

**MOJAVE FRINGE-TOED LIZARD MITIGATION**

**BIO-13** The project owner shall provide compensatory land to mitigate for habitat loss and direct impacts to Mojave fringe-toed lizards based on revised estimates of suitable Mojave fringe-toed lizard habitat on-site, to be verified by an expert in this animal's ecology. The project owner shall provide compensatory mitigation at a 3:1 ratio for impacts to breeding habitat (i.e., dune, sand ramp, or fine-sandy wash habitat), and at a 1:1 ratio for impacts to adjacent suitable foraging and cover habitat, such as thin aeolian sand overlying bajada surfaces, or foraging habitat surrounding the breeding habitat. Staff estimates breeding habitat on site as 21.4 acres, and surrounding suitable foraging and cover habitat (i.e., 45 meter buffer) as 143.3 acres. Therefore, staff ~~anticipates~~ concludes this condition would require the acquisition and dedication in perpetuity of ~~at a minimum~~ 207.5 acres of habitat. The project owner shall provide funding for the acquisition, initial habitat improvements, and long-term management of the compensation lands, as described below.

**Biological Resources Table 17  
Mojave Fringe-toed Lizard Compensation Acreage Summary**

<b>Habitat Function</b>	<b>Project Impact Acreage</b>	<b>Mitigation Ratio</b>	<b>Compensation Acreage</b>
Foraging and cover	143.3 acres	1:1	143.3 acres
Breeding	21.4 acres	3:1	64.2 acres
Total	164.7 acres		207.5 acres

~~To more accurately assess the extent of breeding habitat and adjacent foraging and cover habitat on the Project site, the Project owner shall provide a delineation of habitat for Mojave fringe-toed lizards to the CPM. The delineation shall be prepared by an expert on the species' ecology, whose qualifications have been approved by the CPM,~~

This compensation acreage may be included ("nested") within the acreage acquired and managed as desert tortoise habitat compensation (Condition of Certification **BIO-17**) only if:

- Adequate acreage of qualifying desert tortoise compensation lands also meet the Selection Criteria (below) as habitat for Mojave fringe-toed lizard;
- The desert tortoise habitat compensation lands are acquired and dedicated as permanent conservation lands within 18 months of the start of project construction.

If these two criteria are not met, then the project owner shall provide the required number of acres of Mojave fringe-toed lizard habitat compensation lands, adjusted to reflect the final project footprint and additional delineation of suitable habitat, independent of any compensation land required under other conditions of certification, and shall also provide funding for the initial

improvement and long-term maintenance and management of the acquired lands, and shall comply with other related requirements this condition. Costs of these requirements are estimated to be ~~\$725,416.25~~ \$674,211.24 based on the acquisition of 207.5 acres (see **Revised Biological Resources Tables 5 and 6** for a complete breakdown of estimated costs). Regardless of actual cost, the project owner shall be responsible for funding all requirements of this condition.

The project owner shall provide financial assurances as described below, in the amount of \$660,416.25. In lieu of acquiring lands itself, the Project owner may satisfy the requirements of this condition by providing funds for the acquisition to the Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF), as described in Section 3.i., below. Funding through the NFWF would require additional administrative costs estimated at \$15,744.99, bringing the total required deposit to \$741,161.24. See **Biological Resources Table 6**, above. If the Project owner elects to establish a use the REAT NFWF Account with and have NFWF and the resource agencies complete the required habitat compensation, then the total estimated cost of complying with this condition is \$674,211.24, the Project owner will be responsible for providing sufficient funds to cover actual acquisition costs and fees, even if those costs exceed the estimates in this condition, and will also need to pay NFWF fees to establish and manage the project-specific account for the land transfer and management. The amount of security or NFWF deposit shall be adjusted up or down to reflect any revised cost estimates recommended by REAT.

The actual costs to comply with this condition will vary depending on the final footprint of the Project, ~~the number of acres of Mojave fringe-toed lizard breeding and foraging or cover habitat identified in the final delineation of suitable habitat,~~ 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 Property Analysis Report (PAR, 3. d., below). The 207.5 acre habitat requirement, and associated funding requirements based on that acreage, shall be adjusted up or down if there are changes in the final footprint of the project or the associated costs of evaluation, acquisition, management, and other factors listed in **Revised Biological Resources Tables 5 and 6**. Regardless of actual cost, the project owner shall be responsible for implementing all aspects of this condition.

~~The requirements for the acquisition, initial improvement, protection, and long term management of the compensation lands shall include the following:~~

#### **COMPENSATORY MITIGATION LAND ACQUISITION**

1. Method of Acquisition. Compensation lands shall be acquired by either of the two options listed below. Regardless of the method of acquisition, the transaction shall be complete only upon completion of all terms and conditions described in this Condition of Certification.

- a. The project owner shall acquire lands and transfer title and/or conservation easement to a state or federal land management agency or to a third-party non-profit land management organization, as approved by the CPM in consultation with BLM, CDFG, and USFWS; or
- b. The Project owner shall deposit funds into a project-specific subaccount within the REAT Account established with the NFWF, in the amount as indicated in **Revised Biological Resources Tables 5 and 6** (adjusted to reflect final project footprint and any applicable REAT adjustments to costs).

24. Selection Criteria for Compensation Lands. The compensation lands selected for acquisition to meet Energy Commission requirements shall:

- a. Be sand dune or partially stabilized sand dune habitat with potential to contribute to Mojave fringe-toed lizard habitat connectivity and build linkages between known populations of Mojave fringe-toed lizards and preserve lands with suitable habitat;
- b. Be biologically contiguous to lands currently occupied by Mojave fringe-toed lizard;
- c. Be near larger blocks of lands that are either already protected or planned for protection, or which could feasibly be protected long-term by a public resource agency or a non-governmental organization dedicated to habitat preservation;
- d. Provide quality habitat for Mojave fringe-toed lizard, that has the capacity to regenerate naturally when disturbances are removed;
- e. Not have a history of intensive recreational use or other disturbance that might make habitat recovery and restoration infeasible;
- f. Not be characterized by high densities of invasive species, either on or immediately adjacent to the parcels under consideration, that might jeopardize habitat recovery and restoration;
- g. Not contain hazardous wastes;
- h. Have water and mineral rights included as part of the acquisition, unless the CPM, in consultation with CDFG, BLM and USFWS, agrees in writing to the acceptability of land without these rights; and
- i. Be on land for which long-term habitat management for Mojave fringe-toed lizard and other native biological resources is feasible.

32. 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 Mojave fringe-toed lizard in relation to the criteria listed above and must be approved by the CPM. The CPM will share the proposal with and consult

with CDFG, BLM, and the USFWS before deciding whether to approve or disapprove the proposed acquisition.

34. Compensation Lands Acquisition Conditions: The project owner shall comply with the following conditions relating to acquisition of the compensation lands after the CPM, in consultation with CDFG, BLM and the USFWS, have approved the proposed compensation lands:
- a. Preliminary Report: The Project owner, or 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, in consultation with CDFG, BLM and the USFWS. For conveyances to the State, approval may also be required from the California Department of General Services, the Fish and Game Commission 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 in consultation with CDFG. Any transfer of a conservation easement or fee title must be to CDFG, 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 in consultation with CDFG. If an approved non-profit organization holds fee title to the compensation lands, a conservation easement shall be recorded in favor of CDFG or another entity approved by the CPM. If an approved non-profit holds a conservation easement, CDFG shall be named a third party beneficiary. If an entity other than CDFG holds a conservation easement over the compensation lands, the CPM may require that CDFG or another entity approved by the CPM, in consultation with CDFG, be named a third party beneficiary of the conservation easement. The Project owner shall obtain approval of the CPM, in consultation with CDFG, of the terms of any transfer of fee title or conservation easement to the compensation lands.
  - c. 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, in consultation with CDFG, before it can be used to establish funding levels or management activities for the compensation lands.
5. Compensation Lands Acquisition Costs: The Project owner shall pay all other costs related to acquisition of compensation lands and conservation easements. In addition to actual land costs, these acquisition costs shall

include but shall not be limited to the items listed below. Management costs including site cleanup measures are described separately, in the following section.

- a. Level 1 Environmental Site Assessment;
  - b. Appraisal;
  - c. Title and document review costs;
  - d. Expenses incurred from other state, federal, or local agency reviews;
  - e. Closing and escrow costs;
  - f. Overhead costs related to providing compensation lands to CDFG or an approved third party;
  - g. Biological survey(s) to determine mitigation value of the land; and
  - h. Agency costs to accept the land (e.g., writing and recording of conservation easements; title transfer).
- ~~e. Initial Habitat Improvement Fund. The Project owner shall fund activities that the CPM, in consultation with the CDFG, USFWS and BLM, 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 costs of these activities are estimated at \$250 an acre, but will vary depending on the measures that are required for the compensation lands. A non-profit organization, CDFG or another public agency may hold and expend the habitat improvement funds if it is qualified to manage the compensation lands (pursuant to California Government Code section 65965), if it meets the approval of the CPM in consultation with CDFG, and if it is authorized to participate in implementing the required activities on the compensation lands. If CDFG takes fee title to the compensation lands, the habitat improvement fund must be paid to CDFG 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, in consultation with CDFG, before it can be used to establish funding levels or management activities for the compensation lands.~~

### **COMPENSATORY MITIGATION LAND IMPROVEMENT**

1. Land Improvement Requirements: The Project owner shall fund activities that the CPM, in consultation with the CDFG, USFWS and BLM, 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 surveys of boundaries and property lines, installation of signs, trash removal and other site cleanup measures, construction and repair of fences, invasive plant removal, removal of roads, and similar measures to protect habitat and improve habitat quality on the compensation lands.

The costs of these activities are estimated at \$250 an acre, but will vary depending on the measures that are required for the compensation lands. A non-profit organization, CDFG or another public agency may hold and expend the habitat improvement funds if it is qualified to manage the compensation lands (pursuant to California Government Code section 65965), if it meets the approval of the CPM in consultation with CDFG, and if it is authorized to participate in implementing the required activities on the compensation lands. If CDFG takes fee title to the compensation lands, the habitat improvement fund must be paid to CDFG or its designee.

