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Errata to the Updated Staff Assessment

After reviewing the comments submitted by the applicant (TNs 269448 and 269449) and in coordination with the California Department of Fish and Wildlife, California State Water Resources Control Board and Lahontan Regional Water Quality Control Board, CEC staff incorporates the following changes into the March 27, 2026, Updated Staff Assessment for the Soda Mountain Solar Project (TNs 269349 and 269350).

The changes set forth below to the Updated Staff Assessment are necessary to correct an inadvertent omission, fix typographical and mitigation calculation errors, and provide clarifying language. The added text is shown as **bold underline**. Deleted text is shown in ~~strikethrough~~.

BIO-1 Designated Biologist Selection The project owner shall assign at least one Designated Biologist to the project (multiple personnel may be required to ensure compliance with conditions of certification). The project owner shall submit the resume of the proposed Designated Biologist, with at least three references and contact information, to the California Energy Commission (CEC) Compliance Project Manager (CPM) for review and approval.

The Designated Biologist must meet the following minimum qualifications:

1. Bachelor's degree in biological sciences, zoology, botany, ecology, or a closely related field;
2. Three years of experience in field biology or current certification of a nationally recognized biological society, such as The Ecological Society of America or The Wildlife Society; and
3. At least three years of field experience with biological resources found in or near the project area.

In lieu of the above requirements, the resume shall demonstrate to the satisfaction of the CPM that the proposed Designated Biologist or alternate has the appropriate training and background to effectively implement the conditions of certification.

For work related to Crotch's bumble bee, desert tortoise, desert bighorn sheep and/or burrowing owl, ~~the meet the following minimum qualification above qualifications shall also apply. In addition,~~ the Designated Biologist(s) must **meet the following minimum qualifications in addition to the qualifications listed above:**

1. Knowledgeable in the biology and natural history of Crotch's bumble bee, desert tortoise, desert bighorn sheep and/or burrowing owl, exclusion and/or monitoring techniques as applicable, construction and operational impact monitoring;

2. Demonstrable experience implementing exclusion and/or monitoring techniques and construction and operational impact monitoring for Crotch's bumble bee or burrowing owl, or both Crotch's bumble bee, desert tortoise, desert bighorn sheep and/or burrowing owl;
3. Demonstrable experience implementing conditions of a CDFW Incidental Take Permit or acting as a Designated Biologist, or other experience implementing a CDFW Incidental Take Permit as a Biological Monitor.

Verification: The project owner shall submit to the CPM resumes and any other relevant documentation for Designated Biologist(s) review and approval at least 90 days prior to the start of site mobilization and/or construction-related ground disturbance activities. If multiple Designated Biologists are necessary, the project owner shall appoint a lead Designated Biologist. No site mobilization or construction related activities shall commence until a Designated Biologist has been approved by the CPM.

If a Designated Biologist needs to be replaced, the specified information regarding the proposed replacement must be submitted to the CPM at least ten working days prior to the termination or release of the preceding Designated Biologist. In an emergency, the project owner shall immediately notify the CPM to discuss the qualifications and approval of a short-term replacement while a permanent Designated Biologist is proposed to the CPM for consideration.

BIO-12 Special-Status Plant Avoidance and Minimization

Measures The Designated Biologist and/or Biological Monitor(s) shall conduct floristic pre-construction surveys for special-status plants. Surveys shall be conducted with the appropriate protocols approved by the CPM during the appropriate season in all suitable habitat within the project disturbance areas and access roads and within 100 feet of disturbance areas, where accessible. Surveys shall be conducted by qualified botanists or biologists approved by the CPM, pursuant to **BIO-1** and/or **BIO-3**.

The field surveys and reporting shall conform to current CDFW botanical field survey protocol (CDFW 2018) or more recent updates. With respect to areas potentially directly disturbed during the construction of the generation tie-line, protocol surveys conforming to the current CDFW botanical field survey protocol (CDFW 2018) are required for areas that have not previously been surveyed by the project owner to date. During each year of construction, and prior to site mobilization and ground disturbance, the project owner shall identify proposed survey areas to the CPM for review and approval prior to initiating annual botanical surveys. The survey plan shall identify proposed survey areas and the rationale for any areas not proposed for surveys. The survey plan shall include maps, at an approved scale, clearly defining each proposed survey area.

Any special-status plant species (including state and federally listed threatened or endangered species, candidates for listing, and all CRPR 1A, 1B, 2, 3, and 4 ranked species) detected shall be documented in the pre-construction survey reports. The results shall be submitted to CPM, CDFW, BLM, and USFWS (should federally listed plants be discovered) for review. The reports shall describe any conditions that may have prevented target species from being located or identified, even if they are present as dormant seeds or below-ground root stock (e.g., poor rainfall, disturbance, or wildfire). In some cases, follow-up surveys may be necessary to adequately evaluate impacts. Pre-construction field survey reports shall include maps, at an approved scale, showing locations of survey areas, reference populations, and special-status plants.

The results of these surveys will inform the implementation of appropriate avoidance and minimization measures, as outlined below. These measures shall be included in the BRMIMP and implemented.

1. Avoidance. Where feasible, any special status plant shall be protected by establishment of a minimum 50-foot non-disturbance buffer. The buffer area shall be clearly staked, flagged, and signed for avoidance prior to the beginning of site mobilization and maintained throughout the construction phase. For tree or shrub species, the buffer shall be no less than twice the drip line (i.e., two times the distance from the trunk to the canopy edge) to protect and preserve the root systems. The buffer zone shall be of sufficient size to prevent direct or indirect disturbance to the plants from site mobilization and construction activities, erosion, inundation, or dust.

The final buffer distance shall be determined by a qualified biologist or botanist, approved under **BIO-1** and/or **BIO-3**, based upon the proposed use of the immediately adjacent areas and the plant's ecological requirements (e.g., sunlight, moisture, shade tolerance, water availability, edaphic physical and chemical characteristics).

If a smaller buffer is necessary due to other site-specific constraints, the project owner, in coordination with the Designated Biologist or qualified botanist shall develop and implement site-specific protection measures, such as monitoring, to avoid the impacts to the species, if possible. The measure shall be subject to approval from the CPM, in consultation with BLM and CDFW. Such measures may include placing decking or pads above dormant species to prevent their loss and limit soil compaction.

2. Compensatory Mitigation. If avoidance of special status plants is not feasible, the project owner shall mitigate impacts to any state or federally listed plants that are subject to disturbance from project activities. Should a State listed plant be subject to disturbance the project owner would be required to implement standard categories of mitigation applicable for take coverage through CESA which includes seed salvage, propagation, and the preservation of lands occupied by the species. The measures shall be subject to approval

from the CPM, in consultation with the BLM, CDFW and or USFWS. In addition, the project owner shall provide compensatory mitigation for CRPR 1 or 2 ranked species if project activities result in the loss of more than 10 percent of a defined occurrence due to direct or indirect impacts to soils, vegetation, or water transport that could affect the species' viability.

An occurrence, or local population, shall be defined as the number of individuals occurring on the project area or all plants within a 0.25-mile buffer.

- For perennial species, percent avoidance shall be based on population size or number of individuals avoided.
- For annuals, avoidance shall be based on occupied habitat, which includes habitat containing the species' micro-habitat preferences (e.g., such as "soil types and moist depressions").

Occupied habitat shall be calculated on both the project area and compensation lands as including each special status plant occurrence and a surrounding 100-foot buffer area to account for seed bank.

The project owner shall provide compensation lands at the following minimum ratios:

- 3:1 for any state or federally listed plants and
 - 2:1 ratio for CRPR 1 or 2 ranked species
3. Compensatory Mitigation by Acquisition. The requirements for the acquisition, initial protection and habitat improvement, and long-term maintenance and management of special-status plant compensation lands shall include the following:

Selection Criteria for Acquisition Lands. The compensation lands selected for acquisition may include any of the following three categories:

- a. Occupied Habitat, No Habitat Threats. The compensation lands selected for acquisition shall be occupied by the target plant population and shall be characterized by site integrity and habitat quality that are required to support the target species and shall be of equal or better habitat quality than that of the affected occurrence. The occurrence of the target special-status plant on the proposed acquisition lands should be viable, stable, or increasing (in size and reproduction).
- b. Occupied Habitat, Habitat Threats. Occupied compensation lands characterized by habitat threats may also be acquired if the population could be reasonably expected to recover with habitat restoration efforts (e.g., OHV or grazing exclusion, or removal of invasive non-native plants) and is accompanied by a Habitat Enhancement/Restoration Plan.

- c. Unoccupied but Adjacent. The project owner may also acquire habitat for which occupancy by the target species has not been documented, if the proposed acquisition lands are adjacent to occupied habitat. The project owner shall provide evidence that acquisitions of such unoccupied lands would improve the defensibility and long-term sustainability of the occupied habitat by providing a protective buffer around the occurrence and by enhancing connectivity with undisturbed habitat. This acquisition may include habitat restoration efforts where appropriate, particularly when these restoration efforts will benefit adjacent habitat that is occupied by the target species.
4. Review and Approval of Compensation Lands Prior to Acquisition. The project owner shall submit a formal acquisition proposal to the CPM describing the parcel(s) intended for purchase. This acquisition proposal shall discuss the suitability of the proposed parcel(s) as compensation lands for special-status plants in relation to the criteria listed above and must be approved by the CPM, in coordination with BLM, CDFW and/or USFWS.
5. Compensation Lands Management Plan. The project owner shall prepare a management plan for the compensation lands in consultation with the entity that will be managing the lands. The objective of the management plan shall be to support and enhance the long-term viability of the target special-status plant occurrences. The Compensation Lands Management Plan shall be submitted for review and approval to the CPM in coordination with the BLM, CDFW and/or USFWS.
6. Integrating Special-Status Plant Mitigation with Other Mitigation lands. If all or any portion of the acquired compensation lands **for** desert tortoise, burrowing owl, **state and CDFW jurisdictional** ~~waters of the state~~, or other required compensation lands meets the criteria above for special-status plant compensation lands, the portion of the other species or habitat compensation lands that meets any of the criteria above may be used to fulfill that portion of the obligation for special-status plant mitigation.
7. Compensation Lands Acquisition Requirements. The project owner shall comply with the following requirements relating to acquisition of the compensation lands after the CPM has approved the proposed compensation lands:
 - a. Preliminary Report. The project owner, or an approved third party, shall provide a recent preliminary title report, initial hazardous materials survey report, biological analysis, and other necessary or requested documents for the proposed compensation land to the CPM. All documents conveying or conserving compensation lands and all conditions of title are subject to review and approval by the CPM. For conveyances to the State, approval may also be required from the California Department of General Services and the Wildlife Conservation Board.

b. Title/Conveyance. The project owner shall acquire and transfer fee title to the compensation lands, a conservation easement over the lands, or both fee title and conservation easement, as required by the CPM. Any transfer of a conservation easement or fee title shall be to CDFW if accepted by CDFW, a non-profit organization qualified to hold title to and manage compensation lands (pursuant to California Government Code section 65965), or to BLM or other public agency approved by the CPM. If an approved non-profit organization holds fee title to the compensation lands, a conservation easement shall be recorded in favor of CDFW or another entity approved by the CPM. If an entity other than CDFW holds a conservation easement over the compensation lands, the CPM may require that CDFW or another entity approved by the CPM, in consultation with CDFW, be named a third-party beneficiary of the conservation easement. The project owner shall obtain approval of the CPM of the condition of title and form of any transfer of fee title or conservation easement to the compensation lands.

c. Initial Protection and Habitat Improvement. The project owner shall fund activities that the CPM requires for the initial protection and habitat improvement of the compensation lands. These activities will vary depending on the condition and location of the land acquired, but may include trash removal, construction and repair of fences, invasive plant removal, and similar measures to protect habitat and improve habitat quality on the compensation lands.

