes eggs, the USFWS must also consider incidental take of desert tortoise eggs in a biological opinion, if such take may occur.

In a biological opinion, the USFWS estimates the amount of incidental take for individual desert tortoises and the amount of habitat that may be modified, and provides reasonable and prudent measures and terms and conditions that minimize adverse effects to the listed species. Under section 7(o)(2) of the ESA, a biological opinion with an incidental take statement operates as an exemption to the section 9 prohibitions against take.

Incidental take may also occur when federally listed wildlife are harmed or harassed by activities within their home range. For desert tortoises, harm may include destruction or degradation of habitat components (*e.g.*, soil, vegetation) necessary for the desert tortoise’s existence.

However, habitat cannot be “taken” in the context of the ESA. Harassment may occur when a desert tortoise is moved out of the action area to avoid harm. In these situations, the USFWS recommends that the project proponent initiate a dialogue with the USFWS to discuss the likelihood of incidental take.

Any unauthorized take of desert tortoises that results from activities carried out in a manner not consistent with, or not authorized under, the provisions of section 7 of the ESA may be subject to investigation by the USFWS pursuant to section 9 of the ESA. Criminal penalties for illegal take of a threatened species include up to \$25,000 in fines and 6 months in prison. Civil penalties may also be imposed as the ESA has a provision for citizen lawsuits.

## **2.2. Non-Federal Actions**

### **2.2.1. Conservation Planning under Section 10 of the ESA**

A permit from the USFWS pursuant to section 10(a)(1)(B) of the ESA authorizes incidental take for a non-Federal entity much as a section 7 consultation does through an incidental take statement in a biological opinion for a Federal action. Individuals, corporations, non-Federal government entities, State and local governments, Tribes, and other parties can apply for an incidental take permit by submitting an application and a habitat conservation plan (HCP) to the USFWS. “Habitat conservation planning” is the term often used to refer to this process.

Section 10(a)(1)(B) of the ESA requires that the Secretary of the Interior may not issue a permit for incidental take unless the applicant submits a conservation plan. Section 3 of the ESA defines conservation as using all methods and procedures necessary to bring an endangered or threatened species to the point at which measures provided in the ESA are no longer necessary (i.e., recovery). Congress intended that the conservation planning process be used to reduce conflicts between listed species and non-Federal development, and to provide a framework that would encourage creative partnerships between the private sector and local, State, Tribal, and Federal agencies in the interests of listed species and habitat conservation. The existing laws and regulations provide for, and encourage, flexibility and ingenuity in the development of an HCP that will reduce pertinent conflicts under the ESA. The USFWS recommends maximizing efficiency of effort by developing regional HCPs which include incidental take requests from a number of entities through the appropriate local regulatory agency.

The issuance of an incidental take permit by the USFWS is contingent upon the applicant’s development of a USFWS-approved HCP for the listed species affected by the project or action. Unlisted species may be included in the process and become covered under the permit if they are listed during the term of the permit. A more detailed document, “Habitat Conservation Planning and Incidental Take Permit Processing Handbook” is available from the USFWS’s Sacramento, Albuquerque, and Denver Regional Offices, or any field office, and on the internet at: <http://www.fws.gov/endangered/hcp/hcpbktoc.pdf>.

Upon receipt of the application and HCP, the USFWS may issue an incidental take permit if it determines that the following conditions have been met:

1. The taking will be incidental to an otherwise lawful action;

2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of taking;
3. The applicant will ensure that adequate funding will be provided for the conservation plan and changed circumstances;
4. The applicant will provide procedures to deal with unforeseen circumstances;
5. The taking will not appreciably reduce the likelihood of the survival and recovery of the subject species in the wild;
6. The applicant will ensure that other measures required by the USFWS will be provided (e.g., Implementing Agreement); and
7. The plan will be implemented.

The third item above, regarding funding, generally requires development of an implementing agreement. This agreement is a legal document binding all implementing parties to the proposed HCP and their specific responsibilities.

Issuance of an incidental take permit by the USFWS is a Federal action requiring National Environmental Policy Act (NEPA) compliance through preparation of a categorical exclusion, an environmental assessment, or an environmental impact statement. To expedite this process, the USFWS will often delegate the development of information necessary for NEPA documentation to the applicant. Generally, if the incidental take permit will result in a significant net loss of individuals and/or habitat, an environmental impact statement likely will be required. This process often requires 2 years to complete. Conversely, if the permit will result in a net gain or insignificant net loss of individuals and/or habitat, an environmental assessment leading to a finding of no significant impact likely will be sufficient for NEPA compliance. In such a scenario, a permit could be considered for issuance within 1 year. Preparation times for HCP and NEPA documents vary according to the specific circumstances of each proposed action and are therefore difficult to predict.

When the HCP is approved by the USFWS, the section 7 consultation process is initiated on the proposed issuance of an incidental take permit to the applicant. The USFWS prepares and issues a biological opinion on the proposed Federal action to issue a Federal incidental take permit. When issued, the permit would authorize incidental take of listed, or future listed species covered under the permit, provided that the applicant institutes appropriate conservation measures for habitat maintenance, enhancement, and protection, coincident with development, which are detailed in the HCP.

The USFWS recognizes that completion of measures proposed in an HCP often takes a considerable amount of time. To provide incentives for all parties to participate in the conservation planning process, assurances exist that the terms and conditions of the incidental take permit will be available for the life of the HCP. Permits of 30 years or more duration may be appropriate to provide assurances to the private sector and non-Federal governments that long-term commitments to funding, land use restrictions, and habitat conservation will be maintained. Funding, land use restrictions, and habitat conservation are usually required to continue in perpetuity. Ensuring adequate funding for management of conserved habitat may require establishment of a trust fund.

The USFWS will evaluate all requests for incidental take permits under section 10(a)(1)(B) of the ESA. Permit applicants must submit an official application form (Form 3-200) to the appropriate Regional Director of the USFWS. ESA permits are issued in accordance with 50 CFR § 13.21.

### **2.3. Recommended Format for Biological Evaluations/Biological Assessment**

The following is provided as a recommended guideline, although information should be presented in the order identified below. As projects vary in complexity, the biological evaluation/biological assessment (BE/BA) may also vary. Development of the BE/BA may not occur in the format order. Rather, as additional information becomes available during the crafting of the BE/BA, the appropriate sections will be modified. Federally funded or permitted exploratory activities that may affect listed species and occur prior to project implementation must also undergo section 7 consultation.

**Cover Page:** Name of project, location (city, county, etc.), and date.

**Table of Contents** (all pages must be numbered)

#### **A. Executive Summary**

1. Brief summary of project (2 or 3 sentences)
2. In tabular format, identify the species, critical habitat, status, and effects determinations. If “no effect”, include a brief paragraph for each species (these will not be addressed again.) For example:

<b>SPECIES</b>	<b>LISTING STATUS</b>	<b>DETERMINATION</b>
Mojave desert tortoise	Threatened	Likely to adversely affect
Mojave desert tortoise, critical habitat	Designated	Likely to adversely affect
Southwestern willow flycatcher	Endangered	Not likely to adversely affect

#### **B. Project Description**

**1. Location:** Describe construction boundary: mileposts, State, county, and GPS coordinates ). Include vicinity map (all maps and photographs must be first generation copies, legible and at a scale to be meaningful to the description of the activity).

**2. Definition of Action Area:** All areas affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. Include all off-site use areas (*e.g.*, access roads, new utility lines, materials sources, waste sites, mitigation sites,

stockpiling areas, staging) and locations. A map is helpful, overlaying the entire action area with species and habitat occurrences. Please see Chapter 4 of the USFWS's section 7 handbook for a complete description and examples of the Action Area (<http://www.fws.gov/endangered/consultations/s7hndbk/s7hndbk.htm>).

### **3. Proposed Action:**

- a. Describe the anticipated steps involved in the action in their expected or logical order of implementation and include diagrams that are useful. The intent of the proposed action section is to describe what will be built, how it will be built, and when. Include description of actions for the entire action area (including interrelated and interdependent actions (see section 2.1.1)). Describe how the project will be accessed and if ongoing operations and maintenance is anticipated to occur following completion of the construction phase of the project. If the contractor proposes an alternative construction method other than that described in the BE/BA, concurrence from the Services is required.
- b. Identify Best Management Practices (BMPs), weed-control, habitat restoration, and other measures (i.e., work windows, construction techniques, avoidance) designed to minimize adverse effects in this section.
- c. Describe monitoring and reporting plans, as well as conservation bank credits or mitigation sites if applicable.

### **C. Description of the species and their habitat**

Identify each species and each critical habitat. Include the following (repeat for each listed species and listed habitat):

1. Consultation with State wildlife agency and/or Natural Heritage database;
2. Literature reviews;
3. Consultation with experts on species, as necessary;
4. Descriptions of the species and general habitat requirements;
5. Relationship of habitat in the project area to local populations;
6. Map of the project area at an appropriate scale to show vegetation types and important biological features, such as habitat for sensitive species, wetlands or unique plant assemblages;
7. Photographs keyed to locations labeled on the project map;
8. Species information in Action Area including survey protocol used, by whom, etc. Include names of surveyors and a statement of their qualifications or authorizations to conduct the survey; and
9. Identify designated or proposed critical habitat as separate listed entities. List the primary constituent elements and address the extent to which they are found in the

action area. These can be introduced in table format and elaborated in subsequent text.

**D. Environmental Baseline**

Describe the past and present effects of human actions on the species or critical habitat in the action area. Describe existing habitat conditions and species trends in detail. Use watershed analysis from the BLM or Forest Service where available, State wildlife agency, or any other available scientific or commercial databases or information. Include information on climate change (e.g., changes to the species' range, distribution, habitat, etc.).

**E. Effects of the Action:** Include a discussion of direct and indirect effects relative to the species:

1. Direct Effects - Those effects caused directly by the proposed action (include those based on sideboards). Provide the rationale for each determination;
2. Indirect Effects - Caused by or will result from the proposed action and are later in time, but are still reasonably certain to occur; and
3. Cumulative Effects - Those effects of future State or private activities, not Federal activities, that are reasonably certain to occur within the action area.

**F. Determination of Effect**

This section must include a clear statement of effect for each species. Example: "We conclude that the Fiber-Optic Line Project may affect, but will not likely adversely affect the Mojave desert tortoise because..."

**G. References and Personal Communications Cited**

*Example of Literature Cited:*

Smith, D. M. 2001. Genetic subdivision and speciation in the western North American spotted snake complex, *Thamnophis punctatus*. *Evolution* 4:29-35.

*Example of Personal Communications (must be documented):*

Leslie Brown, Research Biologist  
Smith Nature Center  
4125 Willowtree Drive  
Greenville, Oregon 85194  
January 8, 2009 telephone communication (or email, site visit, etc.)

## **CHAPTER 3. FEDERAL AND STATE AUTHORIZATIONS FOR IMPLEMENTING DESERT TORTOISE MEASURES REQUIRED UNDER SECTIONS 7 OR 10 OF THE ESA**

When a project will be implemented under the purview of a section 7 biological opinion or a section 10 permit for the Mojave population of the desert tortoise, the USFWS requires each desert tortoise survey be conducted by a desert tortoise Authorized Biologist approved by the USFWS. In addition, the appropriate State wildlife agency should be contacted for their permitting requirements. Within the States of Nevada, California, Utah, and Arizona, individuals must obtain the appropriate permits or authorizations from the respective State wildlife agency to be authorized to handle desert tortoises. Authorized individuals must comply with any section 7 biological opinion and Federal and State permits for the project. In California, CDFG must approve the all individuals involved in handling desert tortoises including Monitors and Authorized Biologists. Contact the appropriate agencies for clarification if there are questions about or conflicting conditions between a section 7 biological opinion/section 10 incidental take permit and a State permit.

As a general rule, an Authorized Biologist has a bachelors or graduate degree in biology, ecology, wildlife biology, herpetology, or related discipline with prior field experience using accepted resource agency techniques to survey for desert tortoises. The proposed Authorized Biologist shall submit to the USFWS a completed and signed “Desert Tortoise - Authorized Biologist and Monitor Responsibilities and Qualifications Form” (Qualifications Form) provided below. USFWS is developing a training and certification program for persons who want to be Authorized Biologists. Until this program is in place, Authorized Biologists will be reviewed based on the information submitted on the Qualifications Form.

Submit the Qualifications Form to the appropriate USFWS field office (See AGENCY/ORGANIZATION CONTACT INFORMATION preceding Chapter 1) **at least 30 days prior to initiation of activities**. If required, submit the Qualifications Form to the Federal action agency with whom the USFWS has consulted under section 7 of the ESA. Submit an updated Qualifications Form for each project even if you have been approved previously, unless you have been instructed otherwise by the USFWS or State wildlife agency. If you seek approval to attach/remove/insert any devices or equipment to/into desert tortoises, withdraw blood, or conduct other procedures on desert tortoises, a recovery permit (section 10(a)(1)(A) permit) or similar authorization may be required. The application for a recovery permit requires completion of Form 3-200-55, which can be downloaded at <http://www.fws.gov/forms/3-200-55.pdf>. Submit the completed form to the appropriate USFWS regional office (<http://ww.fws.gov/endangered/permits/permitscontact.html>).

### **3.1. Desert Tortoise - Authorized Biologist and Monitor Responsibilities and Qualifications Form**

**AUTHORIZED BIOLOGIST** – Authorized Biologists must keep current with the latest USFWS protocols, guidelines, and regulations pertaining to the desert tortoise. Some of these are available at [http://www.fws.gov/ventura/speciesinfo/protocols\\_guidelines/](http://www.fws.gov/ventura/speciesinfo/protocols_guidelines/).

Authorized Biologists will serve as mentors to train Desert Tortoise Monitors and should approve Monitors to conduct specific activities based on the Monitor’s demonstrated skills, knowledge and qualifications. Direct supervision is always required for field and clearance surveys; direct supervision means that the Authorized Biologist has direct voice and sight contact

with the desert Tortoise Monitor. An Authorized Biologist is responsible for the outcome of all desert tortoise related activities for which the project is approved, including errors committed by Desert Tortoise Monitors.

The Authorized Biologist must have thorough and current knowledge of desert tortoise identification, behavior, natural history, ecology, and physiology, and demonstrate substantial field experience and training to safely and successfully conduct their required duties. Authorized Biologists are approved to monitor project activities within desert tortoise habitat and are responsible for locating desert tortoises and their sign (*i.e.*, conduct field and clearance surveys). Authorized Biologists must ensure proper implementation of protective measures, and make certain that the effects of the project on the desert tortoise and its habitat are minimized in accordance with a biological opinion or incidental take permit. All incidents of noncompliance in accordance with the biological opinion or permit must be recorded and reported.

To be authorized, the applicant must have the knowledge and experience to conduct any or all of the following, as needed:

- Locate, identify, and report all forms of desert tortoise sign in accordance with approved protocols;
- Handle and temporarily hold desert tortoises;
- Relocate/translocate desert tortoises prior to implementation of projects;
- Excavate burrows to locate desert tortoises or eggs;
- Reconstruct desert tortoise burrows;
- Unearth and relocate desert tortoise eggs;
- Review and approve individual Desert Tortoise Monitors and their activities based on qualifications of the Monitors;
- Directly supervise Desert Tortoise Monitors during clearance surveys and train Monitors in all aspects of protecting desert tortoises during implementation of projects;
- Be familiar with the project biological assessment and biological opinion or incidental take permit (copy in hand);
- Ensure proper implementation of protective measures;
- Record and report incidents of noncompliance in accordance with a biological opinion or permit; and
- Halt project activities per provisions of the biological opinion or permit.

**DESERT TORTOISE MONITOR** – Desert Tortoise Monitors will be approved by the Authorized Biologist(s) or USFWS (if an Authorized Biologist is not required) for a project. Desert Tortoise Monitors will assist the Authorized Biologist on project activities within desert tortoise habitat, ensure proper implementation of protective measures, and record and report desert tortoise and sign observations in accordance with approved protocol. They will report incidents of noncompliance in accordance with a biological opinion or permit, move desert tortoises from harm's way when desert tortoises enter project sites and place these animals in designated safe areas or maintain the desert tortoises in their immediate possession until an Authorized Biologist assumes care of the animal. Monitors assist Authorized Biologists during surveys and serve as apprentices to acquire experience. Monitors may not conduct field or clearance surveys or other specialized duties of the Authorized Biologist unless directly supervised by an Authorized Biologist; "directly supervised" means the Authorized Biologist has direct voice and sight contact with the Monitor.

### 3.2. DESERT TORTOISE AUTHORIZED BIOLOGIST QUALIFICATIONS FORM

This form should be used to provide your qualifications to agency officials if you wish to undertake the duties of an authorized biologist with regard to desert tortoises during construction or other projects authorized under Sections 7 (Biological Opinions) or 10(a)(1)(B) (i.e. Habitat Conservation Plans) of the Endangered Species Act.

(If you seek approval to attach/remove/insert any devices or equipment to/into desert tortoises, withdraw blood, or conduct other procedures on desert tortoises, a recovery permit or similar authorization may be required. Application for a recovery permit requires completion of Form 3-200-55, which can be downloaded at <http://www.fws.gov/forms/3-200-55.pdf>.)

#### 1. Contact Information:

<b>Name</b>	
<b>Address</b>	
<b>City, State, Zip Code</b>	
<b>Phone Number(s)</b>	
<b>Email Address</b>	

#### 2. Date:

#### 3. Areas in which authorization is requested (check all that apply):

- San Bernardino, Kern, Inyo and Los Angeles Counties, California (Ventura office)
- Riverside, San Diego, and Imperial Counties, California (Carlsbad office)
- Nevada     Utah     Arizona

#### 4. Please provide information on the project:

December 2009

<b>USFWS Biological Opinion or HCP No.</b>  <b>When Applicable</b>		<b>Date:</b>
<b>Project Name</b>		
<b>Federal Agency (If Applicable)</b>		
<b>Proponent or Contractor</b>		

5. If you hold, or have held, any relevant state or federal wildlife permits provide the following:

<b>Species</b>	<b>Dates</b>	<b>State (specify) or Federal Permit Number</b>	<b>Authorized Activities</b>

6. **Education:** Provide up to three schools, listing most recent first:

Institution	Dates attended	Major/Minor	Degree received

### 7. Desert Tortoise Training.

Name/Type of Training	Dates (From/To)	Location	Instructor/Sponsor
1. Classes			
2. Field Training			
3. Translocation			
4.			