### **COMPENSATORY MITIGATION LAND LONG-TERM MANAGEMENT**

1. Long-term Management Requirements: Long-term management is required to ensure that the compensation lands are managed and maintained to protect and enhance habitat for Mojave fringe-toed lizard. Management activities may include maintenance of signs, fences, removal of invasive weeds, monitoring, security and enforcement, and control or elimination of unauthorized use.
2. Long-term Management Plan. The project owner shall pay for the preparation of a Management Plan for the compensation lands. The Management Plan shall reflect site-specific enhancement measures on the acquired compensation lands. The plan shall be submitted for approval of the CPM, in consultation with CDFG, BLM and USFWS.
- e3. Long-Term Maintenance and Management Funding. The Project owner shall provide money to establish an account with a non-wasting capital that will be used to fund the long-term maintenance and management of the compensation lands. The amount of money to be paid will be determined through an approved PAR or PAR-like analysis conducted for the compensation lands. The amount of required funding is initially estimated to be \$1,450 for every acre of compensation lands. If compensation lands will not be identified and a PAR or PAR-like analysis completed within the time period specified for this payment (see the verification section at the end of this condition), the project owner shall provide initial payment of \$1,450 an acre for the acres identified in the verified and approved delineation of habitat required by this condition, or if the delineation is not completed, shall provide \$300,875 calculated at \$1,450 an acre for 207.5 acres into an account for long-term maintenance and management of compensation lands. ~~or as an alternative to initial payment of funds for long-term maintenance and management, the project~~

~~owner shall include an amount equal to this initial payment in the security that is provided to the Energy Commission under section 3.h. of this condition.~~ The amount of the required initial payment or security for this item shall be adjusted for any change in the Project footprint as described above. If an initial payment is made based on the estimated per-acre costs, the project owner shall deposit additional money as may be needed to provide the full amount of long-term maintenance and management funding indicated by a PAR or PAR-like analysis, once the analysis is completed and approved. If the approved analysis indicates less than \$1,450 an acre will be required for long-term maintenance and management, the excess paid will be returned to the Project owner.

The project owner must obtain the CPM's approval of the entity that will receive and hold the long-term maintenance and management fund for the compensation lands. The CPM will consult with CDFG before deciding whether to approve an entity to hold the project's long-term maintenance and management funds. The CPM, in consultation with CDFG, may designate another non-profit organization to hold the long-term maintenance and management fee if the organization is qualified to manage the compensation lands in perpetuity.

If CDFG takes fee title to the compensation lands, CDFG shall determine whether it will hold the long-term management fee in the special deposit fund, leave the money in the REAT Account, or designate another entity to manage the long-term maintenance and management fee for CDFG and with CDFG supervision.

The Project owner shall ensure that an agreement is in place with the long-term maintenance and management fee holder/manager to ensure the following conditions:

- i. Interest. Interest generated from the initial capital shall be available for reinvestment into the principal and for the long-term operation, management, and protection of the approved compensation lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the compensation lands.
- ii. Withdrawal of Principal. The long-term maintenance and management fee principal shall not be drawn upon unless such withdrawal is deemed necessary by the CPM, in consultation with CDFG, or the approved third-party long-term maintenance and management fee manager to ensure the continued viability of the species on the compensation lands. If CDFG takes fee title to the compensation lands, monies received by CDFG pursuant to this provision shall be deposited in a special deposit fund established solely for the purpose to manage lands in perpetuity unless CDFG designates NFWF or another entity to manage the long-term maintenance and management fee for CDFG.

- iii. Pooling Funds. A CPM-approved non-profit organization qualified to hold long-term maintenance and management fees solely for the purpose to manage lands in perpetuity, may pool the fund with other funds for the operation, management, and protection of the compensation lands for local populations of ~~desert tortoise~~ Mojave fringe-toed lizard. However, for reporting purposes, the long-term maintenance and management fee fund must be tracked and reported individually to the CPM.
- iv. Reimbursement Fund. The project owner shall provide reimbursement to CDFG or an approved third party for reasonable expenses incurred during title, easement, and documentation review; expenses incurred from other State or State-approved federal agency reviews; and overhead related to providing compensation lands.

### **COMPENSATORY MITIGATION LAND SECURITY**

1. Compensation Mitigation Security: The project owner shall provide security sufficient for funding acquisition, improvement, and long-term management of Mojave fringe-toed lizard compensation land. Financial assurance can be provided to the CPM in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security"). Prior to submitting the Security to the CPM, the Project owner shall obtain the CPM's approval, in consultation with CDFG, BLM and the USFWS, of the form of the Security.

The security amount shall be based on the estimates provided in **Revised Biological Resources Tables 5 and 6**. This amount shall be updated and verified prior to payment and shall be adjusted to reflect actual costs or more current estimates as agreed upon by the REAT agencies.

The Project owner shall provide verification that financial assurances have been established to the CPM with copies of the document(s) to BLM, CDFG and the USFWS, to guarantee that an adequate level of funding is available to implement any of the mitigation measures required by this condition that are not completed prior to the start of ground-disturbing activities described in Section A of this condition.

In the event that the project owner defaults on the Security, the CPM may use money from the Security solely for implementation of the requirements of this condition. The CPM's use of the security to implement measures in this condition may not fully satisfy the Project owner's obligations under this condition. Any amount of the Security that is not used to carry out mitigation shall be returned to the Project owner upon successful completion of the associated requirements in this condition.

Security for the requirements of this condition shall be provided in the amount of \$660,416.25 (or \$674,211.24 if the project owner elects to use the REAT Account with NFWF pursuant to paragraph 4 of this condition, below). The Security is calculated in part from the items that follow but



adjusted as specified below (consult **Revised Biological Resources Tables 5 and 6** for the complete breakdown of estimated costs). However, regardless of the amount of the security or actual cost of implementation, the project owner shall be responsible for implementing all aspects of this condition.

- i. Land acquisition costs for compensation land, calculated at \$1,000/acre;
  - ii. Site assessments, appraisals, biological surveys, transaction closing and escrow costs, calculated as \$18,000 total per parcel (presuming 320 acres per parcel);
  - iii. Initial site clean-up, restoration, or enhancement, calculated at \$250/acre;
  - iv. Third-party and agency administrative transaction costs and overhead, calculated as percentages of land cost;
  - v. Long-term management and maintenance fund, calculated at \$1,450 per acre;
  - vi. NFWF fees to establish a project-specific account; manage the sub-account for acquisition and initial site work; and manage the sub-account for long term management and maintenance.
2. Phasing of Security Payment: Compensatory Mitigation Land Security may be phased according to phasing of the project's approval and construction. Phasing of compensation funding shall be based upon land disturbance and habit impacts for each project phase. Phasing of the mitigation payment is described further in staff's recommended **Condition of Certification BIO-31**.
3. The project owner may elect to comply with some or all of the requirements in this condition by providing funds to implement the requirements into the Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF). To use this option, the Project owner must make an initial deposit to the REAT Account in an amount equal to the estimated costs of implementing the requirement (as set forth in the Security section of this condition, paragraph 3, above). If the actual cost of the acquisition, initial protection and habitat improvements, long-term funding or other cost is more than the estimated amount initially paid by the project owner, the project owner shall make an additional deposit into the REAT Account sufficient to cover the actual acquisition costs, the actual costs of initial protection and habitat improvement on the compensation lands, the long-term funding requirements as established in an approved PAR or PAR-like analysis, or the other actual costs that are estimated in the table. If those actual costs or PAR projections are less than the amount initially transferred by the applicant, the remaining balance shall be returned to the project owner.

4. The responsibility for acquisition of compensation lands may be delegated to a third party other than NFWF, such as a non-governmental organization supportive of desert habitat conservation, by written agreement of the Energy Commission. Such delegation shall be subject to approval by the CPM, in consultation with CDFG, BLM and USFWS, prior to land acquisition, enhancement or management activities. Agreements to delegate land acquisition to an approved third party, or to manage compensation lands, shall be executed and implemented within 18 months of the Energy Commission's certification of the project.
5. The project owner may request the CPM to provide it with all available information about any funds held by the Energy Commission, CDFG, or NFWF as project security, or funds held in a NFWF sub-account for this project, or other project-specific account held by a third party. The CPM shall also fully cooperate with any independent audit that the project owner may choose to perform on any of these funds.
- ~~f. Other expenses. In addition to the costs listed above, 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, expenses incurred from other state agency reviews, and overhead related to providing compensation lands to CDFG or an approved third party; escrow fees or costs; environmental contaminants clearance; and other site cleanup measures.~~
- ~~g. 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 Management Plan shall reflect site-specific enhancement measures on the acquired compensation lands. The plan shall be submitted for approval of the CPM, in consultation with CDFG, BLM and USFWS.~~
- ~~h. Mitigation Security. The Project owner shall provide financial assurances to the CPM with copies of the document(s) to BLM, CDFG and the USFWS, to guarantee that an adequate level of funding is available to implement any of the mitigation measures required by this condition that are not completed prior to the start of ground-disturbing activities. The CPM may use money from the Security solely for implementation of the requirements of this condition. The CPM's use of the security to implement measures in this condition may not fully satisfy the Project owner's obligations under this condition. Security not used to implement mitigation measures shall be returned to the Project owner upon successful completion of the associated requirements in this condition. Financial assurance can be provided to the CPM in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security"). Prior to submitting the Security to the CPM, the Project owner shall obtain the CPM's approval, in consultation with CDFG of the form of the Security.~~

- ~~— Security for the requirements of this condition shall be provided in the amount of \$725,416.25 (or (\$741,161.24 if the project owner elects to use the REAT Account with NFWF pursuant to paragraph 3.h.i. of this condition, below). The security is calculated in part, from the items that follow but adjusted as specified below (consult **Biological Resources Table14** for the complete breakdown of estimated costs). However, regardless of the amount of the security or actual cost of implementation, the project owner shall be responsible for implementing all aspects of this condition.~~
- ~~i. land acquisition costs for compensation land, calculated at \$1,000/acre;~~
  - ~~ii. Site assessments, appraisals, biological surveys, transaction closing and escrow costs, calculated as \$18,000 total per parcel (presuming 40 acres per parcel) —~~
  - ~~iii. Initial site clean-up, restoration, or enhancement, calculated at \$250/acre;~~
  - ~~iv. Third-party and agency administrative transaction costs and overhead, calculated as percentages of land cost;~~
  - ~~v. Long-term management and maintenance fund, calculated at \$1,450 per acre;~~
  - ~~vi. NFWF fees to establish a project-specific account; manage the sub-account for acquisition and initial site work; and manage the sub-account for long-term management and maintenance.~~

~~The project owner may elect to comply with the requirements in this condition for acquisition of compensation lands, initial protection and habitat improvement on the compensation lands, or long-term maintenance and management of the compensation lands, or any combination of these three requirements, by providing funds to implement those measures into the Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF). To use this option, the Project owner must make an initial deposit to the REAT Account in an amount equal to the estimated costs (as set forth in the Security section of this condition) of implementing the requirement. If the actual cost of the acquisition, initial protection and habitat improvements, or long-term funding is more than the estimated amount initially paid by the project owner, the project owner shall make an additional deposit into the REAT Account sufficient to cover the actual acquisition costs, the actual costs of initial protection and habitat improvement on the compensation lands, or the long-term funding requirements as established in an approved PAR or PAR-like analysis. If those actual costs or PAR projections are less than the amount initially transferred by the applicant, the remaining balance shall be returned to the project owner.~~

~~The responsibility for acquisition of compensation lands may be delegated to a third party other than NFWF, such as a non-governmental organization supportive of desert habitat conservation, by written agreement of the Energy Commission. Such delegation shall be subject to approval by the CPM, in consultation with CDFG, BLM and USFWS,~~

~~prior to land acquisition, enhancement or management activities. Agreements to delegate land acquisition to an approved third party, or to manage compensation lands, shall be executed and implemented within 18 months of the Energy Commission's certification of the project.~~

**Verification:** The project owner shall provide the CPM with written notice of intent to start ground disturbance at least 30 days prior to the start of ground-disturbing activities on the project site.