The habitat improvement funds may be held and expended by a qualified non-profit organization, CDFW or another public agency, provided that the entity is qualified to manage compensation lands (pursuant to California Government Code section 65965) and is authorized to participate in implementing the required activities on the compensation lands, upon approval of the CPM, in consultation with CDFW.

If CDFW accepts fee title to the compensation lands, the project owner shall provide the habitat improvement fund directly to CDFW or its designee.

d. Property Analysis Record. Upon identification of the compensation lands, the project owner shall conduct a Property Analysis Record (PAR) or PAR-like analysis to establish the appropriate amount of the long-term maintenance and management fund to pay the in-perpetuity management of the compensation lands. The PAR or PAR-like analysis must be approved by the CPM before it can be used to establish funding levels or management activities for the compensation lands.

e. Long-term Maintenance and Management Funding. The project owner shall deposit a capital long-term maintenance and management fee in a dedicated interest-bearing account held by governmental entity, special

district, or nonprofit organization or other CPM approved entity, in the amount determined through the Property Analysis Record (PAR) or PAR-like analysis conducted for the compensation lands.

The CPM, in consultation with CDFW, may designate another non-profit organization to hold the non-refundable, long-term maintenance and management fee if the organization is qualified to manage the compensation lands in perpetuity.

If CDFW takes fee title to the compensation lands, CDFW shall determine whether it will hold the long-term management fee in the special deposit fund or designate another entity to manage the long-term maintenance and management fee under CDFW oversight.

In addition to the costs listed above under Items a-d, the project owner shall be responsible for all other costs related to acquisition of compensation lands and conservation easements, including but not limited to: title and document review costs incurred from other state agency reviews, overhead related to providing compensation lands to CDFW or an approved third party, escrow fees or costs, environmental contaminants clearance, and other site cleanup measures.

- f. Mitigation Security. The project owner shall provide financial assurances to the CPM to guarantee that an adequate level of funding is available to implement any of the mitigation measures required by Item 7 of this condition that are not completed prior to the start of site mobilization and ground-disturbing activities.

Financial assurances shall be provided to the CPM, and copy to the CDFW, in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security") approved by the CPM. The actual costs to comply with Item 7 of this condition will vary depending on the actual costs of acquiring compensation habitat, the costs of initially improving the habitat, and the actual costs of long-term management as determined by a PAR report.

Prior to submitting the evidence of Security, the project owner shall obtain the CPM's approval of the form of the Security. The CPM may draw on the Security or approve of the security beneficiary to draw on the security, if the CPM determines the project owner has failed to comply with the requirements specified Item 7 in this condition. Funds from the Security may solely be used for implementation of the requirements of Item 7 of this condition.

Use of the Security by the CPM or other approved entity does not relieve the project owner of its obligations under this condition if the Security is insufficient to fully cover required measures. Any unused portion of Security shall be returned to the project owner, in whole or in part, upon

successful completion of the associated requirements in Item 7 of this condition.

8. Monitoring. Annual monitoring and documentation of salvaged plants shall include, but not be limited to, details of plants salvaged, stored, and transplanted (salvage and transplanting locations, species, number, size, condition, etc.); adaptive management efforts implemented (date, location, type of treatment, results, etc.); and evaluation of success of transplantation. Transplanted species may not be placed in areas subject to future land disturbance and must be protected by a conservation easement or restricted covenant that prohibits disturbance and ensures conservation of the site in perpetuity. Conservation lands would be acquired consistent with the specifications identified above under Section b. Title /Conveyance. Annual monitoring shall occur for a minimum of three years post-relocation to ensure the plants become established and are not at risk from weeds or other impacts, unless approved by the CPM. The results of annual monitoring shall be reported in an Annual Monitoring Report specific to salvaged or propagated plants for a minimum of three years. Additional monitoring may be necessary if determined upon review of the annual reports by the CPM that the success criteria are not met. Success criteria shall include maintaining habitat occupied by the impacted species at the identified ratios and number of plants for any occupied habitat affected by the project.
9. Propagation and Relocation Strategy. If salvage and relocation is not believed to be feasible for special-status plants, then the project owner shall consult with California Botanic Garden, BLM, or another qualified entity, to develop an appropriate propagation and relocation strategy, based on the life history of the species affected. The Special-Status Plant Propagation and Relocation Plan shall include at minimum: (a) collection and salvage measures for plant materials (e.g., cuttings), seed, or seed banks, to maximize success likelihood; (b) details regarding storage of plant, plant materials, or seed banks; (c) location of the proposed propagation facility, and proposed methods; (d) time of year that the salvage and other practices will occur; (e) success criteria; and (f) a detailed monitoring program, commensurate with the plan's goals. The draft Special-Status Plant Propagation and Relocation Plan shall be submitted to the CPM for review and approval and to the BLM and CDFW for review and comment. The final plan approved by the CPM shall be submitted prior to any salvage or relocation.

Verification: The project owner shall submit the proposed annual survey plan 45 days prior to commencing the surveys to the CPM for review and approval. The project owner shall submit the results of each annual survey to the CPM for review and approval no more than 45 days after the completion of the surveys.

Should compensatory mitigation be required, the project **owner shall provide verification that the required acquisition, protection and transfer of all**

HM lands has occurred, and record any required conservation easements no later than 18 months from the start of site mobilization, even if a Security is provided. If a Security is provided, the project owner shall provide the approved Security at least 30 days prior to the start of site mobilization activities. ~~The project owner shall submit the Habitat Enhancement/Restoration Plan, Formal Acquisition Proposal, Compensation Lands Management Plan, Recent Preliminary Title Report, and Property Analysis Record (PAR) to the CPM for review and approval, and the BLM/CDFW/USFWS if applicable for review and comment, no later than 45 days prior to site mobilization.~~

If plant propagation is proposed as mitigation the project owner shall submit the Special-Status Plant Propagation and Relocation Plan to the CPM for review and approval and the BLM/CDFW/USFWS if applicable for review and comment no later than 45 days prior to site mobilization.

The project owner shall submit the Annual Monitoring Reports to the CPM for review and approval no more than 30 days after each reporting period.

BIO-15 Desert Tortoise Impact Avoidance, Minimization, and Mitigation

Measures The project owner shall implement the following measures to avoid, minimize and offset impacts to desert tortoise during site mobilization, construction, and operation. These measures shall be included in the BRMIMP and implemented.

1. Desert Tortoise Translocation Plan. The Designated Biologist(s) shall prepare and implement a Desert Tortoise Translocation Plan (DTTP) 30 Calendar days prior to start of site mobilization. Project activities including site mobilization, surveying, fencing, or ground disturbance are not authorized to start until DTTP is approved in writing by the CPM in consultation with the BLM, USFWS, and CDFW. The DTTP shall follow the most current guidelines provided by USFWS and CDFW regarding desert tortoise translocation. It shall include methods of burrow excavation, nest and egg handling procedures, safe handling guidelines for capture and relocation, temperature constraints, avoiding the transmission of diseases or parasites, disease testing, radio tagging, transportation procedures, artificial burrow construction and shelter placement along the perimeter fence line. Where guidance differs between BLM, USFWS and CDFW, the project owner shall apply the most restrictive condition and seek written direction from the CPM in coordination with the USFWS, BLM, and CDFW on how to reconcile the differences.
2. Raven Management and Reporting Plan. The Designated Biologist shall prepare and implement a Raven Management and Reporting Plan (Raven Plan) consistent with CDFW and USFWS raven management guidelines. The purpose of the Raven Plan shall be to minimize project-related predator subsidies (e.g. common ravens and coyotes) and prevent any increases in

raven numbers or activity within desert tortoise habitat during construction and operation phases. The Plan shall address all project components and their potential effects on raven numbers and activity. The Raven Plan shall be reviewed and approved by CPM, in coordination with the CDFW and USFWS, prior to the start of site mobilization activities. The Raven Plan shall:

- a. Identify all potential project activities as well as structures, components, and other features that could provide predator subsidies or attractants. This includes but is not limited to: improperly managed food waste; road-killed animals; water storage facilities; pooled water from leaks, dust control, or wastewater; debris from brush and other vegetation clearing; as well as perch or nest sites on project facilities and other infrastructure. As required by **BIO-7**, Item 18, all trash and food waste will be disposed of in secure, self-closing bins to prevent access by wildlife.
 - b. Describe specific management practices to avoid or minimize conditions that might increase raven numbers and predatory activities. This includes the following:
 - i. Collect and dispose of animals killed on the site or project access roads to reduce food subsidies;
 - ii. Water used for the project shall be applied to avoid puddling;
 - iii. Inactive common raven nests will be removed in accordance with USFWS guidelines. If re-nesting occurs, further measures will be coordinated with the CPM, in coordination with CDFW and USFWS; and
 - iv. Active nests will be reported to CPM, CDFW, and USFWS for consideration of egg-oiling or other authorized management measures.
 - c. The Designated Biologist and/or Biological Monitor shall oversee implementation of the Raven Plan.
 - d. The project owner shall contribute to the USFWS Regional Raven Management Program by making a one-time payment of \$105 per acre of long-term or permanent project disturbance.
3. Desert Tortoise Fencing. The project owner shall install desert tortoise exclusion fencing around the project area, laydown, staging and parking areas. Exclusion fence specifications shall be approved by the CPM and be consistent with those described in the most recent Desert Tortoise Field Manual or more current guidance provided by BLM, CDFW and USFWS. Fencing shall not be required to conduct work at or along the generation-tie line corridor but would be required around tower work areas and the switching station site.
4. Desert Tortoise Pre-construction Clearance Surveys. After the completion of fencing installation, the Designated Biologist(s) and/or Biological Monitor(s) shall conduct 5-meter clearance sweeps of the project area prior to site

mobilization. Follow-up surveys shall also be conducted within fourteen (14) days preceding additional construction after a gap in significant construction activities of 60 calendar days or more. Surveys shall include 100 percent of the area disturbed and a surrounding buffer of 100 feet. A map of proposed survey areas shall be provided to the CPM for review and approval, and the BLM, CDFW and USFWS, for review and comment prior to initiating the surveys. Pre-construction clearance surveys shall be completed using perpendicular survey routes within the Project Area. Pre-construction clearance surveys cannot be simultaneously combined with other clearance surveys conducted for other species while using the same personnel. Project activities, including site mobilization and/or construction, cannot start until two (2) negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented.