**8. Experience** – Include only those positions relevant to the requested work with desert tortoises. Distinguish between wild Mojave desert tortoise and other experience. Include only your experience, not information for the project you worked on (e.g., if 100 tortoises were handled on a project and you handled 5 of those tortoises, include only those 5. List most recent experience first. Handling a Mojave desert tortoise must be authorized by a Biological Opinion or other permit and reported to the USFWS. Information provided in this section will be used by the USFWS to track the numbers of tortoises affected by previous projects (baseline). **Be sure to include a project supervisor or other contact that can verify your skills and experience in relation to your job performance.** Attach additional sheets as necessary. Please use numbers in each column; do not use “X’s” to indicate participation in the activity. If your experience is limited to **less than three desert tortoise positions**, please include additional job experience and references in the section below.

**Experience by project and activity:**

<b>Project Name:</b> <b>Job Title:</b> <b>Dates of Employment:</b>	<b>Supervisor / Project Contact Name:</b> <b>Phone:</b> <b>Email Address:</b>		<b>Conduct Clearance Surveys (Hrs/Days)</b>	<b>Excavate DT burrows (No.)</b>	<b>Locate DT No. &lt; 100mm ≥ 100mm</b>	<b>Handled for Relocation DTs (No.)</b>	<b>Excavate, and relocate DT nests (No.)</b>
1.					/		
2.					/		
3.					/		
4.					/		
5.					/		
6.					/		
7.					/		

**Experience by project and activity (continued):** Each project number should correspond with the project listed on the previous page

<b>Project Name</b> (Number should correspond to previous page)		<b>Construct Artificial Burrows (No.)</b>	<b>Monitor project equipment and activities (Hrs/Days)</b>	<b>Oversee project compliance (Hrs/Days)</b>	<b>Supervise DT field staff (Hrs/Days) and No. staff supervised</b>	<b>DT fence Installation and inspection (Hrs/Days)</b>	<b>Present DT Awareness Training (No.)</b>
1.					/		
2.					/		
3.					/		
4.					/		
5.					/		
6.					/		
7.					/		

**Summary of experience:**

Total time spent for all desert tortoise-related field activities (referenced above):

Specify total number of hours:

OR total number of 8-hour days: \_\_\_\_\_

Total number of miles/kilometers walked conducting survey transects:

Total number of wild, free-ranging desert tortoises you personally handled:

<100 mm: \_\_\_\_\_

≥100 mm: \_\_\_\_\_

Additional supervisory experience other than with desert tortoise work:

Project	Hours	Staff (No.)

Additional references for individuals who have held **less than three** positions working with desert tortoise

<p><b>Project Name:</b></p> <p><b>Job Title:</b></p> <p><b>Dates of employment:</b></p>	<p><b>Supervisor / Project Contact:</b></p> <p><b>Name:</b></p> <p><b>Phone:</b></p> <p><b>Email address:</b></p>
<p><b>Project Name:</b></p> <p><b>Job Title:</b></p> <p><b>Dates of employment:</b></p>	<p><b>Supervisor / Project Contact:</b></p> <p><b>Name:</b></p> <p><b>Phone:</b></p> <p><b>Email address:</b></p>

<b>Project Name:</b>	<b>Supervisor / Project Contact:</b>
<b>Job Title:</b>	<b>Name:</b>
<b>Dates of employment:</b>	<b>Phone:</b>
	<b>Email address:</b>

I certify that the information submitted in this form is complete and accurate to the best of my knowledge and belief.

I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. Ch.47, Sec. 1001.

**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

<b>Table 3. USFWS Desert Tortoise Pre-Project Survey Guidance</b>		
<b>What is the estimated number of tortoises and associated 95% confidence interval for the action area?</b>		
<b>INSTRUCTIONS</b> Use this tab when your transects were of unequal length.		
Enter the appropriate values from the survey into the yellow cells below. The number of tortoises and associated 95% confidence interval for the action area will be calculated.		
		<b>N = 42.4</b>
		<b>Lower 95%CI = 19.41</b>
		<b>Upper 95%CI = 92.54</b>
Total action area (acres)		<b>3000</b>
Prob that a tort is above ground given winter rainfall (Pa from Table 2) =		<b>0.800</b>
Total length of transects walked (km) =		<b>1080</b>
Number of transects walked =		<b>108</b>
Number of tortoises found during surveys (n) =		<b>19</b>
<b><i>Transects of various lengths</i></b>		
Transect	Length (km)	Tortoises within 5m of centerline
1	10.0	0
2	10.0	0
3	10.0	0
4	10.0	0
5	10.0	2
6	10.0	0
7	10.0	0
8	10.0	0
9	10.0	0
10	10.0	2
11	10.0	0
12	10.0	0
13	10.0	2
14	10.0	1
15	10.0	1
16	10.0	1
17	10.0	1
18	10.0	0
19	10.0	0
20	10.0	0
21	10.0	2
22	10.0	0
23	10.0	0
24	10.0	0
25	10.0	0

26	10.0	0
27	10.0	0
28	10.0	0
29	10.0	0
30	10.0	0
31	10.0	0
32	10.0	0
33	10.0	0
34	10.0	0
35	10.0	0
36	10.0	1
37	10.0	0
38	10.0	0
39	10.0	0
40	10.0	1
41	10.0	0
42	10.0	0
43	10.0	0
44	10.0	0
45	10.0	0
46	10.0	0
47	10.0	1
48	10.0	0
49	10.0	1
50	10.0	0
51	10.0	0
52	10.0	0
53	10.0	0
54	10.0	0
55	10.0	0
56	10.0	0
57	10.0	0
58	10.0	0
59	10.0	0
60	10.0	0
61	10.0	0
62	10.0	0
63	10.0	0
64	10.0	0
65	10.0	0
66	10.0	0
67	10.0	0
68	10.0	0
69	10.0	0
70	10.0	0
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73	10.0	0
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79	10.0	0
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82	10.0	0
83	10.0	1
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85	10.0	0
86	10.0	0
87	10.0	1
88	10.0	0
89	10.0	0
90	10.0	0
91	10.0	0
92	10.0	0
93	10.0	0
94	10.0	0
95	10.0	0
96	10.0	0
97	10.0	0
98	10.0	0
99	10.0	0
100	10.0	0
101	10.0	1
102	10.0	0
103	10.0	0
104	10.0	0
105	10.0	0
106	10.0	0
107	10.0	0
108	10.0	0
109	5.0	0
110	5.0	0
111	5.0	0
112	5.0	0
113	5.0	0
114	5.0	0
115	5.0	0
116	5.0	0
117	5.0	0
118	5.0	0
119	5.0	0
120	5.0	0
121	5.0	0
122	5.0	0
123	5.0	1
124	5.0	0
125	5.0	0
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127	5.0	0

128	5.0	0
129	3.0	0
130	3.0	0
131	3.0	0
132	3.0	0
133	3.0	0
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135	3.0	0
136	3.0	0
137	3.0	0
138	3.0	0
139	3.0	0
140	3.0	0
141	3.0	0
142	3.0	0
143	3.0	1
144	3.0	0
145	3.0	0
146	3.0	0
147	3.0	0
148	3.0	0
149	3.0	0
150	3.0	0
151	3.0	0
152	3.0	0
153	3.0	0
154	3.0	0
155	3.0	0
156	3.0	0
157	3.0	0
158	3.0	0
159	3.0	0
160	3.0	0
161	3.0	0
162	3.0	0
163	3.0	0
164	3.0	0
165	3.0	0
166	3.0	0
167	3.0	0
168	3.0	0
169	3.0	0
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<b>Table 3. USFWS Desert Tortoise Pre-Project Survey Guidance</b>	
<b>What is the estimated number of tortoises and associated 95% confidence interval for the action area?</b>	
<b>INSTRUCTIONS</b> Use this tab when all your transects were of equal length. Enter the appropriate values from the survey into the yellow cells below. The number of tortoises and associated 95% confidence interval for the action area will be calculated.	
	<b>N = 42.4</b>
	<b>Lower 95%CI = 19.41</b>
	<b>Upper 95%CI = 92.52</b>
Total action area (acres)	3000
Prob that a tort is above ground given winter rainfall (Pa from Table 2) =	0.800
Total length of transects walked (L, km) =	1080
Transect length (km)	10
Number of transects walked (k) =	108
Number of tortoises found during surveys (n) =	19
<i>Transects all the same length</i>	
Number of tortoises (n <sub>i</sub> )	Number of transects on which (n <sub>i</sub> ) tortoises were
0	93
1	11
2	4
3	0
4	0
5	0
6	0
7	0
8	0
9	0

## **CHAPTER 4. PREPARING FOR ANY ACTION THAT MAY OCCUR WITHIN THE RANGE OF THE MOJAVE POPULATION OF THE DESERT TORTOISE**

### **4.1. General Information on the Ecology of the Desert Tortoise**

Most habitat for the Mojave population of the desert tortoise is below 4,500 feet (1372 meters) elevation in the creosote bush-bursage series of the Mojave desert scrub biome; dominant plants are creosote bush (*Larrea tridentata*) and white bursage (*Ambrosia dumosa*). Desert tortoise habitat may also include various cacti species (*Opuntia* spp.), saltbush (*Atriplex* spp.) scrub, and Joshua tree (*Yucca brevifolia*) woodlands at elevations up to approximately 5,000 feet (1524 meters). The desert tortoise is a large, herbivorous reptile. Mojave desert tortoises are typically active during the day and when annual plants are most abundant during spring and early summer. However, they can also be active following rain events and unseasonably warm periods during fall and winter. If rain events occur at night, tortoises may emerge from their burrows to drink. Female desert tortoises construct nests during the late afternoon and evening, and any desert tortoise may emerge from its burrows at night during extreme heat (see section 7.3). Desert tortoises usually spend the remainder of the year in sheltersites, escaping the extreme weather conditions of the Mojave Desert. Location and type of sheltersites vary greatly in different geographic locations (see section 4.2). For detailed information on the ecology of the Mojave desert tortoise, please see [http://www.fws.gov/nevada/desert\\_tortoise](http://www.fws.gov/nevada/desert_tortoise).

### **4.2 Desert Tortoise Burrows**

Desert tortoises use a variety of sheltersites including soil burrows, caliche caves, lava tubes, pallets, rock caves, rodent or other animal's burrows, and shrubs or man-made structures, such as vehicles and equipment. For this Manual, the term "burrow" means any structure that could be used by a desert tortoise for shelter.

#### 4.2.1. Determining if a Desert Tortoise is Present in a Burrow

If sufficient sunlight is available, use a mirror to direct light into the opening of the burrow to locate desert tortoise sign including a desert tortoise. Alternatives to a mirror are the use of a LED flashlight, fiber-optic scope, or miniature camera. Please refer to section 7.6 for disinfecting procedures for equipment. If the terminus of the burrow or any side chambers cannot be observed, or if the light is insufficient, use a fiber-optic scope or miniature camera to inspect all areas of the burrow.

#### 4.2.2. Describing Burrows

Desert tortoises typically excavate soil burrows that are flat on the bottom and domed on top to match the profile of the desert tortoise shell (half-moon shape). The condition class of a burrow (see below) does not necessarily exclude use or occupation by a desert tortoise. When aestivating in a burrow, desert tortoises may backfill the burrow giving the appearance of the terminus. Spider webs, litter, and other debris may accumulate in burrow openings overnight, and openings may collapse during winter rains. Do not assume that a burrow is inactive if it

looks unused or collapsed. Desert tortoises may use canid or mustelid excavations, and may be found in burrows of other animals, particularly kit foxes. Burrowing owls may use desert tortoise burrows, but do not assume that burrows occupied by owls are not also occupied by desert tortoises. Juvenile desert tortoises create their own burrows, which may resemble rodent burrows, or use rodent burrows. Therefore, consider all burrows to be occupied by desert tortoises until determined otherwise.

Record basic information on the data sheet for each burrow including its class, if occupied by a desert tortoise or other animals, other sign present, GPS location, and other distinguishing information (see below). We recommend photographing burrows and submitting the photographs to the USFWS with the data sheets. Record the information electronically or use permanent black ink and high rag content, acid-free paper when recording all data.

**Condition Class:**

1. currently active, with desert tortoise or recent desert tortoise sign
2. good condition, definitely desert tortoise; no evidence of recent use
3. deteriorated condition which includes collapsed burrows; definitely desert tortoise (please describe)
4. good condition; possibly desert tortoise (please describe)
5. deteriorated condition which includes collapsed burrows; possibly desert tortoise (please describe)

4.2.3. Mapping Burrows

Map desert tortoise burrows using a GPS unit with sufficient accuracy to easily navigate back to the location. Indicate the condition class of the burrow and whether it is occupied by a desert tortoise. There are several important reasons for mapping it: a) resource agencies can determine how many desert tortoises were encountered on the project compared with the number of burrows excavated, b) the information will be available for future projects in the same area, c) burrow locations may be important for organizing desert tortoise removals and determining desert tortoise hot spots versus areas where few, if any, desert tortoises are found, and d) the number and location of burrows found during initial desert tortoise surveys can be compared with the number and location of burrows found during monitoring or subsequent surveys; (i.e., the data may provide information to determine appropriate take limits based on the findings of initial surveys). Typically, the USFWS requires a report that includes the number of desert tortoises observed during the project. Some projects require that all desert tortoise sign be mapped. If an artificial burrow is used, map it accurately. If the burrow is blocked or temporarily penned (see section 7.10.3, Penning Desert Tortoises), map and mark it in the field to easily find it later.

4.2.4. Map Types

For reporting purposes, display burrow locations on maps of appropriate scale, preferably on aerial photography maps. If monitoring a linear right-of-way, number the burrows sequentially within a given portion (e.g., "B-23-2," for burrow #23 on reach 2). As an alternative, use United States Geological Survey (USGS) 7.5' topographical maps (scale 1" = 2,000'), paper or

electronic, or enlargements of them. Project maps at a scale of 1" = 100' or 1" = 200' are particularly useful when burrows are common and better resolution is necessary. The assigned numbers may be cross-referenced with data sheets, field notes, and photographs.

#### **4.3. Presence/absence and abundance desert tortoise survey protocol**

This protocol provides recommendations for survey methodology to determine presence/absence and abundance of desert tortoises for projects occurring within the species range on Federal and non-Federal lands, and to provide a standard method for reporting survey results. Information gathered from these procedures will: 1) help determine the appropriate level of consultation with USFWS and the appropriate State wildlife agency, 2) help determine the incidental take of desert tortoises resulting from proposed projects as defined by the ESA and California Endangered Species Act (CESA) and 3) help minimize and avoid take.

This guidance includes:

- Site Assessment
- Pre-project Field Survey Protocol for Potential Desert Tortoise Habitats
- USFWS Desert Tortoise Pre-project Survey Data Sheet

This guidance is subject to revision as new information becomes available. Before initiating the protocols described below, please check with your local USFWS and appropriate State wildlife agency to verify that you are implementing the most up-to-date methods. To ensure quality and reduce the likelihood of nonconcurrence with survey results, we recommend that the names and qualifications of the surveyors be provided to USFWS and appropriate State agency for review prior to initiating surveys.

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In Nevada:

U.S. Fish and Wildlife Service  
Nevada Fish and Wildlife Office  
4701 North Torrey Pines Drive  
Las Vegas, Nevada 89130  
(702) 515-5230

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In California:

Inyo, Kern, Los Angeles, and San Bernardino Counties:

U.S. Fish and Wildlife Service  
Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, California 93003  
(805) 644-1766

Imperial and Riverside Counties, and Joshua Tree National Park and the San Bernardino National Forest in San Bernardino Co:

U.S. Fish and Wildlife Service  
Carlsbad Fish and Wildlife Office  
6010 Hidden Valley Road  
Carlsbad, California 92009  
(760) 431-9440

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In Utah:

U.S. Fish and Wildlife Service  
Utah Ecological Services Field  
Office  
2369 West Orton Circle  
West Valley City, Utah 84119  
(801) 975-3330

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In Arizona:

U.S. Fish and Wildlife Service  
Arizona Fish and Wildlife  
Conservation Office -Flagstaff  
323 North Leroux Street, Suite 201  
Flagstaff, Arizona 86001  
(928) 226-0614

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**State Wildlife Agencies**

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Nevada: Department of Wildlife:

Southern Region  
4747 Vegas Drive  
Las Vegas, Nevada 89108  
(702) 486-5127

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California Department of Fish and Game (CDFG)

For Fresno, Kern, Kings, Madera, Mariposa, Merced, Monterey, San Benito, San Luis  
Obispo, Stanislaus, Tulare and Tuolumne Counties:

Central Region Headquarters Office  
1234 E. Shaw Avenue  
Fresno, California 93710  
(559) 243-4005 ext. 151

For Imperial, Inyo, Mono, Riverside and San Bernardino Counties:

Inland Deserts Regional Office  
3602 Inland Empire Boulevard, Suite C-220  
Ontario, California 91764  
(909) 484-0167

For Los Angeles, Orange, San Diego, Santa Barbara and Ventura Counties:

South Coast Regional Office  
4949 Viewridge Avenue  
San Diego, California 92123  
(858) 467-4201

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Utah Division of Wildlife Resources:

Southern Region  
1470 N Airport Road  
Cedar City, Utah 84720  
(435) 865-6100

Washington County Field Office  
344 East Sunland Drive, Suite #8  
St. George, Utah 84790  
(435) 688-1426