If the mitigation actions required under this condition are not completed at least 30 days prior to the start of ground-disturbing activities, the Project owner shall provide the CPM and CDFG with an approved Security ~~(as described above in section 3.h., Mitigation Security~~ in accordance with this condition of certification no later than 30 days prior to beginning Project ground-disturbing activities. Prior to submitting the Security to the CPM, the project owner shall obtain the CPM's approval, in consultation with CDFG, BLM and the USFWS, of the form of the Security. The project owner, or an approved third party, shall complete and provide written verification to the CPM, CDFG, BLM and USFWS of the compensation lands acquisition and transfer within 18 months of the start of Project ground-disturbing activities.

No later than 12 months after the start of any phase of ground-disturbing project activities, the project owner shall submit a formal acquisition proposal to the CPM describing the parcels intended for purchase, and shall obtain approval from the CPM, in consultation with CDFG, BLM and USFWS, prior to the acquisition. If NFWF or another approved third party is handling the acquisition, the project owner shall fully cooperate with the third party to ensure the proposal is submitted within this time period. The project owner or an approved third party shall complete the acquisition and all required transfers of the compensation lands, and provide written verification to the CPM, CDFG, BLM and USFWS of such completion, no later than 18 months after the issuance of the Energy Commission Decision. If NFWF or another approved third party is being used for the acquisition, the project owner shall ensure that funds needed to accomplish the acquisition are transferred in timely manner to facilitate the planned acquisition and to ensure the land can be acquired and transferred prior to the 18-month deadline,

The project owner shall complete and submit to the CPM a PAR or PAR-like analysis no later than 60 days after the CPM approves compensation lands for acquisition associated with any phase of construction. The project owner shall fully fund the required amount for long-term maintenance and management of the compensation lands for that phase of construction no later than 30 days after the CPM approves a PAR or PAR-like analysis of the anticipated long-term maintenance and management costs of the compensation lands. Written verification shall be provided to the CPM and CDFG to confirm payment of the long-term maintenance and management funds.

No later than 60 days after the CPM determines what activities are required to provide for initial protection and habitat improvement on the compensation lands for any phase of construction, the project owner shall make funding available for those activities and provide written verification to the CPM of what funds are available and how costs will be

paid. Initial protection and habitat improvement activities on the compensation lands for that phase of construction shall be completed, and written verification provided to the CPM, no later than six months after the CPM's determination of what activities are required on the compensation lands.

The project owner, or an approved third party, shall provide the CPM, CDFG, BLM and USFWS with a management plan for the compensation lands associated with any phase of construction within 180 days of the land or easement purchase, as determined by the date on the title. The CPM, in consultation with CDFG, BLM and the USFWS, shall approve the management plan after its content is acceptable to the CPM.

Within 90 days after completion of all project related ground disturbance, the project owner shall provide to the CPM, CDFG, BLM and USFWS an analysis, based on aerial photography, with the final accounting of the amount of habitat disturbed during Project construction. This shall be the basis for the final number of acres required to be acquired.

~~If electing to satisfy the requirements of this condition by utilizing the options created by CDFG pursuant to SBX8 34, the Project owner shall notify the Commission that it would like a determination that the Project's in-lieu fee proposal meets CEQA and CESA requirements.~~

## DESERT TORTOISE COMPENSATORY MITIGATION

**BIO-17** The project owner shall provide compensatory mitigation acreage of 18,761 acres of desert tortoise habitat lands, adjusted to reflect the final project footprint, as specified in this condition. In addition, the project owner shall provide funding for initial improvement and long-term maintenance, enhancement, and management of the acquired lands for protection and enhancement of desert tortoise populations, and comply with other related requirements of this condition. This acreage was calculated as follows: a ratio of 1:1 for the project area south of the BNSF railroad tracks (2,140 acres); a ratio of 3:1 ratio for 1,877 acres of the project area within Phase 1b contiguous to the BNSF railroad tracks; and a ratio of 5:1 on 2,198 acres of the project area that include the northern (disjunct) portions of Phase 1b and all of Phase 2 that is north of the BNSF railroad tracks. See **Revised Biological Resources Table 18**, below.

**Revised Biological Resources Table 18  
Desert Tortoise Compensation Acreage Summary**

Location	Project Impact Acreage	Mitigation Ratio	Compensation Acreage
South of BNSF RR	2,140 acres	1:1	2,140 acres
North of BNSF RR (southern Phase 1b acreage)	1,877 acres	3:1	5,631 acres
North of BNSF RR (northern Phase 1b and Phase 2 areas)	2,198 acres	5:1	10,990 acres
Total	6,215 acres		18,761 acres

Costs of these requirements are estimated to be \$58,935,480.00 based on the acquisition of 18,761 acres (see **Revised Biological Resources Tables 5 and 7** (attached) for a complete breakdown of costs and acreage).

As many as 6,215 acres of the compensation lands requirement may be satisfied by applicant's compliance with the desert tortoise habitat acquisition or enhancement requirements of BLM, to be calculated as an acre-for-acre offset in the Energy Commission requirement for mitigation provided to satisfy BLM's requirements. For purposes of this paragraph, credit will be given for BLM-required mitigation without regard to whether BLM uses the mitigation funds for habitat acquisition or for enhancement projects to benefit the species.

These impact acreages shall be adjusted to reflect the final project footprint. For purposes of this condition, the Project footprint means all lands disturbed in the construction and operation of the Calico Solar Project, including all

linear project components, as well as all undeveloped areas inside the Project's boundaries.

The project owner shall provide financial assurances as described below in the amount of \$58,935,480.00. In lieu of acquiring lands itself, the Project owner may satisfy the requirements of this condition by depositing funds into a Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF), as described below. If the Project owner elects to establish a REAT NFWF Account and have NFWF and the agencies complete the required habitat compensation, then the total estimated cost of complying with this condition is \$60,201,474.90. The amount of security or NFWF deposit shall be adjusted up or down to reflect any revised cost estimates recommended by REAT.

The actual costs to comply with this condition will vary depending on the final footprint of the Project, the costs of acquiring compensation habitat, the costs of initially improving the habitat, and the actual costs of long-term management as determined by a Property Analysis Report or similar analysis (below). The 18,761 acre habitat requirement, and associated funding requirements based on that acreage, shall be adjusted up or down if there are changes in the final footprint of the project or the associated costs of evaluation, acquisition, management, and other factors listed in **Revised Biological Resources Tables 5 and 7**. Regardless of actual cost, the project owner shall be responsible for funding all requirements of this condition.

#### **COMPENSATORY MITIGATION LAND ACQUISITION**

1. Method of Acquisition. Compensation lands shall be acquired by either of the two options listed below. Regardless of the method of acquisition, the transaction shall be complete only upon completion of all terms and conditions described in this Condition of Certification.
  - a. The project owner shall acquire lands and transfer title and/or conservation easement to a state or federal land management agency or to a third-party non-profit land management organization, as approved by the CPM in consultation with BLM, CDFG, and USFWS; or
  - b. The Project owner shall deposit funds into a project-specific subaccount within the REAT Account established with the NFWF, in the amount as indicated in **Revised Biological Resources Tables 5 and 7** (adjusted to reflect final project footprint and any applicable REAT adjustments to costs).

2. Selection Criteria for Compensation Lands. The compensation lands selected for acquisition to meet Energy Commission and CESA requirements shall be equal to or better than the quality and function of the habitat impacted and:
  - a. be within the Western Mojave Recovery Unit, with potential to contribute to desert tortoise habitat connectivity and build linkages between desert tortoise designated critical habitat, known populations of desert tortoise, and/or other preserve lands;
  - b. provide habitat for desert tortoise with capacity to regenerate naturally when disturbances are removed;
  - c. be near larger blocks of lands that are either already protected or planned for protection, or which could feasibly be protected long-term by a public resource agency or a non-governmental organization dedicated to habitat preservation;
  - d. be contiguous and biologically connected to lands currently occupied by desert tortoise, ideally with populations that are stable, recovering, or likely to recover;
  - e. not have a history of intensive recreational use or other disturbance that might cause future erosional damage or other habitat damage, and make habitat recovery and restoration infeasible;
  - f. not be characterized by high densities of invasive species, either on or immediately adjacent to the parcels under consideration, that might jeopardize habitat recovery and restoration; and
  - g. not contain hazardous wastes that cannot be removed to the extent that the site could not provide suitable habitat; and
  - h. have water and mineral rights included as part of the acquisition, unless the CPM, in consultation with CDFG, BLM and USFWS, agrees in writing to the acceptability of land without these rights.
3. 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 desert tortoise in relation to the criteria listed above and must be approved by the CPM. The CPM will share the proposal with and consult with CDFG, BLM and the USFWS before deciding whether to approve or disapprove the proposed acquisition.
4. Compensation Lands Acquisition Conditions: The project owner shall comply with the following conditions relating to acquisition of the compensation lands after the CPM, in consultation with CDFG, BLM and the USFWS, have approved the proposed compensation lands:
  - a. Preliminary Report: The Project owner, or 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, in consultation with CDFG, BLM and the USFWS. For conveyances to the State, approval may also be required from the California Department of General Services, the Fish and Game Commission 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 in consultation with CDFG. Any transfer of a conservation easement or fee title must be to CDFG, 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 in consultation with CDFG. If an approved non-profit organization holds fee title to the compensation lands, a conservation easement shall be recorded in favor of CDFG or another entity approved by the CPM. If an approved non-profit holds a conservation easement, CDFG shall be named a third party beneficiary. If an entity other than CDFG holds a conservation easement over the compensation lands, the CPM may require that CDFG or another entity approved by the CPM, in consultation with CDFG, be named a third party beneficiary of the conservation easement. The Project owner shall obtain approval of the CPM, in consultation with CDFG, of the terms of any transfer of fee title or conservation easement to the compensation lands.
- c. 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, in consultation with CDFG, before it can be used to establish funding levels or management activities for the compensation lands.
5. Compensation Lands Acquisition Costs: The Project owner shall pay all other costs related to acquisition of compensation lands and conservation easements. In addition to actual land costs, these acquisition costs shall include but shall not be limited to the items listed below. Management costs including site cleanup measures are described separately, in the following section.
  - a. Level 1 Environmental Site Assessment;
  - b. Appraisal;
  - c. Title and document review costs;
  - d. Expenses incurred from other state, federal, or local agency reviews;

- e. Closing and escrow costs;
- f. Overhead costs related to providing compensation lands to CDFG or an approved third party;
- g. Biological survey(s) to determine mitigation value of the land; and
- h. Agency costs to accept the land (e.g., writing and recording of conservation easements; title transfer).