New clearance surveys shall be conducted if the desert tortoise fence is breached (e.g., large gaps, torn fencing, or cavities that could allow desert tortoises to enter the site) for more than 24 hours. Clearance surveys shall be conducted for all linear facilities prior to any ground disturbance. In addition, surveys shall be conducted one week prior to any ground disturbance and within 24 hours of beginning work in suitable habitat. Methods for clearance surveys and exclusion fence specifications shall be consistent with those described in the most recent *Desert Tortoise Field Manual* or more current guidance provided by CDFW and/or USFWS. Any potential burrows, sign, or tortoises shall be noted, recorded using a precision GPS device, and identified on project maps submitted to the CPM.

The Biological Monitor(s) and/or Designated Biologist(s) shall record all potential desert tortoise and burrows within the pre-construction clearance survey area, using global positioning system (GPS) technology. The Designated Biologist(s) and/or Biological Monitor(s) shall provide the results of the pre-construction clearance survey (including all information of the USFWS Protocol data sheet) to the CPM, BLM, USFWS, and CDFW within 10 Calendar days of completing the surveys. The use of specialized equipment (e.g., fiber optics) may be necessary to thoroughly inspect all burrows in preparation for collapsing them.

Twenty-four hours prior to the start of any project activities including site mobilization, surveying, fencing, or ground disturbance, except for areas already cleared within installation of desert tortoise exclusion fencing, the Designated Biologist(s) and/or Biological Monitor shall conduct a final clearance survey of Project Area. The use of specialized equipment (e.g., fiber optics) may be necessary to thoroughly inspect all burrows in preparation for collapsing them.

5. If Desert Tortoise Detected. If a desert tortoise is detected during the surveys, construction, or operation all work within 300 feet of the desert tortoise shall immediately stop and the observation shall be immediately

reported to the Designated Biologist(s). Project activities including site mobilization, surveying, fencing, or ground disturbance shall not resume until the Designated Biologist(s) and/or Biological Monitor(s) has verified the desert tortoise has left the project area or a Designated Biologist(s), approved under **BIO-1**, relocates the desert tortoise as described in the Desert Tortoise Translocation Plan. The Designated Biologist shall notify CPM, BLM, USFWS, and CDFW of any desert tortoise observations within the project area within 24 hours. Notification and the written report shall include the date, location, and circumstances of the observation, the name of the Designated Biologist that relocated the individual, pictures, map and shapefiles with the location (including GPS coordinates) where the individual was moved as specified in the DTTP.

6. Excavation of Desert Tortoise Burrows. All potential desert tortoise burrows shall be investigated by fiber optic systems, excavated, and backfilled prior to construction. Only Designated Biologist(s) and Biological Monitor(s) approved by CPM, in consultation with BLM, USFWS, and CDFW, are authorized to conduct burrow excavation. Excavation of burrows shall follow the methods described the USFWS Field Manual and the DTTP.
7. Desert Tortoise Translocation. The Designated Biologist shall translocate all desert tortoise to the approved translocation areas identified in the approved DTTP. The DTTP shall follow the most current guidelines provided by USFWS and CDFW regarding desert tortoise translocation. Where guidance differs between the USFWS and CDFW, verbal and/or written direction provided by CPM in consultation with the CDFW always controls. CDFW notes that the list of items below are the most common examples of the differences between CDFW and USFWS guidelines. These shall be included in the DTTP along with the most recent USFWS translocation guidelines:
 - a. Translocated tortoises are tortoises removed from the Project Area and/or have a radio transmitter attached.
 - b. The Designated Biologist(s) shall determine when the creation of artificial burrows is needed.
 - c. Ambient air temperature guidelines shall be followed as specified in this ~~COE~~ **condition of certification.**
 - d. Tortoises <100 millimeters (mm) midline carapace length (MCL) shall be released immediately without being held, transmitted, or blood drawn for disease testing as long as the temperature requirements are met.
 - e. CDFW does not authorize the release of tortoises that test positive for disease even if it does not show outward signs of the disease. If a tortoise tests positive for disease it is the responsibility of the project owner to locate a CDFW approved facility to place the tortoise in. Any exception to

this determination will need to be approved in writing by **the CPM in coordination with** CDFW on a case-by-case basis.

8. Disease Testing. Disease testing shall not be done between November 1 and May 14. If a tortoise >100 mm MCL is found between November 1 and May 14 or earlier with written approval from CDFW the tortoise shall be held in quarantine facilities and shall remain in quarantine until tested twice (once in the spring and once in the fall). If the tortoise tests negative for disease, it can be released in accordance with the approved DTTP. Blood draw samples for *Mycoplasma agassizii* and *Mycoplasma testudineum* shall determine if a tortoise is negative or positive for disease. A combination of results from blood testing and visual inspection will be used to determine the health of a tortoise. Blood draw samples will be sent to: Dr. Mary Brown, University of Florida Mycoplasma Laboratory, 2015 SW Archer Road, Room V2-234, Gainesville Florida 32608, or other facility approved by CDFW. CDFW uses enzyme-linked immune assay (ELISA) test results to determine if a tortoise is positive for disease. The ELISA tests will be used to test for exposure to herpes virus (*Mycoplasma agassizii* and *Mycoplasma testudineum*).
 - a. If a tortoise tests positive for or is suspected of disease, then the tortoise will be tested twice for disease (once in the spring after May 15 to and once in the fall). To determine results of blood testing use the most current guidelines provided by the University of Florida Mycoplasma Laboratory Department of Infectious Diseases and Pathology. The University of Florida Mycoplasma Laboratory Department of Infectious Diseases & Pathology 2013 criteria for classifying *Mycoplasma agassizii* and *Mycoplasma testudineum* is a titer <32 is negative, a titer > 64 is positive, and a titer of 32 is suspect (retesting in 6 weeks) or most current guidelines. All sample forms shall come from the University of Florida's guidance.
 - b. The DTTP shall include a requirement that all translocated tortoises regardless of size be included in the translocation numbers and all reports.
 - c. The DTTP shall propose one recipient site. Recipient sites shall have the vegetative structure to support all life stages of desert tortoises. In addition to the USFWS Field Manual guidelines the DTTP shall also include identifying the known threats or potential causes of population decline, how potential threats have been or would be addressed, complete physical examination and health assessments with sample collection, age-structure and sex ratios, protocol level surveys, vegetation classification and quality of habitat. The DTTP shall detail which characteristics are to be used to decide if a recipient site is similar enough to a Project Area including burrow aspects, and recovery needs such as habitat restoration and/or predator control.

- d. All tortoises >100 mm MCL removed off the Project Area shall be fitted with a transmitter and monitored for 5 years post translocation.
 - e. Recipient sites shall be a minimum of 4 miles (6.5 kilometers) away from highway/road right-of-way that does not include desert tortoise fencing.
 - f. All tortoise burrows within the Project Area shall be excavated following procedures outlined in the U. S. Fish and Wildlife Service Desert Tortoise Field Manual.
 - g. Creation of artificial burrows, as well as translocation of tortoises and eggs shall only occur on land(s) (including Bureau of Land Management), when written authorization has been obtained from the landowner prior to the start of project activities including site mobilization, surveying, fencing, or ground disturbance. The written permission from the landowner shall be included in the DTTP and the DTTP shall not be approved by the CPM, in consultation with CDFW, until authorization is provided in writing. If creation of artificial burrows or translocation of tortoise or eggs is proposed to take place on private lands then in addition to written approval required above, some form of protection for the land such as a conservation easement shall be in place prior to translocation occurring.
 - h. Cleaning and Disinfection Protocol. Trifectant and Rescue Ready to Use One Step Disinfectant Cleaner are the only products authorized under this ITP and its associated DTTP to be used as a disinfectant. These products are not authorized to be applied using a spray bottle or other spray methods.
 - i. Cleaning and Disinfection Protocol shall include the following:
 - ii. Remove all grossly visible debris.
 - iii. Wash the area or item with water and mild detergent.
 - iv. Thoroughly rinse the cleaned area to remove any detergent residue.
 - v. Allow the area to dry completely.
 - vi. Apply disinfectant mixture.
 - vii. Allow the full disinfectant product recommended contact time.
 - viii. Thoroughly rinse away any residual disinfectant and allow the area or item to air dry.
9. Ambient Air Temperatures. During all handling procedures, desert tortoise 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. Tortoises shall be kept shaded at all times until it is safe to release them. For the purposes of this permit, ambient air temperature shall be measured in the shade, protected from wind, at a height