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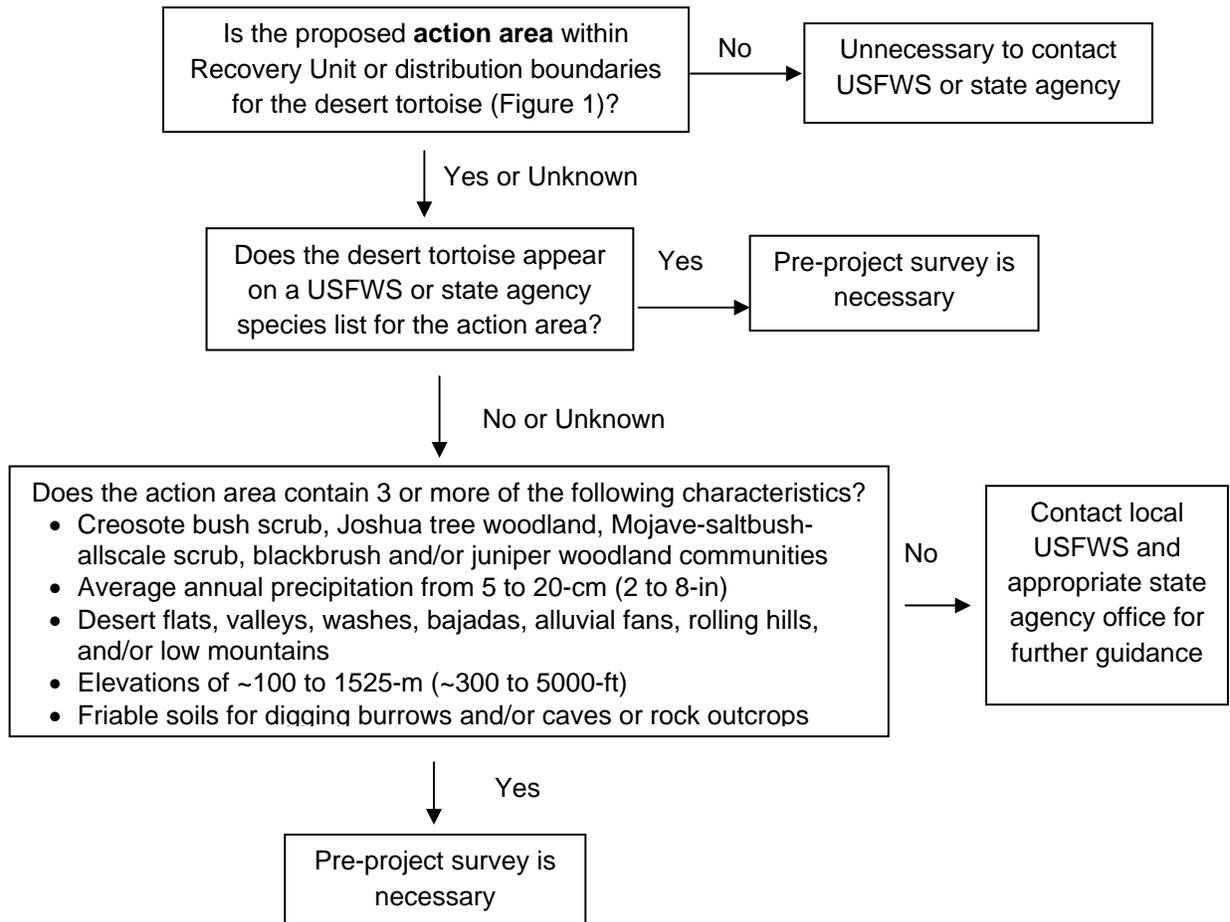
Arizona Game & Fish Department  
State Headquarters--Nongame Branch  
5000 W. Carefree Highway  
Phoenix, Arizona 85086  
(623) 236-7767

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## Site Assessment

Use the below key to assess if desert tortoises may be present within or near the action area and determine survey and consultation requirements<sup>1</sup>. The **action area** is defined by regulation as all areas to be affected directly or indirectly and not merely the immediate area involved in the action (50 CFR §402.02). The extent of the action area is not limited to the footprint of the action nor is it limited by the authority of the Federal, State, or local agency or any other entity proposing the project. The environmental baseline, the analysis of the effects of the action, and the amount or extent of incidental take are based upon the action area. If you cannot access the entire action area during your surveys for some reason (e.g., access to private property is unavailable), please note that in your survey report.



<sup>1</sup>If determined that the proposed project is not likely to adversely affect the desert tortoise and a tortoise or tortoise sign (shells, bones, scutes, limbs, burrows, pellets, scats, egg shell fragments, tracks, courtship rings, drinking sites, mineral licks, etc.) is found in the action area during implementation of the proposed project, the proposed action should *immediately* stop and then it must be determined whether further or formal consultation is necessary to comply with the ESA or CESA in California. It is recommended that the USFWS and CDFG in California be notified in writing within three days of the discovery. This short notification period will help ensure a prompt response by USFWS and CDFG to facilitate ESA and CESA compliance.

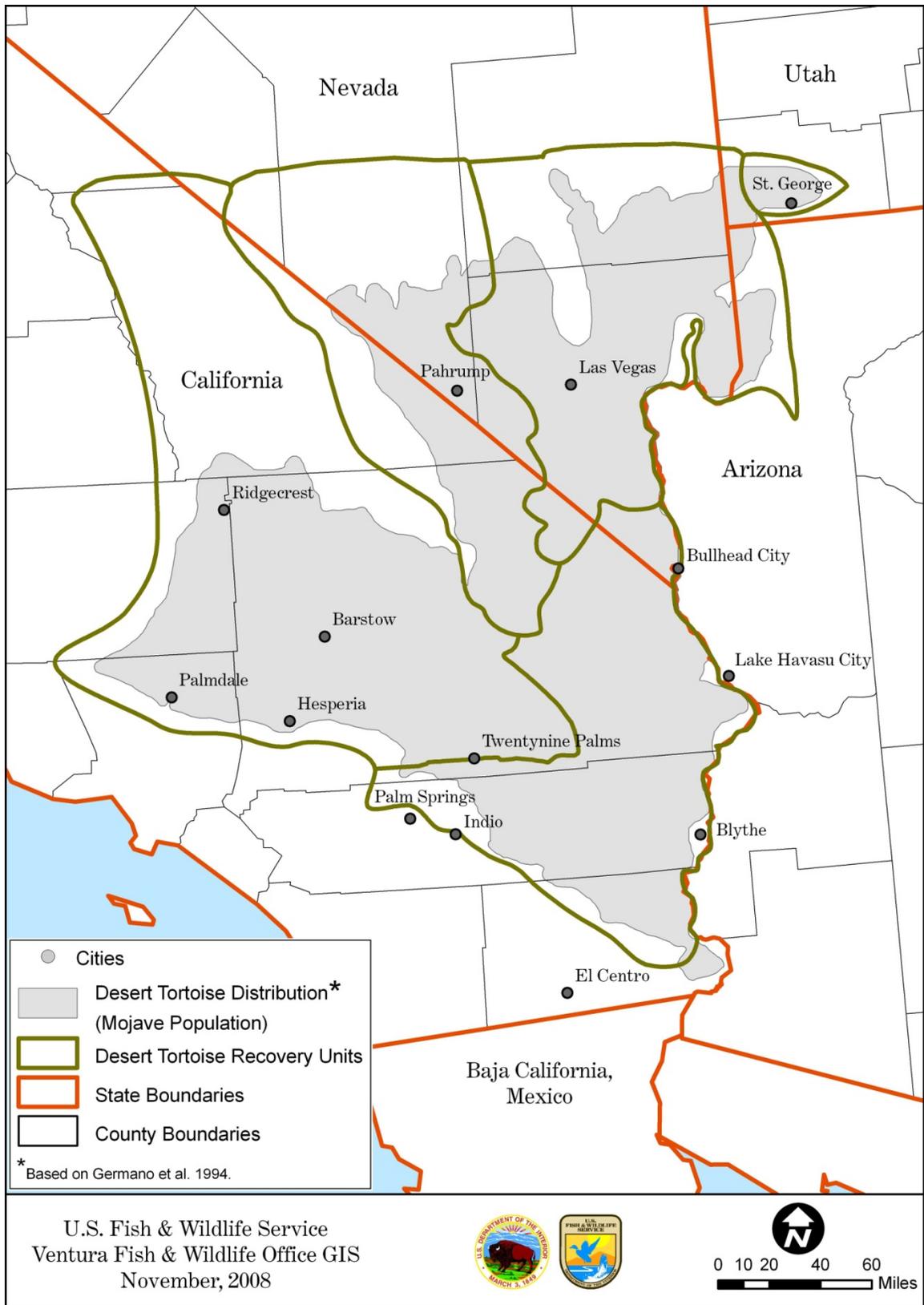


Figure 1: Known Range of the Desert Tortoise (Mojave Population)

## Pre-project Field Survey Protocol for Potential Desert Tortoise Habitats

### Objectives of survey

- Determine presence or absence of desert tortoises within the action area
- Estimate the number of desert tortoises (abundance) within the action area
- Assess the distribution of desert tortoises within the action area to inform take avoidance and minimization

The **action area** is defined by regulation as all areas to be affected directly or indirectly and not merely the immediate area involved in the action (50 CFR §402.02). The action area is not limited to the "footprint" of the action or jurisdiction. Rather, it is a biological determination of the reach of the proposed action on listed species.

### Field Methods

This protocol takes into account the fact that not all desert tortoises within the action area are seen by the surveyor. Provided is an equation which accounts for tortoises that are below ground at the time of surveys and for above-ground desert tortoises that are cryptic and may be missed.

$$\left( \begin{array}{c} \text{Estimated number of tortoises} \\ \text{within action area} \end{array} \right) = \frac{\left( \begin{array}{c} \text{Number of tortoises} \\ \text{observed above ground} \end{array} \right)}{\left( \begin{array}{c} \text{Probability that} \\ \text{a tortoise is} \\ \text{above ground (P}_a\text{)} \end{array} \right) \left( \begin{array}{c} \text{Probability of} \\ \text{detecting a tortoise,} \\ \text{if above ground (P}_d\text{)} \end{array} \right)} \left( \begin{array}{c} \text{Action area} \\ \text{Area surveyed} \end{array} \right)$$

Surveys of 100% coverage, or probabilistic sampling where appropriate, should utilize this equation to estimate the number of desert tortoises within the action area (see below; Table 1, P<sub>a</sub> and P<sub>d</sub>).

- Information to determine presence/absence *and* estimate number of desert tortoises within the action area is collected during the same survey effort. Surveyed objects include all desert tortoises that are above ground (both out of burrows and within burrows but still visible), as well as all desert tortoise sign (burrows, scats, carcasses, etc.). Record all locations of desert tortoises and sign encountered during the survey effort using the USFWS 2009 Desert Tortoise Pre-Project Survey Data Sheet (attached). Please submit a copy of the original datasheets with results of the survey to your local USFWS office.
- Surveys should be conducted during the desert tortoise's most active periods (April through May or September through October) (Nussear and Tracy 2007; Inman 2008; USFWS 2009). Surveys outside these time periods may be approved by USFWS, and CDFG in California (e.g., warm weather in March or rainfall in August stimulating increased desert tortoise activity).
- Desert tortoises utilize burrows to avoid daily and annual thermal extremes (Woodbury and Hardy 1948). Therefore, surveys should take place when air temperatures are below 40 degrees C (104 degrees F) (Zimmerman et al. 1994; Walde et al. 2003; Inman 2008). Air

temperature is measured ~5-cm from the soil surface in an area of full sun, but in the shade of the observer.

- Ten-meter (~30-ft) wide belt transects should be used during surveys. For all projects, surveys which cover the entire project area with the 10-m belt transects (100 percent coverage) are always an acceptable option. For very large action areas, probabilistic sampling may also be an option, such that the appropriate proportion of the action area is surveyed (Table 2). If probabilistic sampling is an option for the project site, each transect should be chosen either systematically or randomly ensuring that the entire action area has an equal probability of being included in the sample. Transects should be completed in a random order, oriented in a logistically convenient pattern (e.g., lines, squares, or triangles). Any sampling design other than simple systematic or random sampling must be approved by USFWS (e.g. stratification). See *Frequently Asked Questions* section for a discussion of 100 percent coverage and probabilistic sampling.
- USFWS considers the results of a pre-project survey to be valid for no more than one year. If survey results are older than one year, please contact the local USFWS office.

#### *Presence or absence of desert tortoises within the project vicinity*

- Occurrence of either live desert tortoises or desert tortoise sign (burrows, scats, and carcasses) in the action area indicates desert tortoise presence and therefore requires formal consultation with USFWS.
- If neither desert tortoises nor sign are encountered during the action area surveys and the project, or any portion of project, is  $\leq$  (less than or equal to) 0.8 km<sup>2</sup> (200 acres) or linear, three additional 10-m (~30-ft) belt transects at 200-m (~655-ft) intervals parallel to and/or encircling the project area perimeter (200-m, 400-m, and 600-m from the perimeter of the project site) should be surveyed. These transects are employed only as part of the presence/absence determination; they are not included in the estimation of desert tortoise abundance. See *Frequently Asked Questions* section below for an explanation of why additional surveys are needed.
- If neither desert tortoises nor sign are encountered during the action area surveys, as well as project perimeter surveys where appropriate, please contact your local USFWS office. Informal consultation with the USFWS may be required even though no desert tortoises or sign are found during surveys.

#### *Number of desert tortoises within the action area*

The attached Table 4.3 spreadsheet will estimate the number of adult desert tortoises (> (greater than) 160 mm MCL) within the action area using the “Number of desert tortoises within the action area” equation from above.

Enter the requested information into the Table 4.3 spreadsheet, as follows:

1. Enter the total project area.
2. Enter the appropriate value from Table 1 for the term “probability that a desert tortoise is above ground” ( $P_a$ ).
3. Enter the number of adult desert tortoises (>160-mm midline carapace length) found during the survey of the action area for the term “number of desert tortoises observed above ground” ( $n$ ).

---

**Table 4.1.** Probability that a desert tortoise is above ground ( $P_a$ ) relative to the previous winter’s rainfall (October through March)

---

*Use amount of rainfall from the winter preceding the pre-project survey to determine which value of  $P_a$  is appropriate for the project*

*To find this amount of rainfall, go to the Western Regional Climate Center site:*

*<http://www.wrcc.dri.edu/summary/Climsmsca.html>; click on your location and scroll down to “monthly totals”*

Previous Winter Rain	Probability ( $P_a$ )	Variance( $P_a$ )
<40 mm (~1.5 inches)	0.64	0.08
≥40 mm (~1.5 inches)	0.80	0.05

---

The estimate for the term “probability of detecting a desert tortoise if above ground ( $P_d$ )” is already included in spreadsheet Table 3 ( $P_d = 0.63$ ; variance = 0.011). See *Frequently Asked Questions* section below for how  $P_a$  and  $P_d$  and their associated variances were estimated.

See *Appendix 1* for a detailed description of the method used to estimate desert tortoise abundance.

#### *100 percent Coverage or Probabilistic Sampling?*

100% coverage surveys are always an acceptable option, regardless of the size of the action area. For very large action areas, probabilistic sampling may be an additional option, such that the appropriate proportion of the action area is surveyed as detailed below.

**For the 2009 field season, probabilistic sampling is not an option for desert tortoise pre-project surveys in California due to the requirement of CESA to avoid, minimize, and fully mitigate (CDFG code section 2081). In addition, probabilistic sampling is not an option for desert tortoise pre-project surveys in the Upper Virgin River Recovery Unit due to its small size and its need to be intensively managed (USFWS 1994).**

**Table 4.2.** Is probabilistic sampling an appropriate option for the proposed action area?

*Is your action area smaller than the area given below for the recovery unit in which the project occurs?*

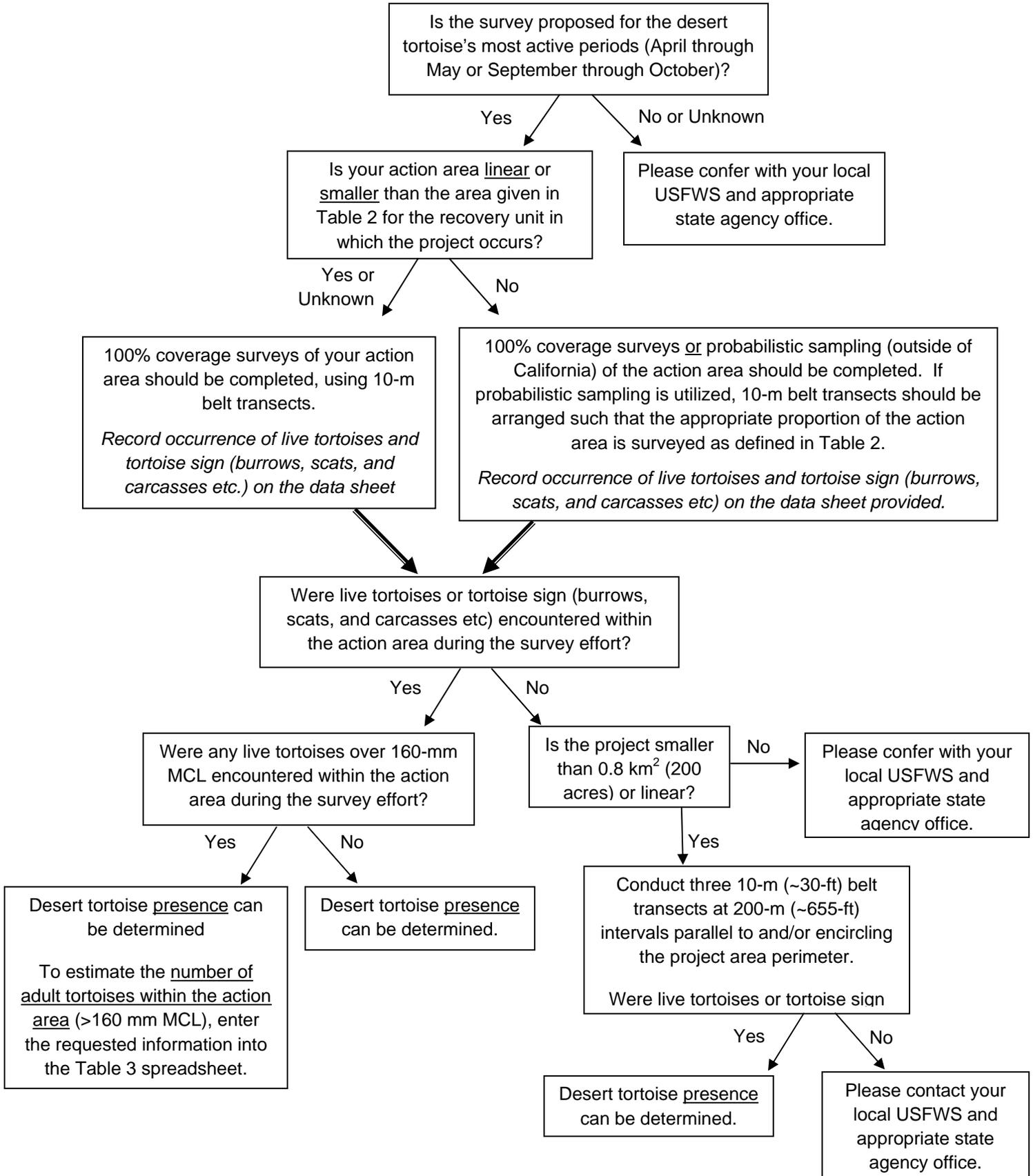
Recovery Unit	Threshold Action Area to Allow Sampling
Western Mojave	7.2 km <sup>2</sup> (1777 acres)
Eastern Mojave	10.8 km <sup>2</sup> (2676 acres)
Colorado Desert	6.4 km <sup>2</sup> (1573 acres)
Northeastern Mojave	23.3 km <sup>2</sup> (5764 acres)

*If yes: 100% coverage surveys of your action area must be completed.*

*If no, total transect lengths that must be surveyed are given below. 100% coverage surveys are also an option, regardless of the size of the project.*

Recovery Unit	Total Transect Length (km) to Sample
Western Mojave	719
Eastern Mojave	1083
Colorado Desert	637
Northeastern Mojave	2333

**Decision Tree for Pre-project Field Survey Protocol for Potential Desert Tortoise**



## **Frequently Asked Questions: Desert Tortoise Pre-project Field Survey Protocol**

### ***Why did USFWS revise the 1992 USFWS Desert Tortoise Pre-project Survey Protocol?***

Desert tortoises occur at low densities across most of the Mojave Desert (USFWS 2006). They are cryptic and spend much of their time underground in burrows (Burge 1977; Nagy and Medica 1986; Bulova 1994) and therefore not all animals within an area will be seen by even the best trained surveyors. Tortoises underground in burrows, as well as individuals hidden above ground, need to be included in estimates.