### **COMPENSATORY MITIGATION LAND IMPROVEMENT**

1. Land Improvement Requirements: The Project owner shall fund activities that the CPM, in consultation with the CDFG, USFWS and BLM, 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 surveys of boundaries and property lines, installation of signs, trash removal and other site cleanup measures, construction and repair of fences, invasive plant removal, removal of roads, and similar measures to protect habitat and improve habitat quality on the compensation lands.

The costs of these activities are estimated at \$250 an acre, but will vary depending on the measures that are required for the compensation lands. A non-profit organization, CDFG or another public agency may hold and expend the habitat improvement funds if it is qualified to manage the compensation lands (pursuant to California Government Code section 65965), if it meets the approval of the CPM in consultation with CDFG, and if it is authorized to participate in implementing the required activities on the compensation lands. If CDFG takes fee title to the compensation lands, the habitat improvement fund must be paid to CDFG or its designee.

### **COMPENSATORY MITIGATION LAND LONG-TERM MANAGEMENT**

1. Long-term Management Requirements: Long-term management is required to ensure that the compensation lands are managed and maintained to protect and enhance habitat for desert tortoise. Management activities may include maintenance of signs, fences, removal of invasive weeds, monitoring, security and enforcement, and control or elimination of unauthorized use.
2. Long-term Management Plan. The project owner shall pay for the preparation of a Management Plan for the compensation lands. The Management Plan shall reflect site-specific enhancement measures on the acquired compensation lands. The plan shall be submitted for approval of the CPM, in consultation with CDFG, BLM and USFWS.
3. Long-Term Maintenance and Management Funding. The Project owner shall provide money to establish an account with a non-wasting capital that will be used to fund the long-term maintenance and management of the compensation lands. The amount of money to be paid will be

determined through an approved PAR or PAR-like analysis conducted for the compensation lands. The amount of required funding is initially estimated to be \$1,450 for every acre of compensation lands. If compensation lands will not be identified and a PAR or PAR-like analysis completed within the time period specified for this payment (see the verification section at the end of this condition), the Project owner shall provide initial payment of \$27,203,450.00 calculated at \$1,450 an acre for 18,761 acres into an account for long-term maintenance and management of compensation lands. The amount of the required initial payment or security for this item shall be adjusted for any change in the Project footprint as described above. If an initial payment is made based on the estimated per-acre costs, the project owner shall deposit additional money as may be needed to provide the full amount of long-term maintenance and management funding indicated by a PAR or PAR-like analysis, once the analysis is completed and approved. If the approved analysis indicates less than \$1,450 an acre will be required for long-term maintenance and management, the excess paid will be returned to the Project owner.

The project owner must obtain the CPM's approval of the entity that will receive and hold the long-term maintenance and management fund for the compensation lands. The CPM will consult with the project owner and CDFG before deciding whether to approve an entity to hold the project's long-term maintenance and management funds on any lands. The CPM, in consultation with the project owner and CDFG, may designate another state agency or non-profit organization to hold the long-term maintenance and management fee if the organization is qualified to manage the compensation lands in perpetuity.

If CDFG takes fee title to the compensation lands, CDFG shall determine whether it will hold the long-term management fee in the special deposit fund, leave the money in the REAT Account, or designate another entity to manage the long-term maintenance and management fee for CDFG and with CDFG supervision.

The Project owner shall ensure that an agreement is in place with the long-term maintenance and management fee holder/manager to ensure the following conditions:

- i. Interest. Interest generated from the initial capital shall be available for reinvestment into the principal and for the long-term operation, management, and protection of the approved compensation lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action approved by CDFG designed to protect or improve the habitat values of the compensation lands.
- ii. Withdrawal of Principal. The long-term maintenance and management fee principal shall not be drawn upon unless such withdrawal is deemed

necessary by the CPM, in consultation with CDFG, or the approved third-party long-term maintenance and management fee manager to ensure the continued viability of the species on the compensation lands. If CDFG takes fee title to the compensation lands, monies received by CDFG pursuant to this provision shall be deposited in a special deposit fund established solely for the purpose to manage lands in perpetuity unless CDFG designates NFWF or another entity to manage the long-term maintenance and management fee for CDFG.

- iii. Pooling Funds. A CPM- approved non-profit organization qualified to hold long-term maintenance and management fees solely for the purpose to manage lands in perpetuity, may pool the fund with other funds for the operation, management, and protection of the compensation lands for local populations of desert tortoise. However, for reporting purposes, the long-term maintenance and management fee fund must be tracked and reported individually to the CDFG and CPM.
- iv. Reimbursement Fund. The project owner shall provide reimbursement to CDFG or an approved third party for reasonable expenses incurred during title, easement, and documentation review; expenses incurred from other State or State-approved federal agency reviews; and overhead related to providing compensation lands.

## **COMPENSATORY MITIGATION LAND SECURITY**

1. Compensation Mitigation Security: The project owner shall provide security sufficient for funding acquisition, improvement, and long-term management of desert tortoise compensation land. Financial assurance can be provided to the CPM in the form of an irrevocable letter of credit, a pledged savings account or another form of security (“Security”). Prior to submitting the Security to the CPM, the Project owner shall obtain the CPM’s approval, in consultation with CDFG, BLM and the USFWS, of the form of the Security.

The security amount shall be based on the estimates provided in **Revised Biological Resources Tables 5 and 7**. This amount shall be updated and verified prior to payment and shall be adjusted to reflect actual costs or more current estimates as agreed upon by the REAT agencies.

The Project owner shall provide verification that financial assurances have been established to the CPM with copies of the document(s) to BLM, CDFG and the USFWS, to guarantee that an adequate level of funding is available to implement any of the mitigation measures required by this condition that are not completed prior to the start of ground-disturbing activities described in Section A of this condition.

In the event that the project owner defaults on the Security, the CPM may use money from the Security solely for implementation of the requirements of this condition. The CPM’s use of the security to implement measures in

this condition may not fully satisfy the Project owner's obligations under this condition. Any amount of the Security that is not used to carry out mitigation shall be returned to the Project owner upon successful completion of the associated requirements in this condition.

Security for the requirements of this condition shall be provided in the amount of \$ \$58,935,480.50 (or \$60,201,474.90 if the project owner elects to use the REAT Account with NFWF pursuant to paragraph 4 of this condition, below). The Security is calculated in part from the items that follow but adjusted as specified below (consult **Revised Biological Resources Tables 5 and 7** for the complete breakdown of estimated costs). However, regardless of the amount of the security or actual cost of implementation, the project owner shall be responsible for implementing all aspects of this condition.

- i. land acquisition costs for compensation land, calculated at \$1,000/acre;
  - ii. Site assessments, appraisals, biological surveys, transaction closing and escrow costs, calculated as \$18,000 total per parcel (presuming 320 acres per parcel)
  - iii. Initial site clean-up, restoration, or enhancement, calculated at \$250/acre;
  - iv. Third-party and agency administrative transaction costs and overhead, calculated as percentages of land cost;
  - v. Long-term management and maintenance fund, calculated at \$1,450 per acre;
  - vi. NFWF fees to establish a project-specific account; manage the sub-account for acquisition and initial site work; and manage the sub-account for long term management and maintenance.
2. Phasing of Security Payment: Compensatory Mitigation Land Security may be phased according to phasing of the project's approval and construction. Phasing of compensation funding shall be based upon land disturbance and habit impacts for each project phase. Phasing of the mitigation payment is described further in staff's recommended **Condition of Certification BIO-31**.
3. The project owner may elect to comply with some or all of the requirements in this condition by providing funds to implement the requirements into the Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF). To use this option, the Project owner must make an initial deposit to the REAT Account in an amount equal to the estimated costs of implementing the requirement (as set forth in the Security section of this condition, paragraph 3, above). If the actual cost of the acquisition, initial protection and habitat improvements, long-term funding or other cost is more than the estimated amount initially paid by the project owner, the project owner

shall make an additional deposit into the REAT Account sufficient to cover the actual acquisition costs, the actual costs of initial protection and habitat improvement on the compensation lands, the long-term funding requirements as established in an approved PAR or PAR-like analysis, or the other actual costs that are estimated in the table. If those actual costs or PAR projections are less than the amount initially transferred by the applicant, the remaining balance shall be returned to the project owner.

4. The responsibility for acquisition of compensation lands may be delegated to a third party other than NFWF, such as a non-governmental organization supportive of desert habitat conservation, by written agreement of the Energy Commission. Such delegation shall be subject to approval by the CPM, in consultation with CDFG, BLM and USFWS, prior to land acquisition, enhancement or management activities. Agreements to delegate land acquisition to an approved third party, or to manage compensation lands, shall be executed and implemented within 18 months of the Energy Commission's certification of the project.
5. The project owner may request the CPM to provide it with all available information about any funds held by the Energy Commission, CDFG, or NFWF as project security, or funds held in a NFWF sub-account for this project, or other project-specific account held by a third party. The CPM shall also fully cooperate with any independent audit that the project owner may choose to perform on any of these funds.

**Verification:** The project owner shall provide the CPM with written notice of intent to start ground disturbance at least 30 days prior to the start of ground-disturbing activities on the project site.

If the mitigation actions required under this condition are not completed at least 30 days prior to the start of ground-disturbing activities, the Project owner shall provide verification to the CPM and CDFG that an approved Security has been established in accordance with this condition of certification no later than 30 days prior to beginning Project ground-disturbing activities. Financial assurance can be provided to the CPM in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security"). Prior to submitting the Security to the CPM, the project owner shall obtain the CPM's approval, in consultation with CDFG, BLM and the USFWS, of the form of the Security. The project owner, or an approved third party, shall complete and provide written verification to the CPM, CDFG, BLM and USFWS of the compensation lands acquisition and transfer within 18 months of the start of Project ground-disturbing activities.

No later than 12 months after the start of any phase of ground-disturbing project activities, the project owner shall submit a formal acquisition proposal to the CPM describing the parcels intended for purchase, and shall obtain approval from the CPM, in consultation with CDFG, BLM and USFWS, prior to the acquisition. If NFWF or another approved third party is handling the acquisition, the project owner shall fully

cooperate with the third party to ensure the proposal is submitted within this time period. The project owner or an approved third party shall complete the acquisition and all required transfers of the compensation lands, and provide written verification to the CPM, CDFG, BLM and USFWS of such completion, no later than 18 months after the issuance of the Energy Commission Decision. If NFWF or another approved third party is being used for all or part of the acquisition, the project owner shall ensure that funds needed to accomplish the acquisition are transferred in timely manner to facilitate the planned acquisition and to ensure the land can be acquired and transferred prior to the 18-month deadline.