- of 5 centimeters above the ground surface. No desert tortoise shall be captured, moved, transported, released, or purposefully caused to leave its burrow for whatever reason when the ambient air temperature is above 95° Fahrenheit (F) (35° Celsius (C)). No desert tortoise shall be captured if the ambient air temperature is anticipated to exceed 95° F (35° C) before handling or processing can be completed. If the ambient air temperature exceeds 95° F (35° C) during handling or processing, desert tortoises shall be kept shaded in an environment that does not exceed 95° F (35° C), and not released until ambient air temperature declines to below 95°F (35°C). Desert tortoises moved during the less active season (June 1 to August 31 and November 1 to March 31) shall be monitored by the Designated Biologist(s) for at least two days after placement in the new burrows to ensure their safety. During relocation, the Designated Biologist(s) may hold a captured desert tortoise overnight and move them the following morning within these temperature constraints.
10. Desert Tortoise Rehydration. If a desert tortoise voids its bladder as a result of being handled, the Designated Biologist(s) shall rehydrate the animal(s). The Designated Biologist(s) shall rehydrate the desert tortoise at the location where the animal(s) was or were captured, or the location where the animal(s) is or will be released. The Designated Biologist(s) shall rehydrate the desert tortoise by placing it in a tub with a clean plastic disposable liner. The Designated Biologist(s) shall add water to the lined tub while ensuring that the water level is not higher than the lower jaw of the animal. The Designated Biologist(s) shall rehydrate each desert tortoise individually for a minimum of 10 to 20 minutes. The Designated Biologist(s) shall place the lined tub in a quiet protected area during rehydration.
11. Desert Tortoise Handling Records. The Designated Biologist(s) and/or Biological Monitor(s) shall maintain a record of all desert tortoises handled. This information shall include: (1) the locations (narrative and maps) and dates of observation, including whether the individual(s) was found above ground or in a burrow; (2) ambient temperature when handled and released; (3) general condition and health of the individual(s), including injuries, state of healing, and whether the individual(s) voided its bladders; (4) identified diagnostic markings (i.e., identification numbers or marked marginal scutes); (5) location moved from and location moved to (using GPS technology), including information on any burrow (natural or artificial) utilized; (6) whether any eggs were discovered and relocated; (7) digital photographs of any desert tortoise and eggs handled; and (8) results of ongoing monitoring. The project owner shall provide the CPM, BLM, USFWS, and CDFW with the information listed above submitted in the quarterly reports during construction.
12. Desert Tortoise Guards. The design of desert tortoise guards shall include exit ramps, cleanouts, and temporary shelters or guards along the fence line.

Guards shall be installed along the fence line of the project and designed to prevent entrapment. Guard locations and design shall be provided to the CPM for approval and the BLM, USFWS, and CDFW for review and comment prior to starting site mobilization and/or construction.

13. Permanent Security Fencing with Attached Desert Tortoise Fencing. The permanent desert tortoise exclusion fencing shall be attached to the 6-foot-high standard chain link security fencing. This fencing shall be installed around the array fields, operation and maintenance facilities, warehouses, substations, switchyard, and interconnection facilities and will remain in place during operations except it may be removed in places where wildlife-friendly fencing may be implemented over a portion of the facility site. The fence shall be constructed according to Chapter 8 of the USFWS Field Manual, or most recent guidance, but if any tortoises <100mm MCL are translocated within 500 meters of the project area, tortoise fencing shall be 16 gauge or heavier galvanized after welded wire with mesh opening of 1/2 inch horizontal by 1/2 inch vertical. The fence shall include the installation of shade structures along the outer fence perimeter placed at regular intervals. To prevent potential access at site access points, all gates would be installed with desert tortoise exclusion fencing affixed along the bottom portion of the gate structure. The fencing shall be constructed to allow desert kit fox access to the solar arrays while excluding desert tortoise. The fencing must be placed in a way to ensure that desert tortoises do not get trapped between the fence line.
14. Permanent Security Fence Maintenance Inspection. The Designated Biologist(s) and/or Biological Monitor(s) shall inspect the tortoise fencing during all ground disturbing or construction activities, at the end of each workday during the construction period, monthly during operation, and during major rainfall and high wind events within 24 hours to ensure desert tortoise is prohibited from entering the project area. If the fence is compromised, repairs shall be completed immediately, and clearance protocol level surveys shall be conducted as described in Item 4.
15. Vehicle Inspection. Workers shall inspect for desert tortoises under vehicles and equipment before the vehicles and equipment are moved. If a desert tortoise is present, the worker shall contact the Designated Biologist(s) and/or Biological Monitor and wait for the tortoise to move unimpeded to a safe location or the Designated Biologist(s) shall relocate the tortoise as described in the DTTP before moving vehicles and equipment.
16. Staging Area and Parking Area. The project owner shall enclose all staging and parking areas with desert tortoise exclusion fencing. All parked vehicles and equipment shall be inspected prior to being moved. If a desert tortoise is found within a staging or parking area the worker shall immediately contact the Designated Biologist(s) and/or Biological Monitor. A designated biologist shall relocate the desert tortoise in accordance with the DTTP.

17. Raven Management and Reporting Plan. The Designated Biologist shall prepare and implement a Raven Management and Reporting Plan (Raven Plan) consistent with CDFW and USFWS raven management guidelines. The purpose of the Raven Plan shall be to minimize project-related predator subsidies (e.g. common ravens and coyotes) and prevent any increases in raven numbers or activity within desert tortoise habitat during construction and operation phases. The Plan shall address all project components and their potential effects on raven numbers and activity. The Raven Plan shall be reviewed and approved by CPM, in coordination with the CDFW and USFWS, prior to the start of site mobilization activities. The Raven Plan shall:
- a. Identify all potential project activities as well as structures, components, and other features that could provide predator subsidies or attractants. This includes but is not limited to: improperly managed food waste; road-killed animals; water storage facilities; pooled water from leaks, dust control, or wastewater; debris from brush and other vegetation clearing; as well perch or nest sites on project facilities and other infrastructure. As required by **BIO-7**, Item 18, all trash and food waste will be disposed of in secure, self-closing bins to prevent access by wildlife.
 - b. Describe specific management practices to avoid or minimize conditions that might increase raven numbers and predatory activities. This includes the following:
 - i. Collect and dispose of animals killed on the site or project access roads to reduce food subsidies;
 - ii. Water used for the project shall be applied to avoid puddling;
 - iii. Inactive common raven nests will be removed in accordance with USFWS guidelines. If re-nesting occurs, further measures will be coordinated with the CPM, in coordination with CDFW and USFWS; and
 - iv. Active nests will be reported to CPM, CDFW, and USFWS for consideration of egg-oiling or other authorized management measures.
 - c. The Designated Biologist and/or Biological Monitor shall oversee implementation of the Raven Plan.
 - d. The project owner shall contribute to the USFWS Regional Raven Management Program by making a one-time payment of \$105 per acre of long-term or permanent project disturbance. Based on this calculation the project owner shall provide a one-time payment at \$105.00/acre for 1543.46 ~~1755.18~~ acres at ~~\$162,063.30~~ **\$184,293.90**, to the REAT account established with NFWF's Raven Management Plan fund **in the amount of \$105.00 per acre for each acre of long-term or permanent project disturbance to desert tortoise habitat, which shall include all areas of permanent disturbance and areas located within the fenced project area on the south side of**

Interstate-15 including the new Razor Road relocation. The acres for the one-time payment calculation and total amount of payment shall be adjusted based on the final approved project footprint, as certified.

A minimum of 15 days prior to the start of site mobilization these funds shall be provided to NFWF using appropriate deposit document and proof of paying this fee shall be provided to the CPM and CDFW **by the project owner** within 24 hours after the funds have been provided to NFWF.

18. Erosion Control Materials. To minimize the risk of ensnaring and strangling desert tortoise and other wildlife, the project owner shall not use erosion control materials containing synthetic (e.g., plastic or nylon) monofilament netting. Geotextiles, fiber rolls, and other erosion control measures shall be made of loose-weave mesh, such as jute, coconut (coir) fiber, or other products without welded weaves. The project owner shall use erosion control materials composed entirely of natural-fiber biodegradable materials. Plastic "photodegradable" erosion control materials shall not be used.
19. Full-Time Monitoring. Designated Biologist(s) and/or Biological Monitor(s) shall be present during all project activities that occur outside a permanent fenced area during the construction period. The Designated Biologist(s) and/or Biological Monitor(s) shall conduct compliance inspections a minimum of three times a day (once during the onset of the day's work, once mid-day, and once at the conclusion of that day's work) during construction within the fenced area. The Designated Biologist(s) and/or Biological Monitor(s) shall conduct compliance inspections to: minimize incidental take of the desert tortoise; prevent unlawful take of species; check for compliance with all measures of this COC; check all exclusion zones; and ensure that signs, stakes, and fencing are intact, and that project activities are only occurring in the project area. The Designated Biologist(s) shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of desert tortoise and their sign, survey results, and monitoring activities required by this COC. During the operations and maintenance period of the project, a Designated Biologist(s) shall be on-site to address any compliance-related issues.
20. Monitoring During Operation and Maintenance. Once all construction is complete any work being performed outside the exclusionary fencing shall have an Designated Biologist(s) and/or Biological Monitor(s) on-site to monitor any ground-disturbing activities such as fence repairs and during perimeter fence inspections during operation.
21. Desert Tortoise Injury. If a desert tortoise is injured as a result of project-related activities, the Designated Biologist(s) shall immediately take it to a CPM and CDFW approved wildlife rehabilitation or veterinary facility. The [project owner shall identify the facility in the DTTP before commencing site mobilization and shall bear any costs associated with the care or treatment of

such injured desert tortoise. The project owner shall notify CPM, BLM, USFWS, and CDFW of the injury immediately by telephone and e-mail followed by a written incident report within 48 hours. The notification shall include the name of the facility where the animal was taken.

22. Reporting. A report documenting survey results, including surveyor name(s), date(s) of survey, location (with maps), weather conditions, and any observations or detections of desert tortoise or their sign will be prepared and submitted to the CPM, BLM, CDFW, and USFWS. In addition, a monitoring report that includes the location, description, and duration of the activities, any observations or detections of desert tortoise found during the surveys or project activities, and any relocation efforts will be provided during monthly and annual compliance reporting.
23. CNDDDB Observations. The Designated Biologist(s) shall submit all observations of desert tortoises to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist(s) shall include copies of the submitted forms with the next Quarterly Compliance Report.

Verification: The project owner shall submit a Desert Tortoise Translocation Plan (DTTP) 30 days prior to start of site mobilization to the CPM for review and approval in consultation with the BLM, USFWS, and CDFW. The project owner shall submit the proposed annual survey plan 45 days prior to commencing the surveys to the CPM for review and approval and to the BLM, CDFW and USFWS for review and comment. The project owner shall submit the pre-construction survey reports to the CPM, BLM, CDFW, and USFWS no more than 30 days after each survey effort has been completed. A final report documenting survey results shall be prepared and submitted to the CPM, BLM, CDFW, and USFWS within 14 days of completing the surveys. The project owner shall submit the receipt of payment to the USFWS Regional Raven Management Program to the CPM at least 14 days prior to site mobilization.