The 1992 USFWS Desert Tortoise Pre-project Survey protocol was based on a BLM protocol from the mid-1970s, which utilized the best available information at the time, but did not take into account that some tortoises will be underground and missed during the survey effort. The data collected during the extensive USFWS range-wide monitoring program (currently <7,000-km of transects each year; USFWS 2006) have allowed us to improve pre-project survey methods. Data about the proportion of tortoises underground in burrows, as well as the probability that an above-ground tortoise will be observed by the surveyor are included in the estimate of the number of tortoises within the action area ( $P_a$  and  $P_d$ ).

This protocol also addresses the potential for using probabilistic sampling when the action area is above the size limits given in Table 2. One hundred percent coverage surveys are *always* an acceptable option, regardless of the size of the action area. For very large action areas, sampling may be an additional option, such that the abundance estimates can be calculated when an appropriate proportion of the action area is surveyed. Estimates of tortoise densities within recovery units from the range-wide monitoring program have been used to calculate how many km<sup>2</sup> of a project site must be surveyed to produce a statistically robust abundance estimate (Table 4.2).

### ***What happened to the zone of influence transects recommended in the 1992 protocol?***

This revised protocol requires that the entire action area, rather than just the project footprint, be included in the survey effort. The **action area** is defined by regulation as “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action” (50 CFR §402.02). The action area is therefore not limited to the footprint of the project nor is it limited by the Federal agency's authority. Rather, the action area is a biological determination of the reach of the proposed action on listed species, which must, by definition, encompass the zone of influence of the project.

### ***How did USFWS determine the values for the “probability that a tortoise is above ground”?***

The USFWS range-wide monitoring program estimated the proportion of the desert tortoise population that is visible using telemetered animals from focal areas in spring 2001-2005 (USFWS 2006). This probability is related to the previous winter's rainfall, as illustrated in

Table 4.1. The range of fall above-ground activity is similar to spring numbers, but the variability is much higher (Nussear and Tracy 2007; Inman 2008). Until more robust estimates of fall above-ground activity are available, spring estimates based on the previous winter's rainfall (October through March) are used for surveys conducted in either active period.

***How did USFWS establish the value for the “probability of detecting a tortoise, if above ground”?***

For the past 5 years, surveyors in the USFWS range-wide monitoring program have undergone training on established transects with artificial tortoises. Trained surveyors detected an average of ~63% of model tortoises that were within 5-m of either side of the transect center-line (USFWS unpublished).

***Why are only tortoises over 160-mm MCL used to estimate the number of tortoises within the action area?***

The values of  $P_a$  and  $P_d$  used in the equation to estimate the number of tortoises within the action area are based on USFWS range-wide monitoring data collected for tortoises  $\geq 160$ -mm MCL.

***What is the purpose of 100% coverage surveys versus probabilistic sampling?***

The purpose of surveying is to determine presence/absence and estimate the abundance of desert tortoises within the action area. For 100% coverage surveys, transects are placed across the entire action area; thus, the entire area for which abundance is estimated is surveyed. A probabilistic sampling approach, on the other hand, uses data from randomly or systematically placed transects to draw inferences about locations where surveys are not conducted. All locations for which abundance will be estimated *must* have an equal probability of being included in the sample.

***How were the threshold project sizes calculated for determining whether 100% coverage or probabilistic sampling is appropriate?***

The validity of probabilistic sampling requires that all locations for which abundance will be estimated have an equal probability of being included in the sample, as well as the expected sample size. Estimating the number of tortoises within the project area using probabilistic sampling is limited by the number of tortoises encountered during the survey effort. Therefore, whether or not the project area must be surveyed using 100% coverage or can be probabilistically sampled is based on the area expected to yield a survey count of 20 tortoises (Krzysik 2002). Table 4.2 uses tortoise densities and detection probabilities estimated from 2001-2005 range-wide line-distance sampling efforts for each tortoise Recovery Unit (USFWS 2006) to calculate that area of a project site that must be surveyed to produce a statistically robust estimate. If the project area is large enough to allow the option of probabilistic sampling, Table 4.2 provides the minimum transect kilometers (10-m wide) that must be surveyed.

***What if the minimum length of 10-m wide transect kilometers are completed but 20 tortoises were not found in the action area?***

If probabilistic sampling is used and < 20 tortoises are found after surveying the total transect length prescribed by Table 4.2, number of tortoises within the action area may be estimated using number found.

***Do I keep surveying if 20 tortoises are found before the minimum transect kilometers that must be surveyed are completed?***

If probabilistic sampling was used and the transects have been completed in a random order, project area surveys may be considered complete when 20 tortoises have been found or the specified number of kilometers have been sampled, whichever happens first. It is okay if more than 20 tortoises are found, this will decrease the width of the 95% confidence interval for the abundance estimate.

***Why do small and linear projects where no tortoises were found have to do additional surveys at 150-m (~500-ft) intervals parallel to the project area perimeter?***

Even though neither tortoises nor tortoise sign were found within the action area at the time of the survey, the area may be part of an animal's home range. The home range of a female desert tortoise averages around 0.15 to 0.16 km<sup>2</sup> (35 to 40 acres), about one third the size of male home ranges, which are variable and can be > 2 km<sup>2</sup> (O'Conner et al. 1994; Duda et al. 1999; Harless et al. in press). Therefore, projects that are ≤ 0.8 km<sup>2</sup> (200 acres) or linear may overlap only part of a tortoise's home range and the possibility that a resident tortoise was outside the project area at the time surveys were conducted must be addressed. In these cases, USFWS recommends three additional 10-m (~30-ft) belt transects at 200-m (~655-ft) intervals parallel to and/or encircling the project area perimeter (200-m, 400-m (~1312 ft), and 600-m (~1968 ft) from the perimeter of the project site). Record any tortoises or sign encountered during these surveys. These transects are employed only as part of the presence/absence determination; they are not included in the estimation of tortoise abundance within the project area.

***What does the 95 percent confidence interval for the number of tortoises within the action area mean?***

Confidence intervals are used to indicate the reliability of an estimate. The interval gives an estimated range of values, calculated from a set of sample data, which is likely to include an unknown population parameter (in this case, the true number of tortoises within the action area). A wider confidence interval indicates that less certainty is associated with the estimate (see Appendix 2). The Table 4.3 spreadsheet calculates the abundance and associated 95 percent confidence interval for the estimated number of tortoises within the project area (Buckland et al. 2001).

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## Appendix 1. Detailed description of desert tortoise abundance and CI estimation

The estimated abundance of adult desert tortoises within the action area is given by:

$$\left( \begin{array}{c} \text{Estimated number of tortoises} \\ \text{within action area} \end{array} \right) = \frac{\left( \begin{array}{c} \text{Number of tortoises} \\ \text{observed above ground} \end{array} \right)}{\left( \begin{array}{c} \text{Probability that} \\ \text{a tortoise is} \\ \text{above ground} \end{array} \right) \left( \begin{array}{c} \text{Probability of} \\ \text{detecting a tortoise,} \\ \text{if above ground} \end{array} \right)} \left( \begin{array}{c} \text{Action area} \\ \text{Area surveyed} \end{array} \right),$$

which is equivalent to:

$$\hat{N} = \left[ \frac{(n)}{(Table2)(0.63)} \right] \left[ \frac{(A)}{(a)} \right],$$

where  $\hat{N}$  = estimated abundance within entire action area,  $n$  = number of tortoises observed above ground,  $A$  = total action area, and  $a$  = actual area surveyed (= total # km surveyed \* 0.01). For 100% coverage surveys,  $A/a = 1$ .

Table 3 uses the following equations to calculate the 95% confidence interval for the estimate of tortoise abundance within the action area (Buckland et al. 2001), assuming all replicate transect lines are the same length, 10-km.

$$\text{var}(n) = L \sum_{i=1}^k l_i \left( \frac{n_i}{l_i} - \frac{n}{L} \right)^2 / (k-1)$$

where  $\text{var}(n)$  = the spatial variation in the number of tortoises detected through the total transect length  $L$ ,  $n_i$  = the number of tortoises seen on transect  $i$ ,  $l_i$  = the length of individual transect  $i$ , and  $k$  = total number of transects walked.

Putting the sources of variability together, the variance of density is:

$$\text{var } \hat{D} = \hat{D}^2 \left[ \frac{\text{var}(n)}{n^2} + \frac{\text{var}(\hat{P}_a)}{(\hat{P}_a)^2} + \frac{\text{var}(\hat{P}_d)}{(\hat{P}_d)^2} \right]$$

Because the tortoise density sampling distribution is positively skewed, the confidence interval is calculated using a log-distribution for density and built with division and multiplication, rather than addition and subtraction from the mean as with a symmetrical interval (Buckland et al. 2001).

Thus, the 95% confidence interval for  $\hat{N}$  is:

$$\left(\hat{N} / C_N, \hat{N} \cdot C_N\right),$$

$$\text{where } C_N = \exp\left[z_{\alpha} \sqrt{\text{var}(\log_e \hat{D})}\right] \text{ and } \text{var}(\log_e \hat{D}) = \log_e \left[1 + \frac{\text{var}(\hat{D})}{\hat{D}^2}\right].$$

Given the simplifying assumptions in this protocol, the 95% confidence interval around the estimated number of tortoises within the action area will be wide (e.g., the estimate of the number of tortoises will be imprecise). While this level of imprecision would not be appropriate for recovery planning and decision making at large scales, this protocol provides estimates at local scales that most efficiently utilize the best information that is available to provide statistically defensible results.

## Appendix 2. Example

Project location = near Beatty, NV (within the Eastern Mojave RU)

Action area = 12 km<sup>2</sup> (3,000 acres)

According to this protocol's Site Assessment key, the proposed action is within the known range of the desert tortoise. The local USFWS and appropriate State wildlife agency offices were contacted and a species list, which includes the desert tortoise, was obtained for the action area. Therefore, pre-project survey and consultation are necessary.

The project footprint is only 10 km<sup>2</sup>, but since the project will include blasting, the reach of the proposed action on listed species extends to 12 km<sup>2</sup>. Thus, the action area (and therefore the area which needs to be surveyed for desert tortoises) is 12 km<sup>2</sup> (which is more inclusive than the 10 km<sup>2</sup> project footprint).

According to Table 2 of the pre-project survey protocol, the project size of 12 km<sup>2</sup> is above the threshold project area to allow probabilistic sampling in the Western Mojave RU (10.8 km<sup>2</sup> threshold). Therefore, at a minimum, 1,083 km of transects must be walked. For this example, 108 10-km transects (10-m wide) were placed systematically across the project site and were completed in a random order. Surveys of 100% coverage in which 10-m wide transects were placed across the entire 12 km<sup>2</sup> action area would also have been acceptable.

Transects totaling 1,083 km were conducted and 19 adult tortoises (> 160 mm carapace length) were found (as well as tortoise sign, both of which were catalogued using the USFWS 2009 DT pre-project survey protocol data sheet). If 20 adult tortoises had been encountered before the 1,083 km of transects were completed, and transects were conducted in a random order, then surveys could have been considered complete after the 20<sup>th</sup> tortoise was catalogued.

Data collected from the 108 transects (live animals encountered <160-mm MCL)

Number of tortoises (n <sub>i</sub> )	Number of transects on which n <sub>i</sub> tortoises were seen
0	93
1	11
2	4

Using the Western Regional Climate Center website, it was determined that the Beatty area had received 97-mm (3.8 inches) of rain in the October through March preceding the survey effort, which is above the 40-mm (1.5 inches) in Table 1. Therefore, P<sub>a</sub> of 0.80 will be used in this estimation.

Thus, from

$$\hat{N} = \left[ \frac{(n)}{(Table2)(0.63)} \right] \left[ \frac{(A)}{(a)} \right], \text{ we get } \hat{N} = \left[ \frac{(19)}{(0.80)(0.63)} \right] \left[ \frac{(12 \text{ km}^2)}{(10.8 \text{ km}^2)} \right], \text{ or } \hat{N} \approx 42 \text{ tortoises}$$

$$\text{Density} = \frac{(\hat{N})}{(A)}, \text{ we get } \hat{D} = \frac{(42)}{(12 \text{ km}^2)}, \text{ or } \hat{D} \approx 3.5 \text{ tortoises/km}^2$$

To calculate the 95% confidence interval for our abundance estimate, we use:

$$\text{var}(\hat{n}) = L \sum_{i=1}^k l_i \left( \frac{n_i}{l_i} - \frac{n}{L} \right)^2 / (k-1),$$

$$\text{we get } \text{var}(\hat{19}) = 1080 \left[ (93)(10) \left( \frac{0}{10} - \frac{19}{1080} \right)^2 + (11)(10) \left( \frac{1}{10} - \frac{19}{1080} \right)^2 + (4)(10) \left( \frac{2}{10} - \frac{19}{1080} \right)^2 \right] / (108-1), \text{ or}$$

$$\text{var}(\hat{19}) = 23.88$$

And for,

$$\text{var } \hat{D} = \hat{D}^2 \left[ \frac{\text{var}(n)}{n^2} + \frac{\text{var}(\hat{P}_a)}{(\hat{P}_a)^2} + \frac{\text{var}(\hat{P}_d)}{(\hat{P}_d)^2} \right], \text{ we get } \text{var } \hat{D} = 3.5^2 \left[ \frac{23.88}{19^2} + \frac{0.05}{0.80^2} + \frac{0.011}{0.63^2} \right], \text{ or } \text{var } \hat{D} = 2.107$$

Using our log-transformation because the tortoise density sampling distribution is positively skewed,

$$\text{var}(\log_e \hat{D}) = \log_e \left[ 1 + \frac{\text{var}(\hat{D})}{\hat{D}^2} \right], \text{ we get } \text{var}(\log_e \hat{D}) = \log_e \left[ 1 + \frac{2.107}{3.5^2} \right], \text{ or } \text{var}(\log_e \hat{D}) = 0.15$$

Then,

$$C_N = \exp \left[ z_{\alpha} \sqrt{\text{var}(\log_e \hat{D})} \right], \text{ we get } C_N = \exp \left[ (1.96) \sqrt{0.15} \right], \text{ or } C_N = 2.18$$

And,

$$\left( \hat{N} / C_N, \hat{N} \cdot C_N \right), \text{ we get } ((42 / 2.18), (42 \cdot 2.18)), \text{ or } \sim (19, 92).$$

## Summary

Using the Site Assessment key, it was determined that survey and consultation were necessary for the proposed action. Thus, the pre-project field survey protocol was implemented. In this case, probabilistic sampling with equal length transects (10-km long) was used and 19 adult tortoises and tortoise sign were found during the sampling of the action area, indicating presence. Using the equations and data presented in Appendix 1 of this protocol, Table 3 estimated the actual number of tortoises within the project was estimated to be ~42, with a 95% confidence interval of ~(19, 92).

**USFWS DESERT TORTOISE PRE-PROJECT SURVEY DATA SHEET**

Date of survey: \_\_\_\_\_ Survey biologist(s): \_\_\_\_\_  
(month, day, year)

Site description: \_\_\_\_\_  
(project name and size; general location)

County: \_\_\_\_\_ Quad: \_\_\_\_\_ Location: \_\_\_\_\_  
(UTM coordinates, lat-long, and/or TRS; map datum)

Transect #: \_\_\_\_\_ Transect length: \_\_\_\_\_ Type of survey: \_\_\_\_\_  
(acres to be surveyed; 100% coverage/probabilistic sampling)

GPS Start-point: \_\_\_\_\_ Start time: \_\_\_\_\_ am/pm  
(easting, northing, elevation in meters)

GPS End-point: \_\_\_\_\_ End time: \_\_\_\_\_ am/pm  
(easting, northing, elevation in meters)

Start Temp: \_\_\_\_\_ °C Weather: \_\_\_\_\_ End Temp: \_\_\_\_\_ °C

**Live Tortoises**

Detection number	GPS location		Time	Tortoise location <i>(in burrow: all of tortoise beneath plane of burrow opening, or not in burrow)</i>	Approx MCL >160-mm? <i>(Yes, No or Unknown)</i>	Existing tag # and color, if present
	Easting	Northing				
1						
2						
3						
4						
5						
6						
7						
8						

**Tortoise Sign (burrows<sup>1</sup>, scats, carcasses, etc)**

Detection number	GPS location		Type of sign <i>(burrows, scats, carcass, etc)</i>	Description and comments
	Easting	Northing		
1				
2				
3				
4				
5				
6				
7				
8				

<sup>1</sup> See section 4.1.2 for information on burrow condition class and photographing burrows

## **CHAPTER 5. AFTER A BIOLOGICAL OPINION OR TAKE PERMIT HAS BEEN ISSUED FOR THE DESERT TORTOISE - MOJAVE POPULATION: PRELIMINARY CONSIDERATIONS BEFORE GOING TO THE FIELD**

### **5.1. Marking and Numbering**

Typically, desert tortoises are not marked or numbered in association with most projects. If you intend to permanently mark or number desert tortoises (e.g., by notching the shell or attaching a tag), you must be authorized to do so and coordinate with the USFWS Desert Tortoise Recovery Office (DTRO) for instruction. The DTRO in coordination with other agencies assigns tortoise numbers that are used by scientists to mark desert tortoises throughout its range. You must contact the DTRO and appropriate State wildlife agency before marking desert tortoises.