The project owner shall complete and submit to the CPM a PAR or PAR-like analysis no later than 60 days after the CPM approves compensation lands for acquisition associated with any phase of construction. The project owner shall fully fund the required amount for long-term maintenance and management of the compensation lands for that phase of construction no later than 30 days after the CPM approves a PAR or PAR-like analysis of the anticipated long-term maintenance and management costs of the compensation lands. Written verification shall be provided to the CPM and CDFG to confirm payment of the long-term maintenance and management funds.

No later than 60 days after the CPM determines what activities are required to provide for initial protection and habitat improvement on the compensation lands for any phase of construction, the project owner shall make funding available for those activities and provide written verification to the CPM of what funds are available and how costs will be paid. Initial protection and habitat improvement activities on the compensation lands for that phase of construction shall be completed, and written verification provided to the CPM, no later than six months after the CPM's determination of what activities are required on the compensation lands.

The project owner, or an approved third party, shall provide the CPM, CDFG, BLM and USFWS with a management plan for the compensation lands associated with any phase of construction within 180 days of the land or easement purchase, as determined by the date on the title. The CPM, in consultation with CDFG, BLM and the USFWS, shall approve the management plan after its content is acceptable to the CPM.

Within 90 days after completion of all project related ground disturbance, the project owner shall provide to the CPM, CDFG, BLM and USFWS an analysis, based on aerial photography, with the final accounting of the amount of habitat disturbed during Project construction. If this analysis shows that more lands were disturbed than was anticipated in this condition, the project owner shall provide the Energy Commission with additional compensation lands and funding commensurate with the added impacts and applicable mitigation ratios set forth in this condition. A final analysis of all project related ground disturbance may not result in a reduction of compensation requirements if the deadlines established under this condition for transfer of compensation lands and funding have passed prior to completion of the analysis.

## **PROJECT CONSTRUCTION AND COMPENSATION PHASING PLAN**

**BIO-31** As an alternative to providing mitigation or security for the entire project prior to the start of the first ground-disturbing activities, the Project Owner may elect to provide compensatory mitigation for the total Project Disturbance Area in two phases and may elect to provide security in three phases as specified in this condition.

Only the phases identified as Phase 1a, Phase 1b, and Phase 2, as described in this condition, in text and maps provided on August 11 or August 12, 2010 by the Project Owner ("Applicant's Phase 1a Information" dated August 12, 2010 but reported in the docket's log as filed August 11, 2010) and in the Supplemental Staff Assessment may be used for the phasing of mitigation and security requirements. To the extent those three sources are found to contain conflicting information about Project phasing, the description in this condition shall control. In particular, the Project Owner has divided the project's Phase 1 activities into two separate sub-phases, identified as Phase 1a and Phase 1b, since the Supplemental Staff Assessment was prepared. This condition presumes that the phases identified in this condition are identical to the phases that the Bureau of Land Management (BLM) will authorize work on through issuance of "notices to proceed"; if phases used by BLM are not identical to the phases as described in this condition and the materials identified above, the Project Owner shall obtain separate written authorization from the CPM prior to beginning work on each of the three phases.

For purposes of this condition:

"Project Disturbance Area" or "ground disturbance area" means all areas that will be temporarily or permanently disturbed during construction or operation of the Project, including all linear facilities.

"Project footprint" means the Project Disturbance Area and undeveloped areas inside the Project's boundaries that will no longer provide functional habitat value, including but not limited to desert tortoise habitat, Mojave fringe-toed lizard habitat, burrowing owl habitat, rare plant habitat, and areas within ephemeral washes and drainages.

"Project construction" or "construction" means any ground-disturbing activity, including but not limited to construction work, site mobilization, fence construction, or any tortoise translocation activities.

"Security" means the security that is required under other biological conditions of certification to ensure required mitigation measures will be implemented, or payments by the Project Owner into the National Fish and Wildlife Service mitigation account in accordance with the option provided in other conditions of certification.

### **Overview of Project Phases**



Phase 1a is strictly limited to construction of the main access road, the waterline, the Main Services Area, the substation area, the installation of 60 SunCatcher pedestals, the temporary at-grade crossing over the Burlington Northern Santa Fe (BNSF) railroad tracks, the permanent bridge spanning the railroad tracks, and any surveys, translocations, or other activities required within the Phase 1a area that are required by Commission Conditions of Certification. The ground disturbance area during Phase 1a shall be no greater than 250 acres and shall be limited to the geographic areas indicated on the maps identified above.

Phase 1b is strictly limited to construction of flood control basins in the northern part of project area, solar fields located throughout the remainder of the area identified as Phase 1 in the Supplemental Staff Assessment, and any surveys, translocations, or other activities required within the Phase 1b area that are required by Commission Conditions of Certification. The ground disturbance area during Phase 1b shall be limited to the areas indicated on the maps identified above.

Phase 2 is the remainder of the project site, as identified in the Supplemental Staff Assessment.

### **General Requirements**

At no time may the Project Owner cause ground-disturbance to any location outside of the area that has been approved for construction according to the phasing plan identified in this Condition of Certification.

Prior to initiating construction in any phase of the Project, the Project Owner shall comply with all pre-construction requirements in this and other Conditions of Certification and shall notify the CPM that it has obtained a Notice to Proceed for the phase from the BLM.

Construction activities, including work on linear and non-linear features, shall not occur outside desert tortoise exclusion areas that have been fenced and cleared in accordance with USFWS protocols and as described in Condition of Certification **BIO-15** (Desert Tortoise Clearance and Exclusion Fencing).

The Project Owner shall provide security to ensure implementation of the mitigation requirements in Conditions of Certification **BIO-12** (Special-Status Plant Impact and Avoidance and Minimization), **BIO-13** (Mojave Fringe-Toed Lizard Mitigation), **BIO-16** (Desert Tortoise Translocation Plan), **BIO-17** (Desert Tortoise Compensatory Mitigation), **BIO-21** (Burrowing Owl Impact Avoidance and Minimization Measures), and **BIO-26** (Streambed Impact Minimization and Compensation Measures) for each of the three phases prior to any Project construction associated with that phase. Phasing of security only applies to security required by the Conditions listed above. If the Project Owner elects to phase payments of security, the amount of the security (including payments to NFWF [see definition of security above]) will be

adjusted by the CPM in consultation with DFG, BLM and USFWS prior to each phase to reflect the CPM's best estimate at that time of the estimated costs of land acquisition, long-term management and maintenance costs, and other costs that are included in the security computation. Those costs may be greater than the costs identified in the Conditions of Certification.

Even when security has been provided, the Project Owner shall complete the acquisition, protection and transfer of all compensation lands required in the Conditions of Certification listed above, as well as all funding requirements associated with those lands, within the time periods identified in those Conditions of Certification, except that the time period for providing compensation lands and funding associated with both Phases 1a and 1b shall be measured from the start of construction of Phase 1a alone, and the period for providing lands and funding required for Phase 2 activities shall be measured from the start of construction of Phase 2.

Additional requirements within the Project's Conditions of Certification that are not expressly phased in this Condition shall be phased as necessary to carry out the purpose of this condition, or to ensure that no project construction occurs in an area for which the Project Owner has not provided security and obtained permission to begin construction. Examples may include such activities as construction and location of desert tortoise exclusion fencing or timing of pre-construction clearance surveys for other species. The Project Owner shall first obtain approval from the CPM, acting in consultation with BLM, CDFG and USFWS, for the phasing of any requirements or deadlines that are not expressly phased in Conditions of Certification.

### **Detailed Phasing Requirements**

Phased impacts and compensation requirements are described in tables below, by phase.

#### Phase 1a

Phase 1a would result in the loss or isolation of 250 acres of desert tortoise habitat from the placement of fencing, road construction, and the development of project facilities. The construction and fencing of the temporary and Main Access Road would also result in the temporary isolation of approximately 650 acres of desert tortoise habitat. In addition, proposed Phase 1a Project construction would affect state-jurisdictional streambeds and, possibly, burrowing owl or rare plant locations that are identified during pre-construction and late-season botanical surveys. The applicant shall provide an enumeration of streambed, burrowing owl, and rare plant habitat impacts and shall provide security for required compensation those impacts as described in Conditions of Certification **BIO-12** (Special-Status Plant Impact and Avoidance and Minimization), **BIO-17** (Desert Tortoise Compensatory Mitigation), **BIO-21** (Burrowing Owl Impact Avoidance and Minimization Measures), and **BIO-26**

(Streambed Impact Minimization and Compensation Measures) prior to initiating Project construction associated with Phase 1a, as set forth in the verification section of this Condition.

All project access throughout Phase 1a construction shall be via temporary or permanent access as mapped by the applicant. Isolation of desert tortoise habitat between the proposed temporary and permanent construction access routes shall be limited to winter months when tortoises are largely inactive. Desert tortoise exclusion fencing shall be installed along the existing temporary construction access routes prior to other ground disturbance at the project site, and fencing shall be maintained as described in Condition of Certification **BIO-15** (Desert Tortoise Clearance and Exclusion Fencing) until completion of the proposed Main Access Road. Desert tortoise exclusion fencing shall be installed along the proposed Main Access Road alignment prior to beginning construction of that road. If project-related access along the temporary construction access route continues beyond March 15, 2011, the Project Owner shall provide additional security to the CPM for all acreage within the area isolated between the two fenced access routes (estimated by staff as approximately 650 acres) by March 15, 2011 and shall implement desert tortoise clearance surveys and translocation of any tortoises within the isolated area consistent with the requirements of Condition of Certification **BIO-15** (Desert Tortoise Clearance and Exclusion Fencing). If the Main Access Road is complete by March 15, 2011 and no further project access via the temporary route is necessary, desert tortoise fencing along the temporary access road shall be removed on or before March 15, 2011

**BIO-31 Table 1a.**

**Phase 1a Impacts and Compensation Acreage.**

<b><u>Resource</u></b>	<b><u>Phase 1a Impact (acres) and Mitigation Ratios</u></b>	<b><u>Compensation (acres)</u></b>
Direct impact: Desert tortoise habitat	40 ac. S of BNSF at 1:1 210 ac. N of BNSF at 3:1	40 630
State Jurisdictional streambed <sup>1</sup>	[to be provided by Project Owner] at 1:1	
Mojave fringe-toed lizard <sup>1</sup>	0	0
Additional (burrowing owl, special status plants) <sup>1</sup>	[to be provided by Project Owner] at 3:1	
<b><u>Total per-acre basis for Security (through 15 March 2011)</u></b>		<b>670<sup>2</sup> acres</b>
Potential impact: Isolation of desert tortoise habitat (after 15 March)	650 acres at 1:1 [staff estimate; to be verified by Project Owner]	650 acres

2011)		
<b>Total per-acre basis for Security (after 15 March 2011, pending status of temporary access route)</b>		<b>1,320<sup>2</sup> acres</b>

1. Compensation may be nested within desert tortoise compensation land.
2. Acreages to be adjusted upon completion of each construction phase and upon confirmation by CPM [and/or biologist?] of acres impacted.