BIO-16 Habitat Management Land Acquisition for Desert Tortoise To mitigate for impacts to desert tortoise the project owner shall fulfill the following requirements:

The project owner shall purchase ~~4,468 acres~~ of desert tortoise mitigation or conservation bank credits, at a location within the Mojave Desert approved in advance by the CPM, in coordination with the BLM, USFWS, and CDFW, or shall provide for both the permanent protection and management of ~~4,468 acres~~ of Habitat Management (HM) lands pursuant to Item 3 (Habitat Management Lands Acquisition and Protection) and the calculation and deposit of the management funds pursuant to Item 5 (Endowment Fund). The amount of mitigation required shall be calculated based on the **approved** project's final direct permanent and temporary loss of desert tortoise habitat, as approved by the CPM, in

consultation with the USFWS, BLM, and CDFW, according to the following ratios:-

- **2.25:1 ratio for all permanent disturbance and for areas located within the fenced project area on the south side of Interstate-15 including the new Razor Road relocation;**
- **1.5:1 ratio for the areas located between the arrays that allow for the use of and passage for desert tortoise;**
- **3:1 ratio for any new access roads, pole foundations, cleared areas, substation located north of I-15.**

The amount of mitigation shall be based on the final approved project footprint, as certified. The project owner shall submit final design plans following project certification so that total mitigation acres can be calculated by the CPM based on the ratios identified in this condition.

The project owner shall provide detailed maps of all proposed work areas that have the potential to result in temporary or permanent impacts to desert tortoise habitat. This includes providing **including, but not limited to,** maps of work areas around each of the generation tie-line poles, access roads, retention basins, staging areas, pull and tensioning sites, or other work areas. Maps, at an approved scale, of all proposed temporary and permanent work areas shall be provided to the CPM, BLM, USFWS, and CDFW prior to any site mobilization. At the conclusion of construction, the project owner shall provide a true-up of any habitat that were subject to temporary or permanent impacts. Any areas subject to grading would be considered permanent.

If all or any portion of the mitigation or conservation bank credits or acquired compensation lands for special-status plants, burrowing owl, state jurisdictional waters, or other required compensatory mitigation meets the criteria for desert tortoise compensation lands, the portion of the other species or habitat compensation lands that meets the criteria for desert tortoise compensation lands may be used to fulfill that portion of the obligation for desert tortoise mitigation.

The purchase of mitigation or conservation bank credits or permanent protection and funding for perpetual management of HM lands must be complete before starting project activities, or within 18 months of the date of the **start of** site mobilization, if Security is provided pursuant to the Security (Item 11) below for all uncompleted obligations.

1. Cost Estimates. For the purposes of determining the Security amount, it is estimated **based on the impacts associated with the project's proposed design, that** the cost for the CPM or its contractors to complete acquisition, protection, and perpetual management of the HM lands is as follows:

- a. Land acquisition costs for HM lands identified in the Item 3 (Habitat Management Lands Acquisition and Protection) below, estimated at \$4,000/acre for 4,468 acres: \$17,872,000.00, **or as adjusted based on the final approved project footprint, as certified**. Land acquisition costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements.
 - b. All other costs are **that are** necessary to review and acquire the land in fee title and record a conservation easement as described below in Item 3b. (Conservation Easement) below: \$17,440.00.
 - c. Start-up costs for HM lands, including initial site protection and enhancement costs as described in the Item 3f (Start-up Activities) below, estimated at \$2,000/acre for 4,468 acres: 8,936,000.00, **or as adjusted based on the final approved project footprint, as certified**.
 - d. Interim management period funding as described in the Item 4 (Interim Management) (Initial and Capital)) below, estimated at \$600.00/acre for 4,468 acres: \$2,680,000.00, **or as adjusted based on the final approved project footprint, as certified**.
 - e. Long-term management funding as described in the Item 5 (Endowment Fund) below, estimated at \$3,100.00/acre for 4,468 acres: \$13,850,000.00, **or as adjusted based on the final approved project footprint, as certified**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
 - f. 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 the Item 10 (Reimburse CDFW), estimated at \$6,000.00.
 - g. All costs associated with the CPM engaging an outside contractor to complete the mitigation tasks, including but not limited to acquisition, protection, and perpetual funding and management of the HM lands and restoration of temporarily disturbed habitat. These costs include but are not limited to the cost of issuing a request for proposals, transaction costs, contract administration costs, and costs associated with monitoring the contractor's work \$75,000.00.
2. **Mitigation Bank Credits**. If the project owner elects to purchase credits to complete desert tortoise compensatory mitigation obligations, then project owner shall purchase 4,468 acres of Covered Species **desert tortoise** credits, **or acres of credits as adjusted based on the final approved project footprint, as certified**, from a mitigation or conservation bank approved in advance by the CPM prior to initiating project activities, or no

later than 18 months from the start of site mobilization, if Security is provided pursuant to Item 11 (Security) below. Prior to the purchase of credits, the project owner shall obtain CPM approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the project. The project owner shall submit to the CPM a copy of the Bill of Sale(s) and Payment Receipt prior to initiating site mobilization or within 18 months from start of site mobilization, if Security is provided.

3. Habitat Management Lands Acquisition and Protection. If the project owner elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the project owner shall:
 - a. Fee Title. Transfer fee title of the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, the CPM, in consultation with CDFW, 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.
 - b. 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 project owner shall obtain written approval from the CPM, in coordination with CDFW, of any conservation easement before its execution or recordation. No conservation easement shall be approved by the CPM 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.
 - c. HM Lands Approval. The project owner shall obtain CPM written approval of the HM lands, in coordination with CDFW, before acquisition and/or transfer of the land by submitting, at least 90 days 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 desert tortoise.

- d. HM Lands Documentation. The project owner shall provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents (please contact CPM for document list). All documents conveying HM lands and all conditions of title are subject to approval from the CPM; and if applicable, the Wildlife Conservation Board, and the Department of General Services.
 - e. Land Manager. Designate both an interim and long-term land manager, approved by the CPM, in consultation with the BLM, USFWS, and 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. The land manager shall prepare a draft management plan for CPM review and approval, in consultation with CDFW, and written approval as part of the HM lands acquisition process. The project owner shall notify the CPM 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 the CPM, in consultation with BLM, USFWS, and CDFW.
 - f. 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 the CPM. Start-up activities include, at a minimum: (1) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (2) developing and transferring Geographic Information Systems (GIS) data if applicable; (3) establishing initial fencing; (4) conducting litter removal; (5) conducting initial habitat restoration or enhancement, if applicable; and (6) installing signage.
4. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The project owner 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 the CPM, in consultation with CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management.

The project owner shall either (1) provide Security to the CPM for the minimum of three years of interim management that the land owner, the project owner, 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 the CPM to pay the land manager annually in advance, or (3) establish a short-term enhancement account with a CPM-approved entity for payment to the land manager.

5. Endowment Fund. If the project owner elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the project owner shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this condition of certification, the conservation easement, and the final management plan approved by the CPM. After obtaining CPM approval, in consultation with CDFW, of the HM lands, the project owner 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 CPM-approved (in consultation with CDFW) 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 the condition of certification, the conservation easement, and the management plan required by Item 3e (Land Manager). Endowment as used in the Certification shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ~~license~~ **certificate**, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended. After the interim management period, the project owner 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 ~~license~~ **certificate**, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.
6. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either the CEC and/or CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended.
 - a. The project owner shall submit to the CPM for review and approval, 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).

7. Calculate the Endowment Funds Deposit. After obtaining CPM written approval, in consultation with CDFW, of the HM lands, long-term management plan, and Endowment Manager, the project owner 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 project owner shall submit to the CPM, in consultation with CDFW, for review and approval the results of the endowment assessment before transferring funds to the Endowment Manager.
 - a. Capitalization Rate and Fees. The project owner 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.
 - b. Endowment Buffers/Assumptions. The project owner 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:
 - c. ~~i.~~ i. 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.
 - d. ~~ii.~~ ii. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
 - e. ~~iii.~~ iii. 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 the CPM, in consultation with CDFW.
8. Transfer Long-term Endowment Funds. The project owner shall transfer the long-term endowment funds to the Endowment Manager ~~upon~~ **following** the CPM's approval of the Endowment Deposit Amount identified, **under Item 6, and at the time of acquisition and/or transfer of the HM lands.**
9. 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 desert tortoise but shall maintain separate accounting for each Endowment. The Endowment Manager

shall, at all times, hold and manage the Endowment in compliance with this Certification, 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 the CPM in its sole discretion. The project owner 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 the CPM, in consultation with 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 the CPM. The Endowment Manager shall not be liable for any shortfall in the Endowment resulting from the CPM's decision to make such an expenditure.

10. Reimburse CDFW. The project owner shall reimburse CDFW for all reasonable costs incurred by CDFW related to transfer of the HM lands to CDFW, if applicable, 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.
11. Security: The project owner may proceed with project activities only after the project owner has ensured the funding (Security) to complete any activity required by the Item 3 (Habitat Management Land Acquisition and Protection) that has not been completed before project activities begin. The project owner shall provide Security as follows:
 - a. Security Amount. The Security shall be in the amount of \$43,436,440.00, **unless adjusted based on the final approved project footprint, as certified,** or in the amount identified in the Item 1 (Cost Estimates) specific to the obligation that has not been completed. This amount is **to be** determined by the CPM **based on a calculation of the mitigation requirement for the final approved project footprint, as certified, using the ratios identified above in this condition of certification.** and is **The amount is** based on cost estimates which are sufficient for the CEC or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.
 - b. Security Form. The Security shall be in the form of an irrevocable letter of credit or another form of Security approved in advance in writing by the CPM, in consultation with CDFW.

- c. Security Timeline. The Security shall be provided to the CPM before starting site mobilization.
 - d. Security Holder. The Security shall be held by the CPM or in a manner approved in advance in writing by the CPM.
 - e. Security Transmittal. The project owner shall transmit security to the CPM by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other.
 - f. Security Drawing. The Security shall allow the CPM to draw on the principal sum if the CPM, in its sole discretion, determines that the project owner has failed to comply with this Condition of Certification.
 - g. Security Release. The Security (or any portion of the Security then remaining) shall be released to the project owner after the CPM has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by either:
 - i. Copy of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer Agreement for the purchase of ~~Crotch's bumble-bee and/or western burrowing owl~~ **desert tortoise** credits. OR
 - ii. Written documentation of the acquisition of the HM lands.
 - iii. Copies of all executed and recorded conservation easements.
 - iv. Written confirmation from the approved Endowment Manager of its receipt of the full Endowment.
12. Additional Funding. The CPM, in consultation with BLM, USFWS, and CDFW, may require the project owner to provide additional HM lands and additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the project owner does not complete these requirements within the specified timeframe.