### **5.2. Field Supplies and Equipment**

Prepare in advance for a variety of field situations. A list of materials needed for handling desert tortoises is provided below. Many researchers have a kit for each type of activity (e.g., tortoise handling kit, burrow excavation kit, etc.). Organize all the materials and equipment that you need to expeditiously handle desert tortoises to ensure their safety and minimize stress.

All authorized personnel (Authorized Biologists and 10(a)(1)(A) permitted biologists) must be knowledgeable on diseases, parasites, and precautions to avoid the spread of pathogens when handling desert tortoises. Upper Respiratory Tract Disease, (URTD) caused by *Mycoplasma* spp. was identified as one of the threats that contributed to the population decline and subsequent listing of the desert tortoise as threatened by the USFWS and CDFG. This and other diseases (e.g., cutaneous dyskeratosis) are present in many populations of the desert tortoise. Also present are parasitic ticks, which are potential vectors of disease to humans (Berry and Christopher 2001).

#### 5.2.1. Documents

Agency document(s) regulating the specific project may include:

- USFWS biological opinion or incidental take permit
- BLM stipulations
- USFWS Authorized Biologist or desert tortoise Monitor approval and/or
- Copy of 10(a)(1)(A) permit or other permits
- State wildlife agency permit
- State memorandum of understanding

#### 5.2.2. Basic supplies and equipment

- Hand-held GPS unit with extra batteries
- Desert Tortoise Field Manual
- Thermometer (to measure air and ground temperatures)

- Watch or clock (to record start and finish processing times)
- Hand held mirror (for viewing inside burrow)
- LED flashlight
- Water
- Project maps
- Clipboard
- Data sheets (in this Manual)
- Tortoise tapping rod (collapsible fishing pole, etc.)
- Surveyor's tape

#### 5.2.3. Desert tortoise handling and marking

- Disposable latex gloves (for handling tortoise)
- Different sizes of coffee cans (or similar cylinders) and waterproof disposable plastic (for immobilizing tortoise and preventing disease transmission)
- Toothbrush, disinfected (for cleaning dirt from scute to be numbered)
- Acrylic paint or typewriter correction fluid (for making dot to number tortoise)
- Waterproof, capillary pen (for numbering the tortoise and keeping notes)
- ½-inch masking tape (to cover growth areas prior to applying epoxy)
- Epoxy, toothpicks, wooden coffee stirrer, tongue depressors (to cover the number on the scute and to apply the epoxy)
- Hand lens (for observing parasites)
- 0.175 percent sodium hypochlorite (bleach) solution (1 part household bleach to 10 parts water) in a spray bottle (for disinfecting equipment) or Nolvasan (chlorhexidine diacetate)
- Rubber/plastic container and lid (for soaking instruments in Nolvasan)
- Container for rehydrating tortoises
- New, disposable cardboard boxes or disinfected plastic containers (for holding and/or transporting tortoises)
- Plastic, ziplock bags (for holding unused latex gloves and weighing juvenile tortoises)
- Garbage bags (for disposing of used gloves, grocery bags, etc.)
- Disposable baby changing sheets
- DTRO/State wildlife agency-approved, sequential numbering scheme for marking tortoises and three-cornered files

#### 5.2.4. Desert tortoise weighing and measuring

- Cloth bags to transport desert tortoises (allows air flow; should be wetted to cool desert tortoises; and must be washed and bleached before reuse)
- Cord with appropriate tensile strength (to harness and weigh the desert tortoise)
- Calipers (for measuring mid-line carapace length)
- Metal or plastic rule
- 100 gram, 1.0 kilogram, and 5.0 kilogram tubular spring scale (to weigh desert tortoises)

#### 5.2.5. Desert tortoise burrow excavation and construction

- Measuring tape (for burrow dimensions)
- Compass (for burrow orientation)
- Leather or cloth gloves (to avoid animal stings and/or bites)
- Shovels (2) (for excavating burrow)
- Garden trowel (for excavating small burrows and nests)
- 4 foot x 8 foot x ¼ inch thick plywood (for artificial burrow construction)
- Hand saw (to cut plywood into appropriate size and shape)
- Surveyor's tape (for marking a burrow)

#### 5.2.6. Desert tortoise egg handling

- Felt-tipped pen (for marking eggs)
- Plastic bucket (for transporting eggs)
- Garden trowel (for excavating nest)

#### 5.2.7. Other

- Fiber-optic scope or miniature camera and clear protective covering (to avoid disease transmission)
- Pads or blanket for truck bed to cushion transported tortoise and reduce heat
- Phone number and contact person of local USFWS field office, State wildlife agency, BLM field office, etc.
- Phone number of nearest qualified veterinarian to treat injured tortoise
- Extra change of clothing, including extra shoes

### **LITERATURE CITED**

Berry, K. H. and M. M. Christopher 2001. Guidelines for the field evaluation of desert tortoise health and disease. *Journal of Wildlife Diseases*, 37(3) 427-450.

McCullough, D.L., K.D. Jones, and T.E. Olson. 1993. List of materials to be carried in the truck; list of materials to be included in the tortoise kit; tortoise excavation/removal data sheets; tortoise shell data sheet; and rough draft of a handling protocol. Materials received from McCullough Ecological Systems and Dames & Moore in response to a request for materials to be included in these Guidelines. Las Vegas, Nevada and Santa Barbara, California.

## **CHAPTER 6. CLEARANCE SURVEY PROTOCOL FOR THE DESERT TORTOISE - MOJAVE POPULATION**

### **6.1. Objectives**

- Locate as many desert tortoises as possible within the project site.
- Remove all desert tortoises encountered from the project site.
- Safely excavate, collect, and rebury desert tortoise eggs.

### **6.2. Applicability of Clearance Surveys**

For projects located in occupied desert tortoise habitat, especially those projects with a permanent or linear disturbance (e.g., pipelines, roads, transmission lines), a clearance survey may be required as part of the Terms and Conditions of a biological opinion or incidental take permit. This survey is intended to reduce the likelihood that desert tortoises are killed or injured as a result of the proposed action. Clearance survey methods may include temporarily penning desert tortoises within the area surrounding its burrow, relocating desert tortoises from the impact area, or translocating desert tortoises to a designated area outside its home range in accordance with a USFWS-approved translocation plan (Section 7.10).

### **6.3. Methodology**

- Clearance surveys require 100 percent coverage of the project area, with a focus on locating all desert tortoises above and below ground within the project area. This survey would be conducted immediately prior to surface disturbance at each site within the project area or following construction of a desert tortoise-proof fence or similar barrier encompassing the project area to ensure that tortoises cannot enter the project area.
- Clearance surveys at the project site must consist of at least 2 consecutive surveys of the site. Surveys shall involve walking transects less than or equal to 15-feet (5-meter) wide under typical conditions. In areas of dense vegetation or when conditions limit the ability of the surveyor's to locate desert tortoises, transects should be reduced in width accordingly. Clearance surveys should be conducted when desert tortoises are most active (April through May or September through October). If desert tortoises are found during the second pass, the USFWS and appropriate State wildlife agency may require a third survey. If any desert tortoises need to be translocated follow the USFWS-approved translocation plan for that project.
- After the desert tortoise exclusion fence has been installed, the fencing should be checked several times a day to ensure a tortoise has not been trapped within the fence and may be exposed to lethal temperatures. Desert tortoises often pace along new fences attempting to gain access to the other side or return to areas from which they were removed.
- All methods used for handling desert tortoises during the clearance surveys must be in accordance with this Manual. Anyone that handles desert tortoises during clearance activities must have the appropriate authorizations from USFWS and the State.
- During the clearance surveys, desert tortoises in burrows may be removed through tapping (Section 6.4) or careful excavation. Multiple visits may be necessary if desert tortoises are inaccessible in deep caves or burrows.

- During all handling procedures, desert tortoises 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. Desert tortoises shall be kept shaded at all times until it is safe to release them. Ambient air temperature shall be measured in the shade, protected from wind, at a height of 2 inches (5 centimeters) above the ground surface. All clearance activities (capture, transport, release, etc.) shall occur when ambient temperatures are below 95 degrees F (35 degrees C) and not anticipated to rise above 95 degrees F (35 degrees C) before handling and processing desert tortoises are completed. Refer to section 7.4 for handling desert tortoises during hot temperatures.
- If a desert tortoise is encountered aboveground and outside the temperature limits refer to Section 7.4 or 7.5.
- The area cleared and number of desert tortoises found within that area must be reported to the local USFWS and the appropriate State wildlife agency. The report should be made in writing, either by mail or email. Notification should be received within one week.
- If a desert tortoise is encountered after clearance surveys have been completed, process the tortoise according to the methods described above.

#### **6.4. Extracting Desert Tortoises from Burrows**

Before touching a desert tortoise or using any instrument that comes into contact with a desert tortoise, implement procedures described in Section 7.6. Examine the burrow for other occupants (e.g., snakes, spiders, scorpions, wasps, Gila monsters, etc.). Firmly pound the soil at the side of the “apron” or soil mound at the entrance of the burrow 5 to 6 times with an open hand then listen for desert tortoise movement; wait 30 seconds and repeat several times if needed. Avoid disturbing or pounding the center of the apron or entrance of the burrow where desert tortoises typically dig nests and lay their eggs. If the desert tortoise is visible deep in its burrow, the observer can gently tap the carapace 3 to 4 times with a stick (Medica et al. 1986). The observer should then remove the stick and move away from the burrow entrance. If tapping is successful, the desert tortoise will emerge, usually to the burrow entrance. If desert tortoise movements are not heard within a few minutes, discontinue tapping.

If the desert tortoise is within arm’s reach, firmly grasp the gular, plastron, or posterior edge of the carapace and gently pull the tortoise towards the burrow entrance. If the desert tortoise resists to the point where moderate pulling effort is unsuccessful, stop pulling while maintaining a grip on the tortoise; resume when the tortoise relaxes. **Never use a hook or other instrument to remove a desert tortoise from a burrow or otherwise compromise the integrity of a burrow if the desert tortoise will remain in the project area.**

If the area is to be cleared of all desert tortoises, excavate the burrow as described in Section 6.5. If the tortoise is in a deep caliche cave which cannot be excavated without potentially harming the desert tortoise, record the location and contact the USFWS for instruction.

## 6.5. Excavating Burrows

According to most agency documents, desert tortoise burrows are excavated only if they occur within a proposed disturbance area. If excavating a burrow to relocate a desert tortoise, and an artificial burrow is required, it should be constructed before beginning the excavation (Section 6.7.). Biological opinions and permits typically require that such areas be flagged and that project activities be confined to those areas. As an alternative to excavation in certain circumstances, the immediate area surrounding a burrow occupied by a desert tortoise may be temporarily penned, if authorized by the USFWS and the appropriate State wildlife agency (Section 6.9.).

When required, take measurements of the burrow before excavating it. Before excavation, feel for desert tortoise eggs by gently probing the soil in front of the burrow opening (i.e., the mound) with a blunt instrument (e.g., knitting needle) or similar instrument, and along the floor of the burrow as you excavate the burrow. The purpose of probing is to locate areas of excavated soil which are less compacted and may indicate a nest. Eggs have been found up to 6 feet (1.9 meters) in front of burrow openings and up to 6 feet (1.9 meters) within the entrance of a burrow; they may also occur in the mound at the burrow opening. To avoid crushing eggs, do not scrape the shovel across the bottom of the burrow, but continue to probe the area with your fingers as you proceed. Removal of the top 10 inches (25 centimeters) of soil (or until a hard layer of soil is encountered) will typically ensure that you find any desert tortoise eggs. Be particularly careful from late April to mid-October when eggs are most likely present. If found, follow the USFWS's egg handling protocol (Section 6.6.).

Excavators should wear leather or cloth gloves during burrow excavation to avoid being bitten or stung by venomous animals. Use blunt-nosed shovels or garden trowels. The preferred method involves two individuals, each with a shovel, to excavate a burrow. Place a shovel in the burrow entrance, or garden trowel for small burrows, and slice away the ceiling with the second shovel or trowel. Remove the soil with the first shovel or trowel as excavation proceeds and repeat. Excavate the burrow slowly and carefully and stop often to see if a desert tortoise is within reach. Do not collapse the burrow ahead of the shovel or trowel inside the burrow. You should feel the shovel contact the other shovel with each stroke to avoid striking a desert tortoise. It may take several minutes or several hours to excavate a desert tortoise burrow, depending on its length and other characteristics.

Always excavate the burrow to its absolute end(s), and then excavate an additional foot-or-so (0.3 meter) of harder soil beyond the suspected end to ensure that a desert tortoise is not behind a dirt plug or mound. Search all side tunnels within the burrow for desert tortoises, especially in kit fox dens. If a desert tortoise is found, do not assume that it is alone. After removing the first desert tortoise encountered, return to the burrow and continue to excavate it looking for additional desert tortoises. After excavating the burrow, leave it collapsed so that no desert tortoise may reuse it easily.

When excavating a burrow, stop digging when a desert tortoise is encountered. If during the desert tortoise less-active period (i.e., during July - August, and November - February; in Arizona the less-active period may begin in late May or June), relocate the desert tortoise to an artificial burrow. If it is during the most-active period (i.e., when desert tortoises are most likely

above ground; March - June, and September - October), place the desert tortoise in the shade of a shrub, or depending on conditions, in an artificial burrow (Section 6.7.).

## **6.6. Nest and Egg Handling Protocol**

Desert tortoises may lay eggs during the months of May through July and usually hatch July through October. Some eggs may not hatch, or hatchlings may not emerge until the following spring. Because desert tortoise eggs are also protected by the ESA, the Authorized Biologist shall search for nests and encouraged to search prior to clearance surveys. Desert tortoise eggs shall be moved to artificial nests either in the wild or at a USFWS-approved facility. If you encounter unemerged hatchlings, contact the USFWS and appropriate State wildlife agency for instructions. Authorized Biologists must receive special training in the procedures outlined below. If you discover a nest and have not been trained, the nest shall be carefully covered with soil so as not to move the eggs then contact the USFWS and appropriate State wildlife agency for instructions.

Any nest that is found shall be carefully excavated by hand at a time of day when the air temperature 6 inches (15 centimeters) above the ground is approximately equal to the soil temperature at egg level. Immediately upon finding a nest, discontinue using large tools. The Authorized Biologist shall excavate the nest using his or her hands. Disposable rubber or latex gloves must be worn when marking and handling eggs. Before disturbance of nest contents, each egg shall be gently marked with a small dot on the top using a felt-tipped pen to establish the egg's orientation in the nest. In handling nest contents, eggs must be maintained in this orientation at all times. Because egg shells become extremely fragile in the last few weeks before hatching, special care shall be taken with eggs found from August to mid-October. Because the egg is very fragile, it may break during handling; this will be lethal to the developing tortoise inside. Broken eggs shall be buried nearby and left in the field, or the contents preserved and made available for research projects. Report broken eggs to the USFWS and appropriate State wildlife agency as required for tortoise mortalities.

The Authorized Biologist shall measure and record the depth of the nest below the soil surface, the cardinal location of the nest in relation to any adjacent shrub (i.e., north, south, east, or west side of the shrub), the species of shrub and its approximate foliage volume, and the soil type. Place approximately 1 inch (2.5 centimeters) of soil from the nest area in a bucket and carefully transfer the eggs to the bucket, maintaining egg orientation. Gently cover the eggs with soil that is free of cobbles and pebbles, to a depth equivalent to that of the original nest.

If good desert tortoise habitat is available in the general area, the eggs shall be relocated between 150 to 1,000 feet (45.7 to 305 meters) from outer boundary of the project site, unless directed differently by USFWS. Eggs and tortoises shall only be placed on lands administered by a Federal agency or on lands when a written authorization to bury the eggs or relocate the tortoises has been obtained. A nest shall be prepared with the same depth, orientation, location in relation to a specific shrub species, and in the same soil type as the original nest. The eggs shall be transferred to the new nest, maintaining their original orientation. The eggs shall be replaced so that they touch one another. Gently cover with soil from which cobbles and pebbles have been removed so that all the air spaces around the eggs are filled. Relocated nests in the wild shall be monitored by an Authorized Biologist. The monitoring program shall be developed in

consultation with the USFWS and appropriate State wildlife agency. Care must be taken to remove any scent of tortoise eggs or human activity at the nest site to minimize nest predation.

If a suitable site for a nest is not available in the wild, the eggs shall be prepared for incubation in a suitable holding facility. A small amount of soil shall be placed in a bucket and the eggs transferred to the bucket using the technique specified above, making sure that the eggs are touching one another. The bucket shall be carefully filled to the depth of the original nest, but leave the top of the soil layer 3 inches (7.6 centimeters) below the rim of the bucket so that future hatchlings cannot escape. The bucket shall be buried in soil in a safe location at a holding facility approved by the USFWS and appropriate State wildlife agency.

The Authorized Biologist shall record in detail all the procedures used in moving eggs. Personnel caring for incubating eggs at a facility shall maintain a record of where the eggs were found, method of incubation, length of time and conditions under which the eggs were incubated, observations of eggs during the incubation period, information about hatchling health and behavior, and disposition of the hatchlings.

## **6.7. Constructing Artificial Burrows**

Constructing an artificial burrow will take from 30 minutes to several hours, depending on the substrate. An artificial burrow is intended to provide replacement shelter and protection to a desert tortoise when removed from its natural burrow. The USFWS requires experience and training in burrow construction prior to being authorized to construct an artificial burrow. The information provided below including Figures 6.1 and 6.2 is a general description of the methods for constructing artificial burrows taken from Tortoise Group's adoption and care pamphlet ([www.tortoisegroup.org](http://www.tortoisegroup.org)).