Phase 1b

Phase 1b consists of two non-contiguous project components: flood control basins in the northern portion of the project area, and solar generators in the central portion of the project area, north of the BNSF railroad. Phase 1b would directly impact 2,130 acres of desert tortoise habitat. Compensation mitigation ratios for these project components shall be as described in Condition of Certification **BIO-17**(Desert Tortoise Compensatory Mitigation). Construction of stormwater detention basins and debris basins identified in Phase 1b will also result in direct impacts to State jurisdictional streambeds located in portions of Phase 2. For that reason, all jurisdictional waters that occur below the proposed detention basins located on the northern border of the project are included in the calculation of Phase 1b security and in the calculation of Phase 1 mitigation requirements..In addition, proposed Phase 1b Project construction could affect burrowing owl or rare plant locations that may be identified during pre-construction and late-season botanical surveys required in the Conditions of Certification described below. The applicant shall provide the CPM with an enumeration of burrowing owl and rare plant habitat impacts and shall provide security for required compensation of those impacts as described in Conditions of Certification **BIO-12** (Special-Status Plant Impact and Avoidance and Minimization), **BIO-17**(Desert Tortoise Compensatory Mitigation), **BIO-21**(Burrowing Owl Impact Avoidance and Minimization Measures), and **BIO-26** (Streambed Impact Minimization and Compensation Measures). Security shall be provided prior to the start of any Phase 1b construction, as set forth in the verification section of this Condition. or prior to September 1, 2011, whichever occurs first.

**BIO-31 Table 1b.**  
**Phase 1b Impacts and Compensation Acreage.**

<u>Resource</u>	<u>Phase 1b Impact (acres) and Mitigation Ratios</u>	<u>Compensation (acres)</u>
<u>Desert tortoise habitat (excluding disturbed or isolated acreage reported above in Phase 1a)</u>	<u>1,627 at 3:1</u> <u>450 at 5:1</u>	<u>4,881 acres</u> <u>2,250 acres</u>
<u>State Jurisdictional streambed</u> <sup>1</sup>	<u>289 acres (less Phase 1a acreage) at 1:1</u>	<u>289 acres</u>
<u>Mojave fringe-toed lizard</u> <sup>1</sup>	<u>[to be provided by Project Owner] at 1:1</u> <u>[to be provided by Project Owner] at 3:1</u>	
<u>Additional (burrowing owl, special status plants)</u> <sup>1</sup>	<u>[to be provided by Project Owner]</u>	
<b><u>Total per-acre basis for Security</u></b>		<b><u>7,131<sup>2</sup> acres</u></b>

1. Compensation may be nested within desert tortoise compensation land.

2. Acreages to be adjusted upon completion of each construction phase and upon confirmation by CPM [and/or biologist?] of acres impacted.

Phase 2

Phase 2 construction would directly impact desert tortoise habitat north and south of BNSF railroad tracks. Compensation mitigation ratios for these project components shall be as described in Condition of Certification **BIO-17**(Desert Tortoise Compensatory Mitigation). In addition, proposed Phase 2 Project construction would affect Mojave fringe-toed lizard habitat and could affect burrowing owl or rare plant locations that may be documented during late-season field surveys. The applicant shall provide the CPM an enumeration of burrowing owl, and rare plant habitat impacts and shall provide security for required compensation of those impacts as described in Conditions of Certification **BIO-12** (Special-Status Plant Impact and Avoidance and Minimization), **BIO-13** (Mojave Fringe-Toed Lizard Mitigation), **BIO-16** (Desert Tortoise Translocation Plan), **BIO-17** (Desert Tortoise Compensatory Mitigation), **BIO-21** (Burrowing Owl Impact Avoidance and Minimization Measures), and **BIO-26** (Streambed Impact Minimization and Compensation Measures) Security shall be provided to the CPM, prior to beginning of any project-related ground disturbing activities, as set forth in the verification section of this Condition.

**BIO-31 Table 2.**  
**Phase 2 Impacts and Compensation Acreage.**

<b><u>Resource</u></b>	<b><u>Phase 2 Impact (acres) and Mitigation Ratios</u></b>	<b><u>Compensation (acres)</u></b>
Desert tortoise habitat (excluding disturbed or isolated acreage in Phase 1a; see Table 1a)	2,132 acres S of BNSF at 1:1 1,766 acres N of BNSF at 5:1	2,132 8,830
State Jurisdictional streambed <sup>1</sup>	0	0
Mojave fringe-toed lizard <sup>1</sup>	21.4 acres at 1:1 143.3 acres at 3:1	21.4 429.9
Additional (burrowing owl, special status plants)	To be provided by the Project Owner.	
<b><u>Total per-acre basis for Security</u></b>		<b><u>10,962<sup>2</sup> acres</u></b>

1. Compensation may be nested within desert tortoise compensation land.

2. Acreages to be adjusted upon completion of each construction phase and upon confirmation by CPM [and/or biologist?] of acres impacted.

**Verification:** No fewer than 30 days prior to the start of desert tortoise clearance surveys for each phase, the Project owner shall submit a description of the proposed construction activities for that phase to CDFG, USFWS and BLM for review and to the CPM for review and approval. The description for each phase shall include the proposed construction schedule, a figure depicting the locations of proposed construction and number of acres of rare plant habitat, burrowing owl habitat, and state-jurisdictional streambeds to be disturbed.

If all mitigation requirements, including habitat acquisition and protection, are not completed for a Project phase at least 30 days prior to the start of ground-disturbing activities for that phase, the Project Owner shall provide verification to the CPM and CDFG that approved security (as described in Conditions of Certification **BIO-12** (Special-Status Plant Impact and Avoidance and Minimization), **BIO-13** (Mojave Fringe-Toed Lizard Mitigation), **BIO-16** (Desert Tortoise Translocation Plan), **BIO-17** (Desert Tortoise Compensatory Mitigation), **BIO-21** (Burrowing Owl Impact Avoidance and Minimization Measures), and **BIO-26** (Streambed Impact Minimization and Compensation Measures)) has been established in accordance with these Conditions of Certification no later than 30 days prior to beginning ground-disturbing activities for each Phase. Prior to submitting verification regarding the security to the CPM, the project owner shall obtain the CPM's approval of the security as required by the other Conditions. For Phase 1b, the Project Owner shall obtain the CPM's approval of security and shall provide verification that approved security has been established by September 1, 2011 or 30 days prior to the start of Phase 1b construction, whichever occurs first. (The fixed deadline for Phase 1b security is necessary because under terms of this Condition, compensation lands and associated funding for both Phase 1a and Phase 1b will be due in the first half of 2012, assuming Phase 1a construction

begins as planned in late 2010, and security must be in place well in advance of the mitigation obligations that are being guaranteed.

The Project Owner shall provide written verification to the CPM, CDFG, BLM and USFWS of the compensation lands acquisition, protection, and transfer requirements and satisfaction of associated funding requirements as set forth in BIO-17 and other conditions within the following time frames: (1) For Phase 1a and Phase 1b mitigation, verification shall be provided no later than 18 months after the start of construction of Phase 1a, and (2) for Phase 2 mitigation, such verification shall be provided no later than 18 months after the start of construction of Phase 2. Other verification, notification and reporting requirements and other deadlines set forth in BIO-17 and other Conditions that relate to compensation land requirements, to the option of funding mitigation through the NFWF account, or to use of approved third parties to carry out mitigation requirements also apply to Phase 1 (1a and 1b combined) and to Phase 2.

Within 90 days after completion of all project related ground disturbance for each project phase, the project owner shall provide to the CPM, CDFG, BLM and USFWS an analysis, based on aerial photography, with the final accounting of the amount of habitat disturbed during Project construction.

**Revised Biological Resources Table 5  
Summary of Compensation Lands Costs<sup>1</sup>**

	<b>Desert tortoise compensation</b>	<b>Mojave fringe-toed lizard compensation</b>	<b>Rare plant compensation</b>	<b>Streambed compensation</b>
Number of acres	14,365 <u>18,761</u>	207.5	undetermined	undetermined
Estimated number of parcels to be acquired, at 320 acres per parcel <sup>2</sup>	360 <u>59</u>	6 <u>1</u>	n/a	n/a
Land cost at \$1000/acre <sup>3</sup>	<del>\$14,365,000.00</del> <u>\$18,761,000.00</u>	\$207,500.00	n/a	n/a
Level 1 Environmental Site Assessment at \$3000/parcel	<del>\$1,080,000.00</del> \$177,000.00	<del>\$18,000.00</del> \$3,000.00	n/a	n/a
Appraisal at no less than \$5,000/parcel	<del>\$1,800,000.00</del> \$295,000.00	<del>\$30,000.00</del> \$5,000.00	n/a	n/a
Initial site clean-up, restoration or enhancement, at \$250/acre <sup>4</sup>	<del>\$3,591,250.00</del> \$4,690,250.00	\$51,875.00	n/a	n/a
Closing and Escrow Cost at \$5000/parcel <sup>5</sup>	<del>\$1,800,000.00</del> \$295,000.00	<del>\$30,000.00</del> \$5,000.00	n/a	n/a
Biological survey for determining mitigation value of land (habitat based with species specific augmentation) at \$5000/40-ac parcel (\$125/acre)	<del>\$1,800,000.00</del> \$2,345,125.00	\$30,000.00	n/a	n/a
3rd Party Administrative Costs (Land Cost x 10%) <sup>6</sup>	<del>\$1,436,500.00</del> \$1,876,100.00	\$20,750.00	n/a	n/a
Agency cost to accept land <sup>7</sup> [(Land Cost x 15%) x 1.17] (17% of the 15% for overhead)	<del>\$2,521,057.50</del> \$3,292,555.50	\$36,416.25	n/a	n/a
<b>Subtotal - Acquisition and Initial Site Work</b>	<del>\$28,393,807.50</del> \$31,732,030.50	<del>\$424,541.25</del> \$359,541.25	n/a	n/a
<b>Long-term Management and Maintenance Fund (LTMM) fee at \$1450/acre<sup>8</sup></b>	<del>\$20,829,250.00</del> \$27,203,450.00	\$300,875.00	n/a	n/a
Subt.	<u>58,935,480.50</u>	<u>\$660,416.25</u>		
<b>NFWF Fees</b>				
Establish Project Specific Account	\$12,000.00	n/a		
Pre-proposal modified RFP or RFP processing <sup>9</sup>	\$30,000	n/a		
NFWF Management fee For Acquisition and Enhancement Actions (Subtotal x 3%)	<del>\$851,814.23</del> \$951,960.90	<del>\$12,736.24</del> \$ 10,786.24	n/a	n/a
NFWF Management Fee for LTMM account (LTMM	<del>\$208,292.50</del> \$272,034.50	\$3,008.75	n/a	n/a



x 1%)				
<b>Subtotal of NFWF Fees</b>	\$1,102,106.73 \$1,265,995.40	\$15,744.99 \$13,794.99	n/a	n/a
<b>TOTAL Estimated cost for deposit in project specific REAT-NFWF Account</b>	<del>\$50,325,164.23</del> <b>\$60,201,474.90</b>	<del>\$741,161.24</del> <b>\$674,211.24</b>	n/a	n/a