Verification: The project owner shall submit to the CPM and CDFW final project design maps of the final approved project footprint, as certified, at an approved scale, of all proposed temporary and permanent impact areas for desert tortoise habitat no later than 45 days after project certification.

The project owner shall provide verification that the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the date of start of site mobilization, even if a security is provided. If a Security is provided, it shall be provided no later than 30 days prior to the start of site mobilization.

The project owner shall submit to the CPM for review and approval, and to CDFW for review and comment, all HM lands due diligence

documentation required for HM lands approval, including but not limited to a preliminary title report, Phase I Environmental Site Assessment, and any other documents required by the CPM, no later than 12 months after the date of the start of site mobilization, if providing a Security.

The project owner shall provide the draft long-term management plan to the CPM for review and approval and to CDFW for review and comment no later than 60 days prior to **acquisition and/or transfer of the HM lands, as part of the HM lands approval process**-construction. The project owner shall submit the final long-term management plan to the CPM and CDFW no later than 7 days prior to **recordation of the conservation easement**-construction.

BIO-21 Habitat Management Land Acquisition for Burrowing Owl To mitigate for impacts to burrowing owl the project owner shall fulfill the following requirements:

The project owner shall purchase 4,100.2 acres of burrowing owl mitigation or conservation bank credits, at a location within the Mojave Desert approved in advance by the CPM, in coordination with the BLM, USFWS, and CDFW, or shall provide for both the permanent protection and management of 4,100.2 acres of Habitat Management (HM) lands pursuant to Item 3 (Habitat Management Lands Acquisition and Protection) and the calculation and deposit of the management funds pursuant to Item 5 (Endowment Fund). The amount of mitigation required shall be calculated based on the **approved** project's final direct permanent and temporary loss of burrowing owl habitat, as approved by the CPM, in consultation with USFWS, BLM, and CDFW, **according to the following ratios:**

- **3:1 ratio for permanent impacts that result in the loss of ecological value and remove habitat from the project area. These features include all permanent structures (BESS, Switching and Substation, and ancillary buildings, well footprints), gen-tie and array foundations, fencing, any areas maintained free from vegetation, and roads;**
- **2:1 ratio for any areas under the arrays that remain vegetated;**
- **1.5:1 ratio for temporary disturbance areas between the arrays and areas located within the limits of disturbance.**

The amount of mitigation shall be based on the final approved project footprint, as certified. The project owner shall submit final design plans following project certification so that total mitigation acres can be calculated by the CPM based on the ratios identified in this condition.

If all or any portion of the mitigation or conservation bank credits or acquired compensation lands for special-status plants, desert tortoise, state jurisdictional

waters, or other required compensatory mitigation meets the criteria for burrowing owl compensation lands, the portion of the other species or habitat compensation lands that meets the criteria for burrowing owl compensation lands may be used to fulfill that portion of the obligation for burrowing owl mitigation.

The purchase of mitigation or conservation bank credits or permanent protection and funding for perpetual management of HM lands must be complete before starting project activities, or within 18 months of the date of the site mobilization, if Security is provided pursuant to the Security (Item 11) below for all uncompleted obligations.

1. Cost Estimates. For the purposes of determining the Security amount, it is estimated, **based on the impacts associated with the project's proposed design, that** the cost for the CPM or its contractors to complete acquisition, protection, and perpetual management of the HM lands is as follows:
 - a. Land acquisition costs for HM lands identified in the Item 3 (Habitat Management Lands Acquisition and Protection) below, estimated at \$4,000.00/acre for 4,100.2 acres: ~~\$16,400,880.00~~ **\$16,400,800.00, or as adjusted based on the final approved project footprint, as certified.** Land acquisition costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements.
 - b. All other costs that are necessary to review and acquire the land in fee title and record a conservation easement as described below in Item 3b. (Conservation Easement) below: \$17,440.00.
 - c. Start-up costs for HM lands, including initial site protection and enhancement costs as described in the Item 3f (Start-up Activities) below, estimated at \$2,000/acre for 4,100.2 acres: ~~\$8,200,400.00~~ **\$8,200,400.00, or as adjusted based on the final approved project footprint, as certified.**
 - d. Interim management period funding as described in the Item 4 (Interim Management) (Initial and Capital)) below, estimated at ~~\$2,000~~ **\$600**/acre for 4,100.2 acres: ~~\$8,200,400.00~~ **\$2,460,120.00, or as adjusted based on the final approved project footprint, as certified.**
 - e. Long-term management funding as described in the Item 5 (Endowment Fund) below, estimated at ~~\$600.00~~ **\$3,100**/acre for 4,100.2 acres: ~~\$2,460,120.00~~ **\$12,710,620.00, or as adjusted based on the final approved project footprint, as certified.** Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.

- f. 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 the Item 10 (Reimburse CDFW), estimated at ~~\$3,100.00/acre for 4,100.2 acres: \$12,721,620.00~~ **\$6,000**.
 - g. All costs associated with the CPM 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 ~~\$6,000.00~~ **\$75,000.00**.
2. Mitigation Bank Credits. If the project owner elects to purchase credits as approved by the approved mitigation bank to complete burrowing owl compensatory mitigation obligations, then project owner shall purchase 4,100.2 acres of burrowing owl credits, **or acres of credits as adjusted based on the final approved project footprint, as certified**, from a mitigation or conservation bank approved in advance by the CPM prior to initiating project activities, or no later than 18 months from the start of site mobilization, if Security is provided pursuant to Item 11 (Security) below. Prior to the purchase of credits, the project owner shall obtain CPM approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the project. The project owner shall submit to the CPM a copy of the Bill of Sale(s) and Payment Receipt prior to initiating site mobilization or within 18 months from start of site mobilization, if Security is provided.
3. Habitat Management Lands Acquisition and Protection. If the project owner elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the project owner shall:
- a. Fee Title. Transfer fee title of the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, the CPM, in consultation with CDFW, 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.
 - b. 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 project owner shall obtain written approval from the CPM, in coordination with CDFW, of any conservation easement before its execution or recordation. No conservation easement shall be approved by the CPM 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.

- c. HM Lands Approval. The project owner shall obtain CPM written approval of the HM lands, in coordination with CDFW, before acquisition and/or transfer of the land by submitting, at least 90 days 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 burrowing owl.
- d. HM Lands Documentation. The project owner shall provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents (please contact CPM for document list). All documents conveying HM lands and all conditions of title are subject to approval from the CPM; and if applicable, the Wildlife Conservation Board, and the Department of General Services.
- e. Land Manager. Designate both an interim and long-term land manager, approved by the CPM, in consultation with the BLM, USFWS, and 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. The land manager shall prepare a draft management plan for CPM review and approval, in consultation with CDFW, and written approval as part of the HM lands acquisition process. The project owner shall notify the CPM 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 the CPM, in consultation with BLM, USFWS, and CDFW.
- f. 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 the CPM. Start-up activities include, at a minimum: (1) conducting a baseline biological assessment and land

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

4. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The project owner 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 the CPM, in consultation with CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management.

The project owner shall either (1) provide Security to the CPM for the minimum of three years of interim management that the land owner, the project owner, 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 the CPM to pay the land manager annually in advance, or (3) establish a short-term enhancement account with a CPM-approved entity for payment to the land manager.

5. Endowment Fund. If the project owner elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the project owner shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this condition of certification, the conservation easement, and the final management plan approved by the CPM. After obtaining CPM approval, in consultation with CDFW, of the HM lands, the project owner 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 CPM-approved (in consultation with CDFW) 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 the condition of certification, the conservation easement, and the management plan required by Item 3e (Land Manager). Endowment as used in the Certification shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this license, Government Code sections 65965-65968, as amended, and Probate Code

sections 18501-18510, as amended. After the interim management period, the project owner 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 license, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.

6. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either the CEC and/or CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended.
 - a. The project owner shall submit to the CPM for review and approval, 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).
7. Calculate the Endowment Funds Deposit. After obtaining CPM written approval, in consultation with CDFW, of the HM lands, long-term management plan, and Endowment Manager, the project owner 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 project owner shall submit to the CPM, in consultation with CDFW, for review and approval the results of the endowment assessment before transferring funds to the Endowment Manager.
 - a. Capitalization Rate and Fees. The project owner 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.
 - b. Endowment Buffers/Assumptions. The project owner 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:

- e. i. 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.
 - d. ii. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
 - e. iii. 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 the CPM, in consultation with CDFW.
8. Transfer Long-term Endowment Funds. The project owner shall transfer the long-term endowment funds to the Endowment Manager **following** upon the CPM's approval of the Endowment Deposit Amount identified **above and at the time of acquisition and/or transfer of the HM lands.**
 9. 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 desert tortoise but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this Certification, 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 the CPM in its sole discretion. The project owner 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 the CPM, in consultation with 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 the CPM. The Endowment Manager shall not be liable for any shortfall in the Endowment resulting from the CPM's decision to make such an expenditure.
 10. Reimburse CDFW. The project owner shall reimburse CDFW for all reasonable costs incurred by CDFW related to transfer of the HM lands to CDFW, if applicable, 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.

11. Security: The project owner may proceed with project activities only after the project owner has ensured the funding (Security) to complete any activity required by the Item 3 (Habitat Management Land Acquisition and Protection) that has not been completed before project activities begin. The project owner shall provide Security as follows:
 - a. Security Amount. The Security shall be in the amount of \$48,006,860.00 **unless adjusted based on the final approved project footprint, as certified**, or in the amount identified in the Item 1 (Cost Estimates) specific to the obligation that has not been completed. This amount is **to be determined by the CPM based on a calculation of the mitigation requirement for the final approved project footprint, as certified, using the ratios identified above in this condition of certification. The amount is** based on cost estimates which are sufficient for the CEC or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.
 - b. Security Form. The Security shall be in the form of an irrevocable letter of credit or another form of Security approved in advance in writing by the CPM, in consultation with CDFW.
 - c. Security Timeline. The Security shall be provided to the CPM before starting site mobilization.
 - d. Security Holder. The Security shall be held by the CPM or in a manner approved in advance in writing by the CPM.
 - e. Security Transmittal. The project owner shall transmit security to the CPM by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other.
 - f. Security Drawing. The Security shall allow the CPM to draw on the principal sum if the CPM, in its sole discretion, determines that the project owner has failed to comply with this Condition of Certification.
 - g. Security Release. The Security (or any portion of the Security then remaining) shall be released to the project owner after the CPM has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by either:
 - i. Copy of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer Agreement for the purchase of ~~Crotch's bumble bee~~ and/or western burrowing owl credits. OR
 - ii. Written documentation of the acquisition of the HM lands.
 - iii. Copies of all executed and recorded conservation easements.

iv. Written confirmation from the approved Endowment Manager of its receipt of the full Endowment.