Create an artificial burrow that is the same orientation and size as the burrow from which the desert tortoise was taken. The burrow for a juvenile desert tortoise should be 3 to 4 feet (0.9 to 1.2 meters) long and an adult tortoise burrow should be 5 to 6 feet (1.5 to 1.8 meters) long. Burrow construction involves digging a three-sided shelf upon which plywood will be placed to serve as the roof of the burrow. A channel is dug below the level of the shelf which approximates the width of the tortoise and functions as the actual burrow (Figure 6.1).

Determine the width and length to dig the shelf, place the plywood on the ground. Use corner stakes and twine to delineate the perimeter. Dig the burrow in a downward slant of 15 to 20 degrees below the horizontal line of the ground (Figure 6.2). Place the plywood onto the shelf. Fit the plywood snugly and then remove it. Next, dig the channel and loosen the soil along the floor of the channel to a depth of 6 inches (15.2 centimeters) to allow a tortoise to dig its way out should the plywood sag and possibly trap or pin it in the burrow. Replace the plywood and shovel dirt on top. Place rocks along the eave of the burrow roof, above the opening (Figure 6.2). Mound the dirt so that rain water will not puddle on top of the finished burrow.

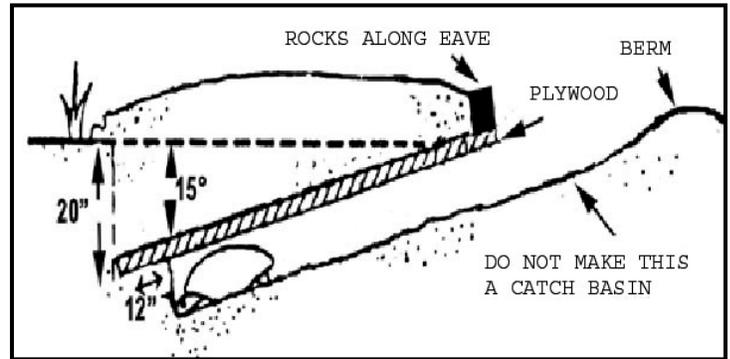
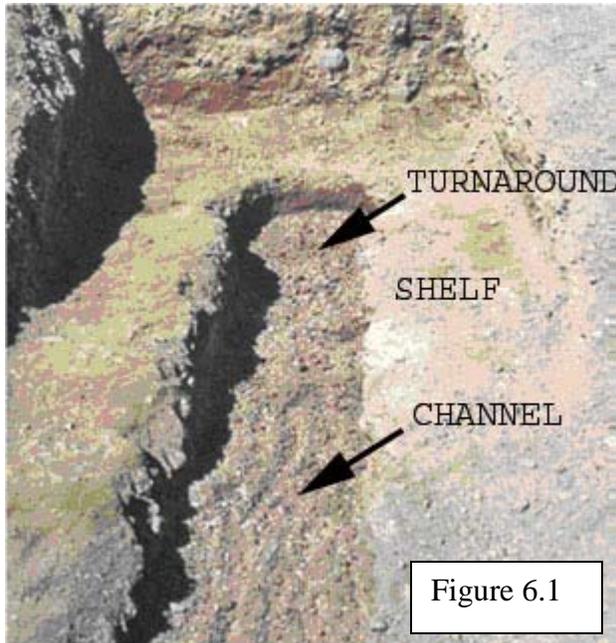


Figure 6.2

We recommend that you cover the opening of the artificial burrow with rocks or wood for 2 or 3 days to ensure that the tortoise remains within the burrow and out of harm's way, or that it resumes hibernation or aestivation.

Alternatively, the tortoise and its burrow may

be temporarily penned (Section 6.9). Providing an artificial burrow is particularly important if most of the burrows have been lost to disturbance and a desert tortoise would be unable to find an existing burrow in a reasonable amount of time. After several days, when project activities have ceased in the area (i.e., as on a pipeline or transmission line), or when you are reasonably sure that the tortoise is safely hibernating or aestivating, **it is absolutely essential that you remove the rocks from the opening of the blocked burrow or remove the pens around the tortoise and its burrow.**

## 6.8. Mapping and Finding Blocked Burrows

If you block a desert tortoise inside a burrow or temporarily pen the tortoise and its burrow according to instructions from the USFWS, you must return to that burrow and unblock it or remove the enclosure as soon as possible. Tortoises shall not be blocked in burrows during extreme high temperatures and construction activity shall be carefully monitored in the area around the blocked or penned tortoise. Accurately map the burrow with GPS so that you can find it again. Additionally, we recommend that you mark the area as a backup in case of GPS failure. For example, mark burrows with lath or ribbon placed a minimum of 100 feet (30.5 meters) from burrow. The marker should provide a cryptic message sufficient to locate the burrow (e.g., B23-2100FTS, to indicate that Burrow #23 on Reach 2 is 100 feet (30.5 meters) south of the lath (LaRue 1993)). The area must be discretely marked to avoid attracting people or ravens to the burrow.

## 6.9. Temporarily Confining Desert Tortoises

Desert tortoises found in the project area sheltering in a burrow during a period of reduced activity (e.g., winter), may be temporarily penned according to instructions from the USFWS. Tortoises shall not be penned in burrows during extreme high temperatures and construction activity shall be carefully monitored in the area around the penned tortoise. The methodology for penning desert tortoises (U.S. Department of Defense 2005) is adapted from a methodology developed by Gilbert Goodlett (EnviroPlus Consulting, Ridgecrest, California). Generally,

desert tortoises should not be penned in areas of moderate or heavy public use. Penning shall be accomplished by installing a circular fence, approximately 20 feet (6 meters) in diameter to enclose the tortoise/burrow. The pen should be constructed with durable materials (i.e., 16 gauge or heavier) suitable to resist desert environments. Fence material should consist of ½-inch hardware cloth or 1-inch horizontal by 2-inch (2.5 by 5.0 centimeters) vertical, galvanized welded wire. Pen material should be 24 inches (50 centimeters) in width. Steel T-posts or rebar (2 to 3 feet or 0.6 to 0.9 meter) should be placed every 5 to 6 feet (1.5 to 1.8 meters) to support the pen material. The pen material should extend 18 inches (45.7 centimeters) aboveground. The bottom of the enclosure shall be buried 6 to 12 inches (15 to 30 centimeters) or bent inward (towards the burrow), soil mounded along the base, and implement other measures to ensure zero ground clearance. Care shall be taken to minimize visibility of the pen by the public. An Authorized Biologist or Desert Tortoise Monitor shall check the pen at least daily and ensure that the desert tortoise is in the burrow or pen, the desert tortoise is okay, and the pen is intact. All instances of penning or issues associated with penning shall be reported to the USFWS within 3 days.

### **Literature Cited**

- LaRue, Jr., E.L. 1993. Monitoring guidelines for construction projects in desert tortoise habitat. Guidelines developed at Tierra Madre Consultants, Inc., Riverside, California.
- Medica, P.A., C.L. Lyons, and F.B. Turner. 1986. "Tapping:" A technique for capturing tortoises. *Herpetological Review* 17(1):15-16.
- U.S. Department of Defense. 2005. DARPA Grand Challenge 2005 after-action report. Defense Advanced Research Projects Agency (DARPA) Unpublished report prepared for the United States Fish and Wildlife Service, Southern Nevada Field Office. December 2005.

## **CHAPTER 7. GUIDELINES FOR HANDLING DESERT TORTOISES-MOJAVE POPULATION AND THEIR EGGS**

### **7.1. Objectives**

- Provide the reader with the most current methods for handling desert tortoises based on research and experience implementing previous handling protocols.
- Provide guidance to ensure the health and well-being of desert tortoises while allowing collection of data and necessary handling of desert tortoises.
- Ensure that diseases and parasites are not transmitted among desert tortoises.

### **7.2. Specific Considerations before Handling Desert Tortoises**

Depending on the circumstances, desert tortoises that are beneath machinery, in trenches or pipes, under pallets, or anywhere on the project site may be in danger and may need to be moved. Desert tortoises may be handled only by authorized personnel, but other project personnel may move a desert tortoise the shortest distance necessary to remove the desert tortoise from imminent danger if an Authorized Biologist is not present. The desert tortoise shall be monitored until an Authorized Biologist or USFWS is contacted for further instruction. If desert tortoises must be moved, a secure location must be available and the appropriate procedures in this Manual must be followed to ensure safe handling. If a secure location is not available, the tortoise must be held pending instruction from USFWS and the appropriate State wildlife agency. Before touching a desert tortoise, implement procedures described in Section 7.6.

### **7.3. Temperature Considerations**

Desert tortoises, particularly small ones, have been observed to be active aboveground every month of the year. However, the preferred daytime body temperature of desert tortoises is 69 degrees F to 101 degrees F (20.5 degrees C to 38 degrees C) (McGinnis and Voigt 1971). The critical maximum body temperature is between 103 degrees F and 112 degrees F (39 degrees C to 44 degrees C) (Brattstrom 1965, Naegle 1976). Berry and Turner (1984) found that juvenile desert tortoises preferred air temperatures of 63 degrees F to 66 degrees F (17 degrees C to 19 degrees C) during March, and 77 degrees F to 83 degrees F (25 degrees C to 28 degrees C) during June. Consequently, more juvenile desert tortoises were located in the morning (76.1 percent) than in the afternoon (23.9 percent). Zimmerman et al. (1994) found that air temperatures were comparable between 2 and 10 inches (5 centimeters to 25.4 centimeters) aboveground, with maximum variance of less than 3.5 degrees F (1.2 degrees C). Current information on lower temperature limits for desert tortoise activity is not well known.

Walde et al. (2003) observed that desert tortoises retreated into burrows when the air temperature reached 91.0 degrees F  $\pm$  3.5 degrees F (32.7 degrees C  $\pm$  1.2 degrees) and ground temperatures reached 95 degrees F  $\pm$  6 degrees F (35 degrees C  $\pm$  2.4 degrees); 95 percent of the desert tortoise observations aboveground occurred at air temperatures less than 91.4 degrees F (33 degrees C). Ground temperatures shall be measured on the ground surface in an area near the desert tortoise in full sun, with the thermometer in the shadow of the observer. Ambient air temperature shall

be measured in the shade, protected from wind, at a height of 2 inches (5 centimeters) above the ground surface.

During extreme heat, desert tortoises that shelter in relatively shallow burrows will remain in the burrow as long as the burrow temperature is lower than the temperature outside of the burrow. At night the air and surface temperatures drop faster than the temperature in the burrow. When the air and surface temperature drop below the burrow temperature, the desert tortoise may exit the burrow in an effort to lower its body temperature. Desert tortoises have been observed moving from a few feet out of the burrow to 50 feet (15 meters) or more during the night (Steve Ferrand, 2009, Nevada Biological Consulting, *in litt.*). Tortoises shall not be blocked in burrows during extreme temperatures and construction sites shall be carefully inspected during these periods for tortoises aboveground.

#### **7.4. Hot Temperatures**

Desert tortoises shall be treated in a manner to ensure that they do not overheat or exhibit signs of overheating, which include aggressive struggling by the desert tortoise, hot to the touch, frothing at the mouth, excessive salivation, or voiding its bladder. Desert tortoises shall not be placed in a situation where they cannot maintain surface and core temperatures necessary to their well-being. Desert tortoises shall be kept shaded at all times until it is safe to release them. Ground temperatures are much hotter than air temperatures thus never place a desert tortoise on unshaded ground. Removal of the upper layer of hot substrate would expose a cooler layer below.

No desert tortoise shall be captured, moved, transported, released, or purposefully caused to leave its burrow for whatever reason when the ground temperature is above 95 degrees F (35 degrees C). Temperature must be measured in the shade and protected from the wind at a height of 2 inches (5 centimeters) above the ground. No desert tortoise shall be captured if ground temperature is anticipated to exceed 95 degrees F (35 degrees C) before handling and relocation can be completed. If the ground temperature exceeds 95 degrees F (35 degrees C) during handling or processing, desert tortoises shall be kept shaded in an environment where the ambient air temperatures do not exceed 91 degrees F (32.7 degrees C) and ground temperature does not exceed 95 degrees F (35 degrees C). The desert tortoise shall not be released until ground temperature at the release site declines to below 95 degrees F (35 degrees C).

If a desert tortoise is found aboveground when these upper temperatures are exceeded and the desert tortoise must be moved from harm's way, place the desert tortoise in a clean, unused cardboard box or disinfected open plastic container, and keep it in a climate-controlled environment (e.g., air conditioned vehicle or building) until the ambient air and ground temperatures are below upper limits.

### Hyperthermic Desert Tortoises

Before touching a desert tortoise, implement procedures described in Section 7.6. If an animal begins frothing at the mouth, it is probably nearing an upper lethal body temperature and immediate action is required: a) capture, transport, and hold the desert tortoise in a climate-controlled environment, or b) if a nearby climate-controlled environment is unavailable, place the desert tortoise in an unused or open disinfected plastic container in the shade and pour cool water over the shell to a depth that ensures the nares remain above the water level. If no container is available, excavate a depression in a shaded area; place the desert tortoise in the depression and pour water over the shell. Heat-stressed desert tortoises shall not be released until they resume normal behavior. Monitor the desert tortoise after release until normal behavior resumes including sheltering.

### **7.5. Cold Temperatures**

If a desert tortoise is found aboveground during cold temperatures (i.e., ambient temperature less than 55 degrees F or 12.8 degrees C) and its burrow cannot be located nearby or will be destroyed, then capture the animal and implement the appropriate actions in Table 7.1. Before touching a desert tortoise, implement procedures described in Section 7.6. If relocating the desert tortoise to a natural burrow, ensure that the burrow is unoccupied; both a natural or artificial burrow must be of appropriate size within the average home range for that size and sex animal. If the end of the burrow cannot be seen, the burrow must be examined with a fiber-optic scope to ensure that the burrow and all side channels are unoccupied by other desert tortoises. Placing a desert tortoise in a burrow occupied by another desert tortoise may promote disease transmission and aggressive behavior between the desert tortoises.

**Table 7.1. Actions to implement for desert tortoises in harm's way or adjacent to project areas during cold temperatures.**

CIRCUMSTANCE	ACTIONS		
	Find natural, unoccupied burrow; block tortoise inside	Construct artificial burrow; block tortoise inside	Construct pen around tortoise and burrow (Section 6.9)
<b>Desert tortoise above ground:</b>			
Desert tortoise in harm's way, not in burrow	<b>X</b>	<b>X</b>	
Desert tortoise and burrow in harm's way	<b>X</b>	<b>X</b>	
Desert tortoise in harm's way, nearby burrow not in harm's way			<b>X</b>
Desert tortoise adjacent to project, burrow in harm's way	<b>X</b>	<b>X</b>	
Desert tortoise adjacent to project, no burrow	<b>X</b>	<b>X</b>	
Desert tortoise and burrow adjacent to project, not in harm's way			<b>X</b>
<b>Desert tortoise in burrow:</b>			
Desert tortoise in harm's way	<b>X</b>	<b>X</b>	
Desert tortoise adjacent to project			<b>X</b>

## 7.6. Procedures to Avoid Transmission of Diseases or Parasites

At all times, handle a desert tortoise as if it has a contagious disease or parasites, and in such a way to avoid transmitting disease or parasites from one desert tortoise to another. Much of the following information was developed by Berry and Christopher 2001.

During handling each desert tortoise, wear a new pair of disposable latex or rubber gloves (i.e., one pair of gloves, per desert tortoise, per encounter). If a glove is torn while handling a desert tortoise, which is likely when its toenail scrapes the glove, put on a new glove over the old one. Used gloves and disposable supplies (e.g., surveyors tape or flagging, etc.) must be placed in a plastic trash bag and disposed of offsite.

All tools that contact desert tortoises shall be disinfected in accordance with procedures described in Section 7.6.2.

### 7.6.1. Disinfecting Clothing

Do not allow a desert tortoise to contact clothing. If it does, change clothes before handling another desert tortoise. Contaminated clothes must be washed before worn again while handling desert tortoises. Keep a change of clothes on-hand and change clothes, including shoes, before leaving the site for another geographical location (e.g., another valley or mountain range would

be considered a separate location). As an alternative, wear disposable jumpsuits or gowns and disposable paper or plastic shoe covers. Use disposable paper or plastic sheeting to place under the desert tortoise or on the lap of field workers; disposable baby changing sheets may prove useful.

#### 7.6.2. Disinfecting Tools and Equipment

All equipment and work surfaces after contact with each desert tortoise, any equipment (e.g., scales, calipers, ruler, etc.) that comes in contact with a desert tortoise, including poles used to probe burrows or tap desert tortoises from burrows (Medica et al. 1986), must be disinfected. Disinfecting solutions shall be either 0.175 percent sodium hypochlorite (bleach) (Wendland et al. 2009) or *Nolvasan* (prepared according to the manufacturer's instructions). A 0.175 percent sodium hypochlorite bleach is a 1:10 dilution of 5 percent household bleach to water. Before disinfecting, first remove any organic debris (e.g., dirt, feces, etc.) by rinsing the area with water or brushing off the area with paper towels or a scrub brush. If using a bleach solution, the equipment and work surface shall be saturated with the solution and allowed to air dry. If using a *Nolvasan* solution, the equipment and work surface shall be submersed in the solution (bath) for a minimum of 10 minutes before being used on another animal. Equipment baths shall be changed regularly according to the label instructions. Measures should be taken to avoid transmission of pathogens between burrows when using a fiber-optic scope which may include covering the scope with a disposable plastic cover.

Between study sites, equipment, particularly buckets will be scrubbed using a dish soap and bleach solution. After rinsing, the bleach solution will be sprayed on the equipment and allowed to air dry. This will minimize the chance of cross-contamination between study sites.

Only metal or plastic rulers may be used; never use a wooden ruler, which is too porous and cannot be properly disinfected. If permitted to notch desert tortoises, files must be disinfected after each use.

Thoroughly clean field vehicles inside and out at a car wash before moving to another geographical location.

### **7.7. Capturing Desert Tortoises**

When encountering a desert tortoise outside its burrow, approach the animal slowly (e.g., if the desert tortoise is 15 feet (4.5 meters) away, pace your approach with pauses to contact the desert tortoise in 30 seconds). Put on a clean, unused pair of latex or rubber gloves and grasp the desert tortoise at its bridge (connection between the carapace and plastron) with both hands, holding it firmly with its plastron parallel to, and facing the ground. Slowly lift the desert tortoise to your waist height and slowly and smoothly walk to where the desert tortoise will be placed (e.g., remove from harm's way).