1. Estimates prepared in consultation with CDFG, USFWS, and BLM. All costs are best estimates as of summer 2010. Actual costs will be determined at the time of the transactions and may change the funding needed to implement the required mitigation obligation.
2. For the purposes of determining costs, a parcel is defined as 320 acres, recognizing that some will be larger and some will be smaller, but that 320 acres provides a good estimate for the number of transactions anticipated (based on input from BLM and CDD).
3. Generalized estimate taking into consideration a likely jump in land costs due to demand, and an 18-24 month window to acquire the land after agency decisions are made. If the agencies, developer, or 3rd party has better information on land costs in the specific area where project-specific mitigation lands are likely to be purchased, that data overrides this general estimate. Note: regardless of the estimates, the developer is responsible for providing adequate funding to implement the required mitigation.
4. Based on information from CDFG.
5. Two transactions: landowner to 3rd party; 3rd party to agency.
6. Includes staff time to work with agencies and landowners; develop management plan; oversee land transaction; organizational reporting and due diligence; review of acquisition documents; assembling acquisition acreage, and related tasks)
7. This amount covers the estimate of BLM's cost to accept the land into the public management system and costs associated with tracking/managing the costs associated with the donation acceptance, includes two physical inspections; review and approval of the Level 1 ESA assessment; review of all title documents; drafting deed restrictions; issue escrow instructions; mapping the parcels, and related tasks.
8. Estimate for purposes of calculating general costs. The actual long term management costs will be determined using a PAR (Property Assessment Report) or PAR-like analysis tailored to the specific acquisition. Includes land management; enforcement and defense of easement or title [short and long term]; and monitoring.
9. If determined necessary by the REAT agencies if multiple 3rd parties have expressed interest; for transparency and objective selection of 3rd party to carry out acquisition.

**Revised Biological Resources Table 6**  
**Mojave Fringe-toed Lizard Compensation Cost Estimate<sup>1</sup>**

	<b>Task</b>	<b>Cost</b>
1.	Land Acquisition	\$1,000 per acre <sup>2</sup>
2.	Level 1 Environmental Site Assessment	\$3,000 per parcel <sup>3</sup>
3.	Appraisal	\$5,000 per parcel
4.	Initial site work - clean-up, enhancement , restoration	\$250 per acre <sup>4</sup>
5.	Closing and Escrow Costs – 2 transactions per parcel; landowner to 3 <sup>rd</sup> party and 3 <sup>rd</sup> party to agency	\$5,000 per parcel
6.	Biological survey for determining mitigation value of land (habitat based with species specific augmentation)	\$5,000 per parcel
7.	3 <sup>rd</sup> party administrative costs - includes staff time to work with agencies and landowners; develop management plan; oversee land transaction; organizational reporting and due diligence; review of acquisition documents; assembling acres to acquire....	10% of land acquisition cost (#1)
8.	Agency costs to review and determine accepting land donation - includes 2 physical inspections; review and approval of the Level 1 ESA assessment; review of all title documents; drafting deed and deed restrictions; issue escrow instructions; mapping the parcel.	15% of land acquisition costs (#1) × 1.17 (17% of the 15% for overhead)
	<b><i>SUBTOTAL - Acquisition &amp; Initial Site Work</i></b>	<b><i>\$424,541.25</i></b> <b><i>\$359,541.25</i></b>
9.	Long-term Management and Maintenance (LTMM) Fund - includes land management; enforcement and defense of easement or title [short and long term]; monitoring.	\$1,450 per acre <sup>5</sup>
	<b><i>SUBTOTAL - Acquisition, Initial Site Work, &amp; LTMM</i></b>	<b><i>\$725,416.25</i></b> <b><i>\$660,416.25</i></b>
	<b>NFWF Fees</b>	
10.	Establish the project specific account	n/a (presumes establishment of desert tortoise account for project)
11.	Pre-proposal Modified RFP or RFP processing <sup>6</sup>	n/a (presumes establishment of desert tortoise account for project)
12.	NFWF management fee for acquisition & initial site work	3% of SUBTOTAL
13.	NFWF Management fee for LTMM Fund	1% of LTMM Fund
	<b><i>TOTAL for deposit in REAT-NFWF Project Specific Account</i></b>	<b><i>\$741,161.24</i></b> <b><i>\$674,211.24</i></b>

1. Estimates prepared in consultation with CDFG, BLM, and USFWS. All costs are best estimates as of summer 2010. Actual costs will be determined at the time of the transactions and may change the funding needed to implement the required mitigation obligation. Note: regardless of the estimates, the developer is responsible for providing adequate funding to implement the required mitigation.
2. Generalized estimate taking into consideration a likely jump in land costs due to demand, and an 18-24 month window to acquire the land after agency decisions are made. If the agencies, developer, or 3<sup>rd</sup> party has better, credible information on land costs in the specific area where project-specific mitigation lands are likely to be

## Revised Table 6, Page 2

purchased, that data overrides this general estimate. Note: regardless of the estimates, the developer is responsible for providing adequate funding to implement the required mitigation.

3. For the purposes of determining costs, a parcel is 40 acres (based on input from CDD).
4. Based on information from CDFG.
5. Estimate for purposes of calculating general costs. The actual long term management and maintenance costs will be determined using a Property Assessment Report (PAR) tailored to the specific acquisition.
6. If determined necessary by the REAT agencies if multiple 3<sup>rd</sup> parties have expressed interest; for transparency and objective selection of 3<sup>rd</sup> party to carry out acquisition.

**Revised Biological Resources Table 7  
Desert Tortoise Compensation Cost Estimate<sup>1</sup>**

	<b>Task</b>	<b>Cost</b>
1.	Land Acquisition	\$1,000 per acre <sup>2</sup>
2.	Level 1 Environmental Site Assessment	\$3,000 per parcel <sup>3</sup>
3.	Appraisal	\$5,000 per parcel
4.	Initial site work - clean-up, enhancement , restoration	\$250 per acre <sup>4</sup>
5.	Closing and Escrow Costs – 2 transactions at \$2,500 each; landowner to 3 <sup>rd</sup> party and 3 <sup>rd</sup> party to agency	\$5,000 per parcel
6.	Biological survey for determining mitigation value of land (habitat based with species specific augmentation)	\$5,000 per parcel
7.	3 <sup>rd</sup> party administrative costs - includes staff time to work with agencies and landowners; develop management plan; oversee land transaction; organizational reporting and due diligence; review of acquisition documents; assembling acres to acquire....	10% of land acquisition cost (#1)
8.	Agency costs to review and determine accepting land donation - includes 2 physical inspections; review and approval of the Level 1 ESA assessment; review of all title documents; drafting deed and deed restrictions; issue escrow instructions; mapping the parcels....	15% of land acquisition costs (#1) × 1.17 (17% of the 15% for overhead)
	<b><i>SUBTOTAL - Acquisition &amp; Initial Site Work</i></b>	<b><i>\$28,393,807.50</i></b> <b><i>\$31,732,030.50</i></b>
9.	Long-term Management and Maintenance (LTMM) Fund - includes land management; enforcement and defense of easement or title [short and long term]; monitoring....	\$1,450 per acre <sup>5</sup>
	<b><i>SUBTOTAL - Acquisition, Initial Site Work, &amp; LTMM</i></b>	<b><i>\$49,223,057.50</i></b> <b><i>\$58,935,480.50</i></b>
	<b>NFWF Fees</b>	
10.	Establish the project specific account	\$12,000.00
11.	Pre-proposal Modified RFP or RFP processing <sup>6</sup>	\$30,000.00
12.	NFWF management fee for acquisition & initial site work	3% of SUBTOTAL
13.	NFWF Management fee for LTMM Fund	1% of LTMM Fund
	<b><i>TOTAL for deposit in REAT-NFWF Project Specific Account</i></b>	<b><i>\$50,325,164.23</i></b> <b><i>\$60,201,474.90</i></b>

1. Estimates prepared in consultation with CDFG, USFWS, and BLM. All costs are best estimates as of summer 2010. Actual costs will be determined at the time of the transactions and may change the funding needed to implement the required mitigation obligation. Note: regardless of the estimates, the developer is responsible for providing adequate funding to implement the required mitigation.
2. Generalized estimate taking into consideration a likely jump in land costs due to demand, and an 18-24 month window to acquire the land after agency decisions are made. If the agencies, developer, or 3<sup>rd</sup> party has better, credible information on land costs in the specific area where project-specific mitigation lands are likely to be purchased, that data overrides this general estimate. Note: regardless of the estimates, the developer is responsible for providing adequate funding to implement the required mitigation.
3. For the purposes of determining costs, a parcel is 40 acres (based on input from CDD).
4. Based on information from CDFG.

## Revised Table 7, Page 2

5. Estimate for purposes of calculating general costs. The actual long term management and maintenance costs will be determined using a Property Assessment Report (PAR) tailored to the specific acquisition.
6. If determined necessary by the REAT agencies if multiple 3<sup>rd</sup> parties have expressed interest; for transparency and objective selection of 3<sup>rd</sup> party to carry out acquisition.

## SPECIAL-STATUS PLANT IMPACT AVOIDANCE AND MINIMIZATION

**BIO-12** This condition contains the following five sections:

- **Section A: White-margined Beardtongue Avoidance and Minimization Measures** describes measures to protect all white-margined beardtongue plants located within the project area or within 250 feet of its boundaries (including access roads, staging areas, laydown areas, parking and storage areas) from accidental and indirect impacts during construction, operation, and closure.
- **Section B: Conduct Late Season Botanical Surveys** describes guidelines for conducting summer-fall ~~2010~~ surveys to detect special-status plants that ~~would~~ may have been missed during the spring ~~2010~~ surveys.
- **Section C: Mitigation Requirements for Special-Status Plants Detected in the Summer/Fall ~~2010~~ Surveys** outlines the level of avoidance required for plants detected during the summer-fall surveys, based on the species' rarity and conservation status. Avoidance is based on extent of local occurrences on the project site and, as applicable, extending onto contiguous public land. Where avoidance would result in on-site isolation of plant occurrences from essential ecological processes, or would cause local populations to become inviable, then off-site compensation would be allowed.
- **Section D: Off-Site Compensatory Mitigation for Special-Status Plants** describes performance standards for mitigation for a range of options for compensatory mitigation through acquisition, restoration/enhancement, or a combination of acquisition and restoration/enhancement, based on the species' rarity and conservation status.
- **Section E: Plant Salvage** describes measures to include potted nursery stock or salvaged specimens of certain cacti, yucca, and other species listed in San Bernardino County plant protection policies in revegetation plans, in conformance with BLM policy.