12. Additional Funding. The CPM, in consultation with BLM, USFWS, and CDFW, may require the project owner to provide additional HM lands and additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the project owner does not complete these requirements within the specified timeframe.

Verification: The project owner shall submit to the CPM and CDFW final project design maps of the final approved project footprint, as certified, at an approved scale, of all proposed temporary and permanent impact areas for burrowing owl habitat no later than 45 days after project certification.

The project owner shall provide verification that the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the date of start of site mobilization, even if a security is provided. If a Security is provided, it shall be provided no later than 30 days prior to the start of site mobilization.

The project owner shall submit to the CPM for review and approval, and to CDFW for review and comment, all HM lands due diligence documentation required for HM lands approval, including but not limited to a preliminary title report, Phase I Environmental Site Assessment, and any other documents required by the CPM, no later than 12 months after the date of the start of site mobilization, if providing a Security.

The project owner shall provide the draft long-term management plan to the CPM for review and approval and to CDFW for review and comment no later than 60 days prior to **acquisition and/or transfer of the HM lands, as part of the HM lands approval process**-construction. The project owner shall submit the final long-term management plan to the CPM and CDFW no later than 7 days prior to **recordation of the conservation easement**-construction.

BIO-26 Habitat Management Land Acquisition for Permanent and Temporary Impacts to State Jurisdictional Waters To mitigate for impacts to state jurisdictional waters the project owner shall fulfill the following requirements:

The project owner shall purchase ~~1,368.24~~ acres of state jurisdictional waters mitigation or conservation bank credits, at a location within the Mojave Desert approved in advance by the CPM, in coordination with the CDFW and LRWQCB, or shall provide for both the permanent protection and management of ~~1,368.24~~ acres of Habitat Management (HM) lands pursuant to Item 3 (Habitat Management Lands Acquisition and Protection) and the calculation and deposit

of the management funds pursuant to Item 5 (Endowment Fund). The amount of mitigation required shall be calculated based on the **approved** project's final direct permanent and temporary loss of state and CDFW jurisdictional waters, as approved by the CPM, in consultation with USFWS, BLM, and CDFW, **according to the following ratios:**

- **3:1 ratio for permanent impacts that result in the loss of ecological value to plants and wildlife and remove the stream channel from the system. These features include all permanent structures (BESS, Switching and Substation, berms, and ancillary buildings, well footprints), gen-tie and array foundations, fencing, any areas maintained free from vegetation, and all access roads including the relocation of Razor Road;**
- **1.5:1 ratio for any areas under the arrays that maintain unaltered hydrology and areas subject to temporary disturbance between the arrays;**
- **1:1 ratio for temporary impacts along the gen-tie alignment and areas located between or outside the arrays that can be re-established following construction;**

No mitigation is required for temporary impacts to drainages that cross existing access roads provided they do not exceed the existing road prism and do not alter downstream hydrology. Temporary impacts are defined as any physical disturbance to the stream.

The amount of mitigation shall be based on the final approved project footprint, as certified. The project owner shall submit final design plans following project certification so that total mitigation acres can be calculated by the CPM based on the ratios identified in this condition.

If all or any portion of the mitigation or conservation bank credits or acquired compensation lands for special-status plants, desert tortoise, burrowing owl, or other required compensatory mitigation meets the criteria for state jurisdictional waters compensation lands, the portion of the other species or habitat compensation lands that meets the criteria for state jurisdictional waters lands may be used to fulfill that portion of the obligation for state jurisdictional waters lands.

The purchase of mitigation or conservation bank credits or permanent protection and funding for perpetual management of HM lands must be complete within 18 months of the date of the site mobilization, if Security is provided pursuant to the Security (Item 11) below for all uncompleted obligations.

1. **Cost Estimates.** For the purposes of determining the Security amount, it is estimated **based on the impacts associated with the project's current**

- design, that** the cost for the CPM or its contractors to complete acquisition, protection, and perpetual management of the HM lands is as follows:
- a. Land acquisition costs for HM lands identified in the Item 3 (Habitat Management Lands Acquisition and Protection) below, estimated at \$4,000/acre for 1,368.24 acres: \$5,472,960.00 **or adjusted based on the final approved project footprint, as certified.** Land acquisition costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements.
 - b. All other costs that are necessary to review and acquire the land in fee title and record a conservation easement as described below in Item 3b. (Conservation Easement) below: \$17,440.00.
 - c. Start-up costs for HM lands, including initial site protection and enhancement costs as described in the Item 3f (Start-up Activities) below, estimated at \$2,000/acre for 1,368.24 acres: \$2,736,480.00 **or adjusted based on the final approved project footprint, as certified.**
 - d. Interim management period funding as described in the Item 4 (Interim Management) (Initial and Capital) below, estimated at \$600.00/acre for 1,368.24 acres: \$820,944.00 **or adjusted based on the final approved project footprint, as certified.**
 - e. Long-term management funding as described in the Item 5 (Endowment Fund) below, estimated at \$3,100.00/acre for 1,368.24 acres: \$4,241,544.00 **or adjusted based on the final approved project footprint, as certified.** Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
 - f. 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 the Item 10 (Reimburse CDFW), estimated at \$6,000.00.
 - g. All costs associated with the CPM engaging an outside contractor to complete the mitigation tasks, including but not limited to acquisition, protection, and perpetual funding and management of the HM lands and restoration of temporarily disturbed habitat. These costs include but are not limited to the cost of issuing a request for proposals, transaction costs, contract administration costs, and costs associated with monitoring the contractor's work \$75,000.00.
2. **Mitigation Bank Credits.** If the project owner elects to purchase credits to complete state jurisdictional waters compensatory mitigation obligations, then project owner shall purchase ~~1,368.24 acres of~~ jurisdictional waters credits, **or acres of credits as adjusted based on the final approved project**

footprint, as certified, from a mitigation or conservation bank approved in advance by the CPM prior to initiating site mobilization, or no later than 18 months from the start of site mobilization, if Security is provided pursuant to Item 11 (Security) below. Prior to the purchase of credits, the project owner shall obtain CPM approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the project. The project owner shall submit to the CPM a copy of the Bill of Sale(s) and Payment Receipt prior to initiating site mobilization or within 18 months from start of site mobilization, if Security is provided.

3. **Habitat Management Lands Acquisition and Protection**. If the project owner elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the project owner shall:
 - a. **Fee Title**. Transfer fee title of the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, the CPM, in consultation with CDFW, 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.
 - b. **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 project owner shall obtain written approval from the CPM, in coordination with CDFW, of any conservation easement before its execution or recordation. No conservation easement shall be approved by the CPM 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.
 - c. **HM Lands Approval**. The project owner shall obtain CPM written approval of the HM lands, in coordination with CDFW, before acquisition and/or transfer of the land by submitting, at least 90 days 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 burrowing owl.

- d. HM Lands Documentation. The project owner shall provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents (please contact CPM for document list). All documents conveying HM lands and all conditions of title are subject to approval from the CPM; and if applicable, the Wildlife Conservation Board, and the Department of General Services.
 - e. Land Manager. Designate both an interim and long-term land manager with demonstrated aquatic resource management experience, approved by the CPM, in consultation with BLM, USFWS, LRWQCB, and 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. The land manager shall prepare a draft management plan for CPM review and approval, in consultation with CDFW, and written approval as part of the HM lands acquisition process. The project owner shall notify the CPM 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 the CPM, in consultation with BLM, USFWS, and CDFW.
 - f. 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 the CPM. Start-up activities include, at a minimum: (1) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (2) developing and transferring Geographic Information Systems (GIS) data if applicable; (3) establishing initial fencing; (4) conducting litter removal; (5) conducting initial habitat restoration or enhancement, if applicable; and (6) installing signage.
4. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The project owner 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 the CPM, in consultation with CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management.

The project owner shall either (1) provide Security to the CPM for the minimum of three years of interim management that the land owner, the

project owner, 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 the CPM to pay the land manager annually in advance, or (3) establish a short-term enhancement account with a CPM-approved entity for payment to the land manager.

5. Endowment Fund. If the project owner elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the project owner shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this condition of certification, the conservation easement, and the final management plan approved by the CPM. After obtaining CPM approval, in consultation with CDFW, of the HM lands, the project owner 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 CPM-approved (in consultation with CDFW) 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 the condition of certification, the conservation easement, and the management plan required by Item 3e (Land Manager). Endowment as used in the Certification shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this license, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended. After the interim management period, the project owner 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 license, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.
6. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either the CEC and/or CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended.
 - a. The project owner shall submit to the CPM for review and approval, 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).

7. Calculate the Endowment Funds Deposit. After obtaining CPM written approval, in consultation with CDFW, of the HM lands, long-term management plan, and Endowment Manager, the project owner 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 project owner shall submit to the CPM, in consultation with CDFW, for review and approval the results of the endowment assessment before transferring funds to the Endowment Manager.
 - a. Capitalization Rate and Fees. The project owner 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.
 - b. Endowment Buffers/Assumptions. The project owner 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:
 - e. i. 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.
 - ~~d.~~ ii. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
 - e. iii. 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 the CPM, in consultation with CDFW.
8. Transfer Long-term Endowment Funds. The project owner shall transfer the long-term endowment funds to the Endowment Manager upon the CPM's approval of the Endowment Deposit Amount identified above.
9. 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 desert tortoise but shall maintain separate accounting for each Endowment. The Endowment Manager

shall, at all times, hold and manage the Endowment in compliance with this Certification, 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 the CPM in its sole discretion. The project owner 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 the CPM, in consultation with 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 the CPM. The Endowment Manager shall not be liable for any shortfall in the Endowment resulting from the CPM's decision to make such an expenditure.

10. Reimburse CDFW. The project owner shall reimburse CDFW for all reasonable costs incurred by CDFW related to transfer of the HM lands to CDFW, if applicable, 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.
11. Security: The project owner may proceed with project activities only after the project owner has ensured the funding (Security) to complete any activity required by the Item 3 (Habitat Management Land Acquisition and Protection) that has not been completed before project activities begin. The project owner shall provide Security as follows:
 - a. Security Amount. The Security shall be in the amount of \$13,370,368.00 **unless adjusted based on the final approved project footprint, as certified,** or in the amount identified in the Item 1 (Cost Estimates) specific to the obligation that has not been completed. This amount is to be determined by the CPM **based on a calculation of the mitigation requirement for the final approved project footprint, as certified, using the ratios identified above in this condition. The amount is** based on cost estimates which are sufficient for the CEC or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.
 - b. Security Form. The Security shall be in the form of an irrevocable letter of credit or another form of Security approved in advance in writing by the CPM, in consultation with CDFW.