If a desert tortoise is collected at or near sunset and intended to be released the same day, hold the desert tortoise overnight in a clean, unused cardboard box or open disinfected plastic container, and release it the next morning at or near the capture site. Monitor the desert tortoise until it resumes normal behavior.

## 7.8. Processing Desert Tortoises

Before touching a desert tortoise, implement procedures described in Section 7.6. A desert tortoise shall only be processed (i.e., weighed, measured, or sexed) if authorized in a biological opinion or permit. An experienced biologist should be able to process a desert tortoise in 5 to 10 minutes. **Do not process a desert tortoise if the ambient temperature exceeds 95 degrees F (35 degrees C)** (Section 6.3 or 7.4.) or if there is a chance that a second desert tortoise could be in harm's way and requires timely action while processing the first one.

Inspect a desert tortoise and record data on size, sex, distinctive features, indications of health and disease (e.g., ectoparasites, shell lesions, signs of osteoporosis or osteomalacia, injuries, evidence of URTD, etc.). Ensure that the desert tortoise is maintained in a horizontal position at all times.

### 7.8.1. Measuring and Sexing

If authorized and required, measure the midline carapace length (MCL) of the desert tortoise from the nuchal to pygal scutes using calipers, which provide the most accurate measurement. Measurements should be taken in millimeters (mm). Before touching a desert tortoise, implement procedures described in Section 7.6.

The sex of desert tortoises less than 180 mm MCL cannot be accurately determined based on external characteristics. Generally, the following male characteristics differentiate them from females: a) concave plastron; b) longer, more curved gulars; c) larger, well-developed chin glands; d) longer, broader, more conical tail; and e) shorter, thicker toenails. Pay particular attention to the gular projection and the shape of the plastron, which are the two best features for differentiating the sexes. For very large desert tortoises, feel the concave (male) or flattened (female) plastron or see it by holding the desert tortoise at eye level without turning the desert tortoise on its back. When in doubt, record all other information and mark "sex unknown" on the data sheet.

### 7.8.2. Weighing

Handle desert tortoises carefully. Mishandling may result in injury or cause the tortoise to void its bladder. Before touching a desert tortoise, implement procedures described in Section 7.6. If using a digital scale, immobilize the desert tortoise as described in Section 7.8.3. If using a spring scale, place the desert tortoise inside a harness made of clean, unused cord that will avoid the spread of pathogens. It will also minimize gross contamination to the desert tortoise and to field equipment from urination or defecation. The harness shall consist of a double loop with one loop crossing the plastron posterior to the forelimbs and the other anterior to the hind limbs. As the Authorized Biologist slowly begins to raise the tortoise, the tortoise shall remain positioned horizontally and care shall be taken to ensure that the tortoise does slip out of the harness or fall. Using the harness allows the Authorized Biologist to observe any stressful behavior exhibited by the desert tortoise (e.g., flailing of legs) and act quickly to correct this situation. Suspend the harness from the scale, ensuring the desert tortoise is securely and safely positioned, a few inches above sand or soil substrate. Keep weighing time to a minimum; and

take every precaution to prevent the desert tortoise from falling or voiding. Once the desert tortoise has been weighed, dispose of the harness.

The following spring scale sizes are recommended: a) 0 to 100 gram scale with a 1.0 gram precision for small desert tortoises; b) 1 kilogram scale with a 10 gram precision for moderate-sized desert tortoises; and c) 5 kilogram scale with a 50 gram precision for large desert tortoises. It is best to use the smallest scale that will accommodate the weight of a desert tortoise. Occasionally a desert tortoise will weigh more than 5 kilograms; in this case you may use two 5-kilogram scales simultaneously on the harness and add the weights. Keep scales clean and calibrated.

Experts recommend weighing a desert tortoise immediately after capture. This provides a true weight. Should the desert tortoise void its bladder, weigh it afterwards to determine how much fluid has been lost. Another reason for weighing a desert tortoise is to determine if it is underweight for its size. Low weight may be the result of disease, drought conditions, recent egg-laying, or other factors.

### 7.8.3. Restricting Mobility

*Using cylinders* - Before touching a desert tortoise, implement procedures described in Section 7.6. A desert tortoise may be placed on the top of a cylindrical holding stand such as a coffee can or other large can to facilitate processing. The stand should be large enough to support the desert tortoise and small enough to prevent any waving appendages from touching the stand, and tall enough to prevent desert tortoise from touching a solid surface below. Given that desert tortoises come in all sizes, a range of stand sizes will be needed. Note that coffee cans and other types of stands come in several sizes and can be "nested" in one another for ease of transport thereby accommodating different-sized desert tortoises. Freedom to move its appendages may encourage a desert tortoise to extend its head, which allows observation of the eyes, nares, chin glands, and beak where most signs of URTD are observed. The stand must be disinfected before using it with another desert tortoise, or place waterproof plastic on top of the stand prior to each use, then position the desert tortoise on top of the plastic, and discard the plastic afterwards.

### 7.8.4. Assessing Desert Tortoise Health

A section 7 biological opinion or section 10 permit may require a health assessment for encountered desert tortoises. Before initiating this assessment, contact the appropriate USFWS office to determine the information to be included in the health assessment. This will determine the qualifications needed by the person conducting the health assessment. You will need the approval of the person conducting the health assessment from the USFWS.

### 7.8.5. Marking Desert Tortoises

You must contact the DTRO and appropriate State wildlife agency before marking desert tortoises. Before touching a desert tortoise, implement procedures described in Section 7.6. If authorized, first restrict movement of the desert tortoise (Section 7.8.3.). Next, use a clean, disinfected toothbrush to remove dirt from the left fourth costal scute, where the desert tortoise will be marked. If this scute is damaged, use the right fourth costal scute. Next, place a small

dot (i.e., no larger than 1/4 inch (0.64 centimeter) in diameter) of correction fluid (i.e., white out) or acrylic paint on the scute. The number is likely to last longer if placed on a rough, off-centered surface where shell-wear is less common, which is one reason only the fourth costal scutes are used for marking. Once the spot is dry, write the identifying mark on the spot using a waterproof, permanent black ink pen. Some biologists recommend using a capillary type technical pen (e.g., fine-tip Sharpie).

Allow the number to dry before applying 5-minute epoxy. Mix the epoxy on a file card or piece of paper, then transfer the mixed epoxy to the dot on the shell using a toothpick, wooden coffee stirrer, or tongue depressor. Wait several seconds until the epoxy starts to thicken but is still liquid enough to spread over the numbered spot with ease. Cover the paint spot overlapping its edges just enough to seal the paint. **Never allow the epoxy to spill over onto the growth area, which occurs at the border between two scutes.** Anticipate this when applying the paint so there will be space for the epoxy to overlap the paint without entering the seams. It may be helpful to cover the margins of the scute with 1/2-inch wide masking tape before applying the epoxy, to ensure that the epoxy does not touch the growth area, especially on smaller desert tortoises. Record the identifying mark on the data sheet. Dispose of used materials appropriately after use on each desert tortoise.

#### 7.8.6. Photographing Desert Tortoises

Before touching a desert tortoise for photographing, implement procedures described in Section 7.6. If permitted, photograph processed desert tortoises as follows: a) dorsal view of the carapace; b) the numbered scute; and c) frontal view of the desert tortoise's face and forelegs. Photograph any recent or previously healed injuries or unusual anomalies. Unless specifically required, do not photograph the plastron which would require unnecessary handling and risk to the tortoise. It is important that each object fills 80 to 90 percent of the frame and that the object be clearly focused. Digital photographs are preferred. Two types of labels are recommended: a) hold a small card adjacent to the desert tortoise so that the above information is clearly visible on the photograph without blocking the part of the desert tortoise being photographed; or, b) attach a 1/2 inch x 1/2 inch, adhesive label to the desert tortoise to allow for closer, more detailed photographs of the subject. Dispose of label appropriately following use on each desert tortoise.

Keep a log of the photographs in your field notes (e.g., "photo number 453, carapace of desert tortoise 4"). You must be familiar with the features of the camera. Label photographs with the following information: date, biologist's name, project name, desert tortoise number, UTM or lat/long, county, and state.

Supplies and equipment:

- 3 inch x 5 inch file cards (for identifying photographs)
- 1/2 inch x 1/2 inch labels or other stickers (to attach to desert tortoise to identify photograph)
- Camera

## **7.9. Desert Tortoise Urination and Hydration**

Desert tortoises may void their bladder: 1) when first encountered, picked up, or carried; 2) the longer you handle them; and (3) during drought conditions, which is also when water availability is at its lowest. Since desert tortoises store water in their bladders, any loss of this fluid may result in death (Averill-Murray 2002). Discourage bladder voiding by gently and slowly moving the desert tortoise. If the tortoise does void, record on the data sheet the quantity, color, and viscosity of the urine. If the desert tortoise has already been weighed, weigh it again to estimate the amount of lost fluid. Avoid all unnecessary actions that may result in stress to the animal.

If the desert tortoise urinates, it should be rehydrated. To rehydrate, soak the desert tortoise at the release location in a tub with a clean unused plastic disposable liner for a minimum of 10 to 20 minutes in a quiet protected area. Water level shall not be higher than the lower jaw of the animal; the water temperature should be tepid. Desert tortoises must be soaked individually. Weigh the desert tortoise before and after placing in water. Even if desert tortoises do not drink, they can absorb water through their cloaca. Weighing the desert tortoise before and after placing it in water will determine if the tortoise took in water (James Jarchow, veterinarian, pers. comm.).

On warm days, transport the desert tortoise in the shade. Remember to roll up your sleeves and wear protective clothing to avoid transmitting disease or parasites to other desert tortoises that may come in contact with your clothing. When handling is complete, remove and properly dispose of your gloves and protective clothing.

## **7.10. Moving and Releasing Desert Tortoises**

In this Manual, relocating desert tortoises is defined as moving them from harm's way but allowing them to remain within their home ranges. To relocate, move the desert tortoise the distance directed in the permit or biological opinion once the desert tortoise has been processed. The minimum distance from the edge of the project footprint that a desert tortoise can be relocated will be determined by its age and sex (different home range sizes), the presence or absence of desert tortoise-proof fencing around the perimeter of the project footprint, and the duration of the project activity. Desert tortoises may attempt to return to their point of capture. A desert tortoise should not be placed on private land without the written permission of the landowner.

In this Manual, translocating desert tortoises is defined as moving them from harm's way to a location outside their home range (e.g., more than 1,000 feet (305 meters)). Translocating tortoises should only occur when authorized by the permitting agencies and in accordance with an approved, project-specific translocation plan. Translocation not only affects the desert tortoise being moved but also may impact resident desert tortoises in the translocation area. The effectiveness of translocation of desert tortoises as a conservation or recovery tool has not been proven. Until its effectiveness is determined, it should be implemented only on an experimental basis and in close coordination with the USFWS and State wildlife agency.

For temperature considerations, refer to Section 7.3. To discourage urination or if the tortoise voided during handling, refer to Section 7.9.

After processing is completed, release the desert tortoise as soon as possible while considering its well-being. Desert tortoises shall be released individually and not in groups. The biological opinion or permit may require that desert tortoises be removed from the project site and placed in the shade of a shrub, in a natural unoccupied burrow, or in an artificial burrow. Desert tortoises shall be released at a safe location as near to the point of capture as possible. If a desert tortoise is found aboveground, release it aboveground if environmental conditions are suitable (Sections 7.4 and 7.5), or hold it until conditions are suitable, then release it. When releasing the desert tortoise, slowly lower the animal to the ground, release it, and slowly walk away. Following release, monitor the desert tortoise until it exhibits and maintains normal behavior. Further, we recommend that desert tortoises **not** be put into existing burrows to avoid exposing the desert tortoise to diseases.

If a desert tortoise and its burrow are not in harm's way but adjacent to project activities, as an alternative to moving, construct a temporary restraining pen around the desert tortoise and its burrow to protect it during project activities (See Section 6.9.).

#### 7.10.1. Temporarily Holding Desert Tortoises

There may be a situation where a desert tortoise needs to be removed from the field, held overnight or longer, and then released at its point of capture. While held, each desert tortoise shall remain in a clean, unused or disinfected container that is covered or closed. Newspaper placed in the bottom will absorb any urine that is voided. The box shall be ventilated in such a way that a desert tortoise's leg or head cannot be caught in the ventilation hole. Never put more than one desert tortoise in a container, and avoid placing anything in a container occupied by a tortoise that previously came in contact with another tortoise without following disinfection procedures (Section 7.6.).

#### 7.10.2. Transporting by Vehicle

Do not allow desert tortoises to roam freely in the vehicle. Do not transport desert tortoises in shopping or grocery bags or other containers less sturdy than a new cardboard box. Discard the box immediately after use to ensure that it is not used for another desert tortoise.

Never place desert tortoises over the catalytic converter or other area in a vehicle that becomes hot. Pad truck beds or floorboards and travel at speeds that minimize vibrations or shifting of the box. Never leave a desert tortoise unattended in a vehicle. During summer months, transport desert tortoises in an air-conditioned vehicle, placing them in a covered, unused cardboard box while maintaining the vehicle interior temperature between 75 degrees F and 80 degrees F (23.9 degrees C and 26.7 degrees C). If a desert tortoise is captured during the winter, maintain the desert tortoise at its current body temperature, which will be less stressful to it than much warmer temperatures, and may allow it to remain in a physiological state of brumation. When transporting an adult female desert tortoise, assume it may be gravid (i.e., April through July) and take special care to avoid jolting and jostling to ensure that the eggs are not ruptured which may result in her death from egg yolk peritonitis.

### **7.11. Injured or Dead Desert Tortoises**

If an injured desert tortoise is encountered that may have been the result of project activities, follow the instructions of the biological opinion/permit, which typically requires immediate transport to a qualified veterinarian. Contact the USFWS and appropriate State wildlife agency. Document the injury with photographs and a written description of the injury; circumstances and probable cause; and recommendations to avoid future injuries. Submit this information to the USFWS and other appropriate agencies.

If a dying or dead desert tortoise is encountered, you may not salvage or collect it unless authorized to so under a biological opinion, section 10 permit, or under 50 *Code of Federal Regulations* 17.31.

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## CHAPTER 8. DESERT TORTOISE EXCLUSION FENCE

### RECOMMENDED SPECIFICATIONS FOR DESERT TORTOISE EXCLUSION FENCING

These specifications were developed to standardize fence materials and construction procedures to confine tortoises or exclude them from harmful situations, primarily roads and highways. Prior to commencing any field work, all field workers should comply with all stipulations and measures developed by the jurisdictional land manager and the U.S. Fish and Wildlife Service for conducting such activities in desert tortoise habitat, which will include, at a minimum, completing a desert tortoise education program.

#### Fence Construction

##### Materials

Fences should be constructed with durable materials (*i.e.*, 16 gauge or heavier) suitable to resist desert environments, alkaline and acidic soils, wind, and erosion. Fence material should consist of 1-inch horizontal by 2-inch vertical, galvanized welded wire, 36 inches in width. Other materials include: Hog rings, steel T-posts, and smooth or barbed livestock wire. Hog rings should be used to attach the fence material to existing strand fence. Steel T-posts (5 to 6-foot) are used for new fence construction. If fence is constructed within the range of bighorn sheep, 6-foot T-posts should be used (see New Fence Construction below). Standard smooth livestock wire fencing should be used for new fence construction, on which tortoise-proof fencing would be attached.

##### Retrofitting Existing Livestock Fence

**Option 1 (see enclosed drawing).** Fence material should be buried a minimum of 12 inches below the ground surface, leaving 22-24 inches above ground. A trench should be dug or a cut made with a blade on heavy equipment to allow 12 inches of fence to be buried below the natural level of the ground. The top end of the tortoise fence should be secured to the livestock wire with hog rings at 12 to 18-inch intervals. Distances between T-posts should not exceed 10 feet, unless the tortoise fence is being attached to an existing right-of-way fence that has larger interspaces between posts. The fence must be perpendicular to the ground surface, or slightly angled away from the road, towards the side encountered by tortoises. After the fence has been installed and secured to the top wire and T-posts, excavated soil will be replaced and compacted to minimize soil erosion.

**Option 2 (see enclosed drawing).** In situations where burying the fence is not practical because of rocky or undigable substrate, the fence material should be bent at a 90E angle to produce a lower section approximately 14 inches wide which will be placed parallel to, and in direct

contact with, the ground surface; the remaining 22-inch wide upper section should be placed vertically against the existing fence, perpendicular to the ground and attached to the existing fence with hog rings at 12 to 18-inch intervals. The lower section in contact with the ground should be placed within the enclosure in the direction of potential tortoise encounters and level with the ground surface. Soil and cobble (approximately 2 to 4 inches in diameter; can use larger rocks where soil is shallow) should be placed on top of the lower section of fence material on the ground covering it with up to 4 inches of material, leaving a minimum of 18 inches of open space between the cobble surface and the top of the tortoise-proof fence. Care should be taken to ensure that the fence material parallel to the ground surface is adequately covered and is flush with the ground surface.

### New Fence Construction

Options 1 or 2 should be followed except in areas that require special construction and engineering such as wash-out sections (see below). T-posts should be driven approximately

24 inches below the ground surface spaced approximately 10 feet apart. Livestock wire should be stretched between the T-posts, 18 to 24 inches above the ground to match the top edge of the fence material; desert tortoise-proof fencing should be attached to this wire with hog rings placed at 12 to 18-inch intervals. Smooth (barb-less) livestock wire should be used except where grazing occurs.

If fence is constructed within the range of bighorn sheep, two smooth-strand wires are required at the top of the T-post, approximately 4 inches apart, to make the wire(s) more visible to sheep. A 20 to 24-inch gap must exist between the top of the fence material and the lowest smooth-strand wire at the top of the T-post. The lower of the top two smooth-strand wires must be at least 43 inches above the ground surface.

(72-inch T-posts: 24 inches below ground + 18 inches of tortoise fence above ground + 20 to 24-inch gap to lower top wire + 4 inches to upper top wire = 66 to 70 inches).

### **Inspection of Desert Tortoise Barriers**

The risk level for a desert tortoise encountering a breach in the fence is greatest in the spring and fall, particularly around the time of precipitation including the period during which precipitation occurs and at least several days afterward. All desert tortoise fences and cattleguards should be inspected on a regular basis sufficient to maintain an effective barrier to tortoise movement.

Inspections should be documented in writing and include any observations of entrapped animals; repairs needed including bent T-posts, leaning or non-perpendicular fencing, cuts, breaks, and gaps; cattleguards without escape paths for tortoises or needed maintenance; tortoises and tortoise burrows including carcasses; and recommendations for supplies and equipment needed to complete repairs and maintenance.

All fence and cattleguard inventories should be inspected at least twice per year. However, during the first 2 to 3 years all inspections will be conducted quarterly at a minimum, to identify and document breaches, and problem areas such as wash-outs, vandalism, and cattleguards that fill-in with soil or gravel. GPS coordinates and mileages from existing highway markers should be recorded in order to pinpoint problem locations and build a database of problem locations that may require more frequent checking. Following 2 to 3 years of initial inspection, subsequent inspections should focus on known problem areas which will be inspected more frequently than twice per year. In addition to semi-annual inspections, problem areas prone to wash-outs should be inspected following precipitation that produces potentially fence-damaging water flow. A database of problem areas will be established whereby checking fences in such areas can be done efficiently.

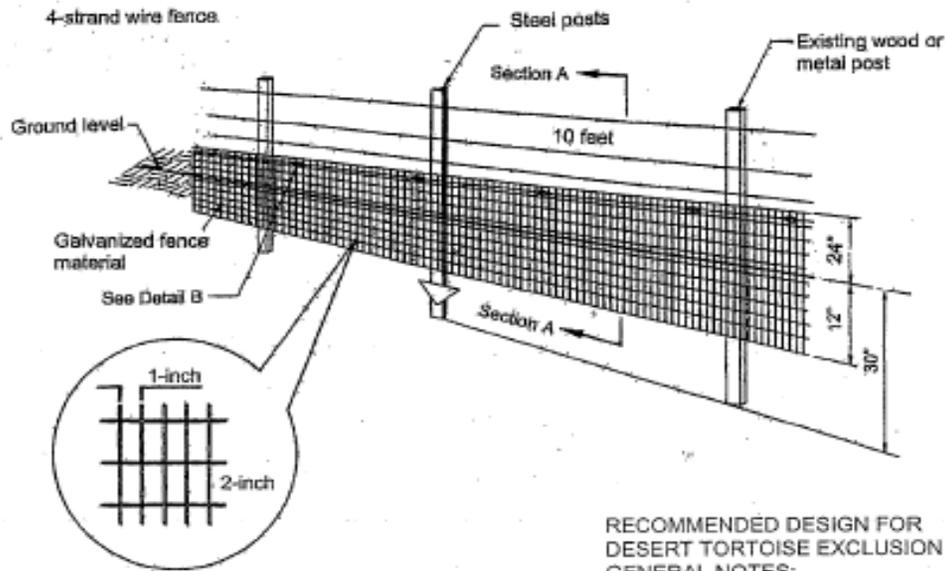
### **Repair and Maintenance of Desert Tortoise Barriers**

Repairs of fence wash-outs: (1) realign the fence out of the wash if possible to avoid the problem area, or (2) re-construct tortoise-proof fencing using techniques that will ensure that an effective desert tortoise barrier is established that will not require frequent repairs and maintenance.

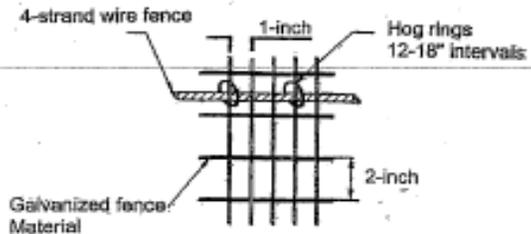
Gaps and breaks will require either: (a) repairs to the existing fence in place, with similar diameter and composition of original material, (b) replacement of the damaged section to the nearest T-post, with new fence material that original fence standards, (c) burying fence, and/or (d) restoring zero ground clearance by filling in gaps or holes under the fence and replacing cobble over fence constructed under Option 2. Tortoise-proof fencing should be constructed and maintained at cattleguards to ensure that a desert tortoise barrier exists at all times.

All fence damage should be repaired in a timely manner to ensure that tortoises do not travel through damaged sections. Similarly, cattleguards will be cleaned out of deposited material underneath them in a timely manner. In addition to periodic inspections, debris should be removed that accumulates along the fence. All cattleguards that serve as tortoise barriers should be installed and maintained to ensure that any tortoise that falls underneath has a path of escape without crossing the intended barrier.

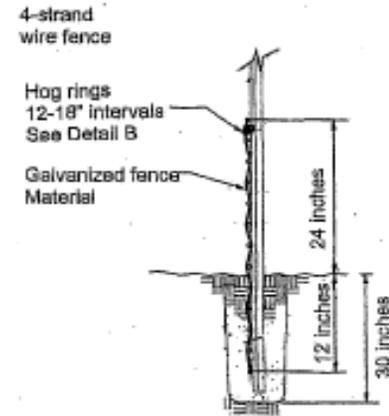
DESERT TORTOISE EXCLUSION FENCE (2005)



DETAIL A



DETAIL B



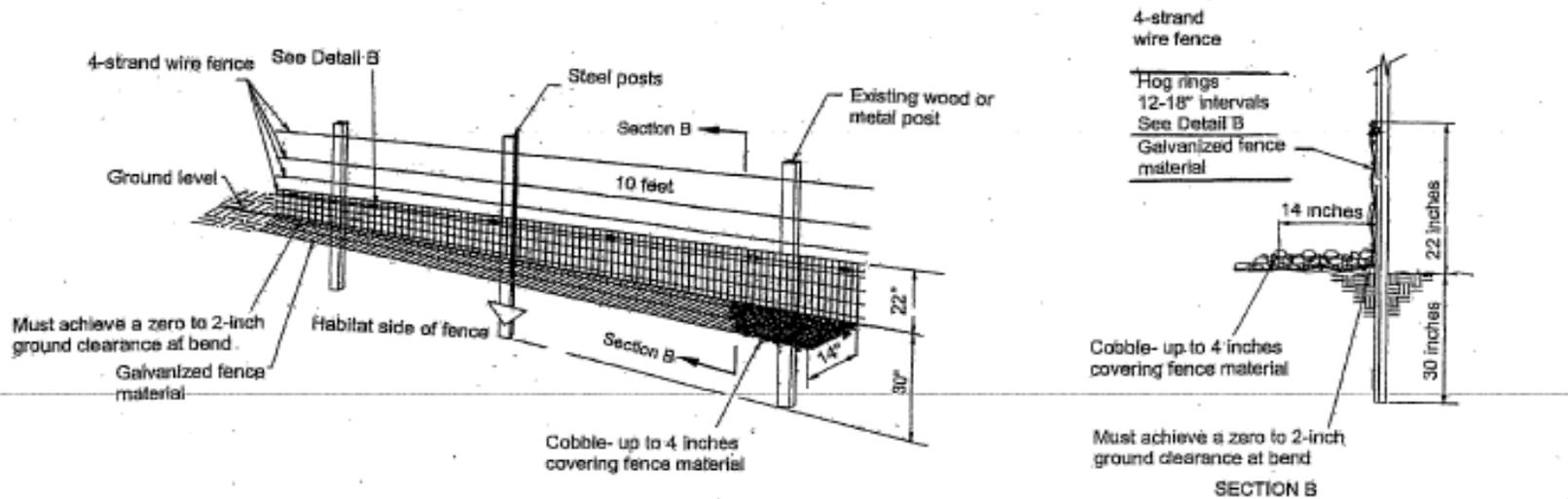
SECTION A

RECOMMENDED DESIGN FOR  
DESERT TORTOISE EXCLUSION FENCE  
GENERAL NOTES:

1. Ensure that fence posts and materials conform to the standards approved by the U.S. Fish and Wildlife Service.
2. Ensure that the height above ground level is no less than 18 inches and no higher than 24 inches.
3. Ensure that the depth of fence material below ground level is about 12 inches but no less than 6 inches. (See SECTION A above)
4. Install additional steel posts when span between existing fence posts exceed 10 feet.
5. Attach fence material to existing fence or wire using hog rings at 12-inch intervals.
6. Fasten fence material to posts with 3 tie wires with a wire near the top, bottom, and center of the fence material.
7. Backfill trenches with excavated material and compact the material.
8. Attach fence material to all gates. Ensure that clearance at base of gate achieves zero ground clearance.
9. Substitute smooth wire for barbed wire if additional support wires are necessary.
10. The number and placement of support wires may be modified to allow sheep and deer to pass safely.
11. Erosion at the edge of the fence material where the fence crosses washes may occur and requires appropriate and timely monitoring and repair.
12. Tie the fence into existing culverts and cattleguards when determined necessary to allow desert tortoise passage underneath roadways.

**FOR BEDROCK OR CALICHE SUBSTRATE**

1. Use this fence design (see below) only for that portion of the fence where fence material cannot be placed 6 inches below existing ground level due to presence of bedrock, large rocks or caliche substrate.
2. Ensure that the fence height above ground level is no less than 22 inches.
3. Ensure that there is a zero to 2-inch ground clearance at the bend.
4. Ensure that the bent portion of the fence is lying on the ground and pointed in the direction of desert tortoise habitat.
5. Cover the portion of the fence that is flush with the ground with cobble (rocks placed on top of the fence material to a vertical thickness up to 4 inches).
6. When substrate no longer is composed of bedrock or caliche, install fence using design shown above.



Attachment 4

**[Financial institution letterhead]**

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

---

Issue Date: **[date]**

Beneficiary:

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

Amount: U.S. \$**[dollar number]** **[(dollar amount)]**

Expiry: **[Date]** at our counters

Dear Sirs:

1. At the request and on the instruction of our customer, **[name of applicant]** ("Applicant"), we, **[name of financial institution]** ("Issuer"), hereby establish in favor of the beneficiary, the California Department of Fish and Wildlife ("CDFW"), this irrevocable standby letter of credit ("Credit") in the principal sum of U.S. \$**[dollar number]** **[(dollar amount)]** ("Principal Sum").
2. We are informed this Credit is and has been established for the benefit of CDFW pursuant to the terms of the incidental take permit for the **[name of project]** issued by CDFW to the Applicant on **[date]** (No. **[number]**) ("Permit").
3. We are further informed that pursuant to the Permit, the Applicant has agreed to complete certain mitigation requirements, as set forth in conditions **[numbers]** in the Permit ("Mitigation Requirements").
4. We are finally informed that this Credit is intended by CDFW and the Applicant to serve as a security device for the performance by the Applicant of the Mitigation Requirements.
5. CDFW shall be entitled to draw upon this Credit only by presentation of a duly executed Certificate for Drawing ("Certificate") in the same form as Attachment A,

which is attached hereto, at our office located at [***name and address of financial institution***].

6. The Certificate shall be completed and signed by an Authorized Representative of CDFW as defined in paragraph 12 below. Presentation by CDFW of a completed Certificate may be made in person or by registered mail, return receipt requested, or by overnight courier.
7. Upon presentation of a duly executed Certificate as above provided, payment shall be made to CDFW, or to the account of CDFW, in immediately available funds, as CDFW shall specify.
8. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give CDFW prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Credit, state the reasons therefore, and await further instruction.
9. Upon being notified that the demand for payment was not effected in conformity with the Credit, CDFW may correct any such non-conforming demand for payment under the terms and conditions stated herein.
10. All drawings under this Credit shall be paid with our funds. Each drawing honored by us hereunder shall reduce, *pro tanto*, the Principal Sum. By paying to CDFW an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.
11. This Credit will be cancelled upon receipt by us of Certificate of Cancellation/Reduction, which: (i) shall be in the form of Attachment B, which is attached hereto, and (ii) shall be completed and signed by an Authorized Representative of CDFW, as defined in paragraph 12 below.
12. An Authorized Representative shall mean the Director of CDFW; the General Counsel of CDFW; a Regional Manager of CDFW; or the Branch Chief of CDFW's Habitat Conservation Planning Branch.
13. This Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof, unless at least sixty (60) days prior to any such date, we notify CDFW in writing by registered mail, return receipt requested, or by overnight courier that we elect not to consider this Credit extended for any such period.
14. Communications with respect to this Credit shall be in writing and addressed to us at [***name and address of financial institution***], specifically referring upon such writing to this credit by number. The address for notices with respect to this Credit shall be: (i) for CDFW: Department of Fish and Wildlife, Habitat

Conservation Planning Branch, Post Office Box 944209, Sacramento, CA 94244-2090, Attn: HCPB Contract Coordinator; and (ii) for the Applicant: [***name and address of applicant***].

15. This Credit may not be transferred.
16. This Credit is subject to the International Standby Practices 1998 ("ISP 98"). As to matters not covered by the ISP 98 and to the extent not inconsistent with the ISP 98, this credit shall be governed by and construed in accordance with the Uniform Commercial Code, Article 5 of the State of California.
17. This Credit shall, if not canceled, expire on [***expiration date***], or any extended expiration date.
18. We hereby agree with CDFW that documents presented in compliance with the terms of this Credit will be duly honored upon presentation, as specified herein.
19. This Credit sets forth in full the terms of our undertaking. Such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which this Credit is referred to or to which this Credit relates and any such reference shall not be deemed to incorporate herein by reference any document or instrument.

**[Name of financial institution]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone: \_\_\_\_\_

ATTACHMENT A

CERTIFICATE FOR DRAWING

**[CDFW Letterhead]**

**[Date]**

**[Name and address of financial institution]**

Re: Irrevocable Standby Letter of Credit No. **[number issued by financial institution]**

The undersigned, a duly Authorized Representative of the California Department of Fish and Wildlife ("CDFW"), as defined in paragraph 12 of the above-referenced standby letter of credit ("Credit"), hereby certifies to the Issuer that:

1. **[Insert one of the following statements:** "In the opinion of CDFW, the Applicant has failed to complete the Mitigation Requirements referenced in paragraph 3 of the Credit." **or** "As set forth in paragraph 13, the Issuer has informed CDFW that the Credit will not be extended and the Applicant has not provided CDFW with an equivalent security approved by CDFW to replace the Credit."]
2. The undersigned is authorized under the terms of the Credit to present this Certificate as the sole means of demanding payment on the Credit.
3. CDFW is therefore making a drawing under the Credit in amount of U.S. \$ \_\_\_\_\_.
4. The amount demanded does not exceed the Principal Sum of the Credit.

Therefore, CDFW has executed and delivered this certificate as of this \_\_\_ day of **[month]**, **[year]**.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

**[Insert one of the following:** "Director" **or** "General Counsel" **or** "Regional Manager, [Name of Regional Office]" **or** "Chief, Habitat Conservation Planning Branch"]

ATTACHMENT B

CERTIFICATE FOR CANCELLATION/REDUCTION

[*CDFW Letterhead*]

[*Date*]

[*Name and address of financial institution*]

Re: Irrevocable Standby Letter of Credit No. [*number issued by financial institution*]

The undersigned, a duly Authorized Representative of the California Department of Fish and Wildlife ("CDFW"), as defined in the paragraph 12 in the above-referenced Irrevocable Standby Letter of Credit ("Credit"), hereby certifies to the Issuer that:

1. [*Insert one of the following statements: "The Applicant has presented documentary evidence of full compliance with the Mitigation Requirements referenced in paragraph 3 of the Credit." or "The Applicant has presented documentary evidence of compliance with the following Mitigation Requirement[(s)] referenced in paragraph 3 of the Credit: [insert brief description of requirement(s) or requirement number(s) completed]." or "The Applicant has provided CDFW with an equivalent security approved by CDFW to replace the Credit."*]
2. [*Insert one of the following statements: "CDFW therefore requests the cancellation of the Credit." or "CDFW therefore requests a reduction in the Principal Sum in the amount of \$ \_\_\_\_\_, thereby making the new Principal Sum \$ \_\_\_\_\_."*]

Therefore, CDFW has executed and delivered this certificate as of this \_\_\_\_ day of [*month*], [*year*].

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

\_\_\_\_\_  
[*Insert one of the following: "Director" or "General Counsel" or "Regional Manager, [Name of Regional Office]" or "Chief, Habitat Conservation Planning Branch"*]

State of California - Department of Fish and Wildlife

**MITIGATION PAYMENT TRANSMITTAL FORM**

DFW 1057 (NEW 07/28/17)

**Project Applicant Instructions:** Please fill out and attach this form to payment. For conservation banks, also attach the Bill(s) of Sale for credits sold. One form may be used for multiple transactions, **BUT YOU MUST USE A SEPARATE FORM FOR EACH CHECK YOU TRANSMIT.** Make sure to include Project Name, Project Tracking Number, and ASB Mitigation Tracking Number (if available) on the attached payment type.

<p><b>1. DATE:</b> _____</p> <p><b>TO:</b> _____ Regional Manager</p> <p>_____  Region Office Address</p>	<p><b>2. FROM:</b> _____ Name</p> <p>_____  Mailing Address</p> <p>_____  City, State, Zip</p> <p>_____  Telephone Number/FAX Number</p>
<p><b>3. RE:</b> _____ Project Name as appears on permit/agreement</p>	

**4. AGREEMENT/ACCOUNT INFORMATION:** (check the applicable type)

2081 Permit     Conservation Bank     2835 NCCP     1802 Agreement     1600 Agreement     Other \_\_\_\_\_

\_\_\_\_\_   
Project Tracking Number

**5. PAYMENT TYPE** (One check per form only): The following funds are being remitted in connection with the above referenced project:Check information:

Total \$ \_\_\_\_\_      Check No. \_\_\_\_\_

Account No. \_\_\_\_\_      Bank Routing No. \_\_\_\_\_

a.      Endowment: for Long-Term Management      Subtotal \$ \_\_\_\_\_

b.      Habitat Enhancement      Subtotal \$ \_\_\_\_\_

c.      Security:

          1.      Cash Refundable Security Deposit      Subtotal \$ \_\_\_\_\_

          2.      Letter of Credit      Subtotal \$ \_\_\_\_\_

                  1. Financial Institution: \_\_\_\_\_

                  2. Letter of Credit Number: \_\_\_\_\_

          3.      Date of Expiration: \_\_\_\_\_

<b>ACCOUNTING OFFICE USE ONLY</b>	
Description	FI\$Cal Coding
Speedchart (Project, Program, Reference, Fund)	
Reporting Structure	
Category	
Date Established: _____      By: _____	