- c. Security Timeline. The Security shall be provided to the CPM before starting site mobilization.
 - d. Security Holder. The Security shall be held by the CPM or in a manner approved in advance in writing by the CPM.
 - e. Security Transmittal. The project owner shall transmit security to the CPM by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other.
 - f. Security Drawing. The Security shall allow the CPM to draw on the principal sum if the CPM, in its sole discretion, determines that the project owner has failed to comply with this Condition of Certification.
 - g. Security Release. The Security (or any portion of the Security then remaining) shall be released to the project owner after the CPM has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by either:
 - i. Copy of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer Agreement for the **purchase of state jurisdictional waters mitigation or conservation bank credits** ~~Crotch's bumble-bee and/or western burrowing owl credits.~~ OR
 - ii. Written documentation of the acquisition of the HM lands.
 - iii. Copies of all executed and recorded conservation easements.
 - iv. Written confirmation from the approved Endowment Manager of its receipt of the full Endowment.
12. Additional Funding. The CPM, in consultation with BLM, USFWS, and CDFW, may require the project owner to provide additional HM lands and additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the project owner does not complete these requirements within the specified timeframe.

Verification: The project owner shall submit to the CPM and CDFW final project design maps of the final approved project footprint, as certified, at an approved scale, of all proposed temporary and permanent impact areas for state waters no later than 45 days after project certification.

The project owner shall provide verification that the required acquisition, protection and transfer of all HM lands has occurred, and record any required conservation easements no later than 18 months from the date of start of site mobilization, even if a security is provided. If a Security is provided, it shall be provided no later than 30 days prior to the start of site mobilization.

The project owner shall submit to the CPM for review and approval, and to CDFW for review and comment, all HM lands due diligence documentation required for HM lands approval, including but not limited to a preliminary title report, Phase I Environmental Site Assessment, and any other documents required by the CPM, no later than 12 months after the date of the start of site mobilization, if providing a Security.

The project owner shall provide the draft long-term management plan to the CPM for review and approval and to CDFW for review and comment no later than 60 days prior to **acquisition and/or transfer of the HM lands, as part of the HM lands approval process**-construction. The project owner shall submit the final long-term management plan to the CPM and CDFW no later than 7 days prior to **recordation of the conservation easement**-construction.

COMPLIANCE WITH PORTER-COLOGNE WATER QUALITY ACT

WATER-4 The project shall require construction of ~~(3) engineered channels, (13) low grade road crossings, and (3) culvert~~ **three rip-rapped at-grade** road crossings **of existing arroyos** associated with ephemeral streambeds that have been determined to be Water of the State in the updated jurisdictional delineation report prepared for the application (RE 2025aaaa). The United States Army Corp of Engineers (USACE) previously determined that no ephemeral streambeds on the project were Water of the United States. Therefore, the applicant shall apply for dredge and fill waste discharge requirements (WDRs) with the LRWQCB, following the *State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* in accordance with the applicable requirements of division 7 of the Water Code and California Code of Regulations, title 23, Section 3855.

Verification: ~~At least sixty (60) days p~~**rior to construction, site mobilization,** the project owner shall apply to **submit a copy of the dredge and fill WDRs approved by** the LRWQCB for coverage under dredge and fill WDRs, include all necessary information and applicable fees, submitting copies of all application submittals to the CPM. Within ten (10) days of its mailing or receipt, the project owner shall submit to the CPM any correspondence with the SWRCB or the LRWQCB about the SWRCB Order for discharge of stormwater associated with this activity. The project owner shall notify the CPM in writing of any violations and include these in the annual compliance report. Any monitoring documentation associated with the SWRCB Order shall be included in the annual compliance report.

GROUNDWATER PRODUCTION & MONITORING WELL INSTALLATION

WATER-5 Water used for project construction and operation shall be groundwater produced from up to (5) well(s) to be installed along the eastern edge of the

project site or, alternatively or in addition, from an existing well located at 58502 Death Valley Road, Baker, California 92309 (RE 2025ii, RE 2025eeee). In addition, additional wells shall be installed to monitor groundwater levels and quality to assess any possible negative impacts to the local groundwater resource. Groundwater monitoring well locations shall be selected per consultation between the CPM, project owner, LRWQCB, and the San Bernardino County Department of Environmental Health Services (SBCEHS).

A Groundwater Well Installation Workplan (GWIW) shall be submitted to the CPM for review and approval, and to the LRWQCB and SBCEHS for review. The GWIW shall include the following:

1. A scaled map showing the site and vicinity, and production and monitoring wells proposed for construction;
2. Description of proposed drilling and well installation methods;
3. Proposed monitoring well design; and,
4. schedule for completion of the work.

Groundwater production and monitoring wells shall be installed and constructed per applicable California Water Code section, California well standards (DWR bulletins 74-81 and 74-90, 2020 Statewide Advisory: Dealing Materials for Water Wells, Monitoring Wells, Cathodic Protection Wells, and Geothermal Heat Exchange Wells), and the San Bernardino County Desert Groundwater Management Ordinance (§ 33.06551-**33.0554, except 33.0554 [a]**).

Verification: At a frequency determined by the CPM, the project owner shall keep the CPM apprised of all aspects of production and monitoring well installation. At least 4 months prior to groundwater production, the project owner shall submit the Groundwater Well Installation Workplan (GWIW) to the CPM for review and approval, and to the LRWQCB, and SBCEHS for review. At least 3 months prior to groundwater production, the project owner shall initiate groundwater well installation. At least 45 days prior to groundwater production, the project owner shall submit a Groundwater Well Installation Report (GWIR) to the CPM for review and approval, along with the Groundwater Monitoring and Reporting Plan as required by COC **WATER-6**.

WATER USE AND REPORTING

WATER-7 Water supply for project construction and operation shall be groundwater extracted from the project site from up to 5 production wells or, alternatively or in addition, from an existing well identified in COC **WATER-5**. Since the project site is within an unincorporated and unadjudicated desert region of San Bernardino County, groundwater extraction, if used, shall ~~comply with~~ **meet the substantive requirements of** the DGMO (**except §33.0554 [a]**). Water use during construction shall not exceed 336 AF and operational water use shall be

limited to a maximum of 7.5 AFY. If groundwater from the private off-site well is used as potable water, the vendor selected to transport the water shall be certified by the California Department of Public Health (CDPH) as a potable water hauler per California Health and Safety Code section 111120. During project construction, the Project Owner shall file an annual notice with the SWRCB per the requirement of Water Code Sections 4999-5009 for reporting of groundwater production in excess of 25-acre feet per year. The project owner shall record daily water use for the project construction and operation.

Verification: The Project owner shall file an annual "Notice of Extraction and Diversion of Water" with the SWRCB in accordance with Water Code Sections 4999-5009 **during project construction**. The Project Owner shall include a copy of the filing in the annual compliance report. During project construction, the monthly compliance report shall include a summary of monthly water use. The project's annual compliance report shall include a monthly and annual summary of water use identifying construction or operations and water source.

WORKER SAFETY-10 The project owner shall:

- a. Reach one or more agreements with the SBCFPD, either directly between the parties or using a mediator, regarding one-time initial funding and ongoing annual funding to provide mitigation for SBCFPD's emergency response services related to direct and cumulative project-related impacts; or
- b. If no agreement can be reached under (a), then the project owner and SBCFPD shall enter into final and binding arbitration. The arbitration shall be held in accordance with California law and the terms of **WORKER SAFETY-10**, and any challenge related to arbitration or the enforceability of arbitration, will not suspend, delay, or excuse payment obligations by the project owner. The project owner shall pay the cost of arbitration. The arbitrator shall be selected by mutual agreement of the parties and submitted to the CPM for review and approval. If the parties are unable to mutually agree to an arbitrator, the CPM shall select one. The arbitrator shall also consider the following in reaching a decision:
 1. Weigh the needs of SBCFPD's emergency response to the project related to fire, rescue, EMS, and hazardous materials spills and the related costs on the fire department resources caused by direct impacts of the project;
 2. Weigh the cumulative impact of the project on the fire department resources including but not limited to the drawdown of SBCFPD resources on existing communities and the impacts on those communities;
 3. Determine the amount of one-time initial funding for any capital improvements and the amount of annual funding with an increase for inflation.

- c. Develop a schedule, in coordination with the SBCFPD, that provides a timeline for reaching agreement or completing arbitration prior to the anticipated date of site mobilization, subject to sub-paragraph (ed) below. The schedule must include a timeframe for: (i) negotiating one or more agreements on funding directly between the parties or using a mediator, or (ii) commencing and finalizing arbitration. In all dealings regarding this condition, the CEC expects the project owner and the SBCFPD to work in good faith and provide timely, substantive responses to all communications from the other party, mediator, or arbiter. In no event may the agreement or arbitration delay the project's site mobilization, construction, or operation.
- d. The agreement(s) or arbiter's decisions may separately address funding to SBCFPD related to services for direct and cumulative impacts caused during construction and caused during operation, but any agreement or arbiter's decision regarding funding during construction shall be completed no later than 45 days prior to site mobilization, any agreement or arbiter's decision regarding funding during operation shall be completed no later than 45 days prior to operation, and there must be continual funding until the solar property tax exclusion sunsets and there is no solar property tax exclusion applicable to the project.

Verification:

- a. No more than 30 days after certification, the project owner shall provide to the CPM for review and approval the schedule for reaching agreement on funding prior to site mobilization.
- b. At least 30 days prior to the start of site mobilization, or as soon as practicable thereafter, the project owner shall provide to the CPM for review and approval either:
 - 1. A copy of the agreement with the SBCFPD or
 - 2. A copy of the arbiter's decision.
- c. If the agreement or arbiter's decision submitted 30 days prior to site mobilization is limited to funding during construction, then, provided the property tax exclusion still applies, the project owner must provide to the CPM for review and approval an agreement or arbiter's decision to cover the remaining period of the project at least 30 days prior to the completion of construction.
- d. Upon approval of the agreement or arbiter's decision by the CPM, the project owner shall commence payment of the initial funding and annual funding. If the agreement or arbiter's decision is provided later than 30 days prior to the start of site mobilization, funding will be made retroactive to cover from the start date of site mobilization.