"Project Disturbance Area" encompasses all areas to be temporarily and permanently disturbed by the Project, including the plant site, linear facilities, and areas disturbed by temporary access roads, fence installation, construction work lay-down and staging areas, parking, storage, or by any other activities resulting in disturbance to soil or vegetation. Nothing in this condition requires the project owner to conduct botanical surveys on private lands adjacent to the project site when the project owner has made reasonable attempts to obtain permission to enter the property for survey work but was unable to obtain such permission.

The Project owner shall implement the following measures in Section A, B, C, D and E to avoid, minimize, and compensate for impacts to certain special-status plant species, based on species rarity and conservation status:

### **Section A: White-margined Beardtongue Avoidance and Minimization Measures**

To protect all white-margined beardtongue plants located within the project area or within 250 feet of its boundaries (including access roads, staging areas, laydown areas, parking and storage areas) from accidental and indirect impacts during construction, operation, and closure, the Project owner shall implement the following measures:

1. Designated Botanist. An experienced botanist who meets the qualifications described in Section **B-2** below shall oversee compliance with all special-status plant avoidance, minimization, and compensation measures described in this condition throughout construction, operation, and closure. The Designated Botanist shall oversee and train all other Biological Monitors tasked with conducting botanical survey and monitoring work.
2. White-margined Beardtongue Impact Avoidance and Minimization Plan. The Project owner shall prepare and implement a White-margined Beardtongue Impact Avoidance and Minimization Plan and shall incorporate the Plan into the BRMIMP (**BIO-7**). The Plan shall be designed to prevent direct or indirect effects of project construction and operation to all white-margined beardtongue occurrences within the project boundary, and to any other special status plants including small-flowered androstephium located within Environmentally Sensitive Areas (defined below). The Plan shall include the following elements:
  - a. Designate Environmentally Sensitive Areas (ESAs). Before construction, designate ESAs to protect all known white-margined beardtongue locations on the project site or within 250 feet of site boundaries. The ESAs shall include, at minimum, the approximately 18 acres of white-margined beardtongue occurrences as identified on Applicant's Exhibit 57, Alternative Site Layout #2. The locations of ESAs shall be clearly depicted on construction drawings, which shall also include all avoidance and minimization measures on the margins of the construction plans. The boundaries of the ESAs shall provide a minimum of 250 feet buffer area between white-margined beardtongue plant locations and any ground-disturbing project activity. The ESAs shall be clearly delineated in the field with permanent fencing and signs prohibiting movement of the fence under penalty of work stoppages and additional compensatory mitigation. ESAs shall also be permanently marked (with signage or other markers) to ensure that

avoided plants are not inadvertently harmed during construction, operation, or closure.

- b. Baseline data. Document baseline conditions, including numbers and areal extent of white-margined beardtongue and any other special-status plant occurrences within the ESAs;
- c. Success criteria. Specify success standards for protection of special-status plant occurrences within the ESAs, and identify specific triggers for remedial action (e.g., numbers of plants dropping below a threshold);
- d. Literature review. Describe and reference any available information about microhabitat preferences and fecundity, essential pollinators, reproductive biology, and propagation and culture requirements for white-margined beardtongue and any other special-status species within the ESAs;
- e. Protection and avoidance measures. Describe measures (e.g., fencing, signage) to avoid direct and indirect construction and operation impacts to special-status plants within the ESAs; these shall include but shall not be limited to: (1) training components specific to protection of white-margined beardtongue and surrounding habitat buffer area, which shall be incorporated into the WEAP described in **BIO-6**; (2) detailed specifications for avoiding herbicide and soil stabilizer drift, and shall include a list of herbicides and soil stabilizers that may be used on the Project with manufacturer's guidance on appropriate use; the Plan shall reference the Weed Management Plan (see Condition of Certification **BIO-11**) and shall be consistent with provisions of that Plan; (3) measures to ensure that erosion and sediment control do not inadvertently impact special-status plants located within an ESA (e.g., by using invasive or non-native plants in seed mixes, introducing pest plants through contaminated seed or straw, etc.). Where applicable, these measures shall be incorporated in the Weed Management Plan and Storm Water Pollution Prevention Plan. Also, designate spoil areas; equipment, vehicle, and materials storage areas; parking; equipment and vehicle maintenance areas, and; wash areas at least 100 feet from boundaries of any ESAs;
- f. Monitoring and Reporting Requirements. The Designated Botanist shall conduct weekly monitoring of the ESAs during any construction or decommissioning activities within 100 feet of the ESAs, and quarterly monitoring for the remainder of construction and during operations. For the life of the project, the Project owner shall also conduct annual monitoring of the avoided occurrences within ESAs on-site, and off-site occurrences that are within 250 feet from the project boundary and are located on public lands or on private lands to which the Applicant has access. The project



owner shall make reasonable attempts to obtain permission to enter adjacent private property for the purpose of rare plant monitoring (see Verification, below).

- g. Remedial Action Measures. Specify remedial action measures to be implemented if success standards (above) are not met at any time during the life of the project;
- h. Seed Collection. Over the life of the project, the project owner shall collect a small proportion of any available seed produced by white-margined beardtongue plants protected on-site within ESAs on an annual basis until propagation research (below) is complete and seed bank curators agree that sufficient seed has been placed into long-term storage. Seed collection must only be done under permit from the BLM; the project owner shall be responsible for obtaining and complying with applicable permit(s). The collection technique shall follow seed collection and storage guidelines contained in (Wall 2009a; Bainbridge 2007). Collection of seed shall be done by the Rancho Santa Ana Botanic Garden (RSABG) Conservation Program staff or other qualified seed or restoration specialist. The Project owner shall be responsible for all costs associated with seed collection and storage. All seed storage shall occur at RSABG or other qualified research institution and at least 40 percent of the collected seed shall remain in long-term storage at RSABG Seed Conservation Program, San Diego Natural History Museum, or other qualified seed conservation program. In the event that construction schedules or seed production prevent collection within ESAs on-site, the applicant must substitute off-site seed collection site as approved by the CPM in consultation with the BLM State Botanist;
- i. Propagation research. The project owner shall be responsible for evaluating potential white-margined beardtongue propagation and reintroduction methods with the objective of developing horticultural techniques suitable for eventual introduction of nursery-grown white-margined beardtongue on-site or off-site as remedial action measures if needed (paragraph g., above); a portion of seed (paragraph h., above) shall be made available for propagation research which may at some time inform contingency propagation efforts on the project site or elsewhere; propagation experimentation shall be funded by the project owner and conducted by a qualified research institution such as Rancho Santa Ana Botanic Garden and the results shall not be subject to a non-disclosure agreement. At minimum, propagation research shall include germination and seedling establishment trials under a variety of soil and humidity conditions reflecting the range of seasonal conditions found in the plant's natural habitat on the project site; plant growth from seedling to nursery stock size; and

transplantation methods. These trials shall be conducted in part within growth chambers where temperature and humidity are controlled and in part on the project site or adjacent Pisgah ACEC under natural conditions.

- j. Off-site sand transport monitoring and management. The White-margined Beardtongue Impact Avoidance and Minimization Plan shall include a sand transport monitoring and management to document and manage project effects to eastward sand transport to occupied white-margined beardtongue aeolian sand habitat off-site to the east. At minimum, the plan shall include the following elements (1) quantify baseline eastward sand transport from the project area into the adjacent BLM Pisgah Crater ACEC, following methods described by Etyemezian et al. (2010); (2) specify methods and schedule for annual sand transport monitoring throughout the first five years of the project's life; (3) identification of thresholds which would trigger remediation requirements; and (4) development of adaptive management strategies to supplement eastward sand transport into the ACEC if needed. These strategies may include revisions to project fencing design, importing sand from off-site or transporting sand across the project site for further dispersal. No sand transport remediation work would be permitted to cause new land disturbance outside the project area as analyzed in this SSA.
- k. Off-site weed monitoring and management. The White-margined Beardtongue Impact Avoidance and Minimization Plan shall include methods and schedule to monitor and manage weed abundance in occupied and suitable white-margined beardtongue habitat to the east. At minimum, the plan shall (1) quantify baseline weed abundance in the portion of the ACEC adjacent BLM Pisgah Crater ACEC, adjacent to and within 500 m of the eastern project boundary, north of the BNSF railroad tracks; (2) weed abundance monitoring schedule and methods to implement throughout that area by collecting and analyzing quantitative weed abundance during every year of average or greater rainfall throughout the life of the project; (3) identify weed abundance thresholds which would trigger remediation requirements; and (4) specify weed control methods to be implemented as needed in occupied and suitable white-margined beardtongue habitat throughout the area described above.

### **Section B: Conduct Late-Season Botanical Surveys**

The Project owner shall conduct late-summer/fall botanical surveys for late-season special-status plants as described below:

1. Survey Timing. To the extent feasible, surveys shall be timed to detect: a) summer annuals triggered to germinate by the warm, tropical summer storms (which may occur any time between June and October), and b) fall-blooming perennials that respond to the cooler, later season storms that originate in the Pacific northwest (typically beginning in September or October), if identification may require leaves, flowers, or other structures not available during spring surveys previously completed. The survey dates shall be based on plant phenology and the timing of a significant storm (i.e., a 10 mm or greater rain or multiple storm events of sufficient volume to trigger germination, as measured at or within 1 mile of the Project site) if an event is recorded. Surveys for summer annuals shall be timed as needed and feasible to identify target species (below), based upon field visits to reference populations. However, due to the undependable nature and scattered patterns of summer and early fall rainfall, it is possible that no suitable rain event will be documented in the area. Nevertheless, the project own shall be responsible for conducting late-season botanical surveys along washes and other lowland areas on-site due to the possibility that rainstorms in the Cady Mountains may go undetected, but may initiate summer or fall blooms. In 2010, summer/fall late-season botanical surveys shall be completed throughout the project areas designated as Phases 1a and 1b and throughout washes and drainageways of project areas designated as Phase 2. Additional surveys throughout all of the Phase 2 area shall be completed during 2010 or a subsequent year, but prior to construction of that phase.
2. Surveyor Qualifications and Training. Surveys shall be conducted by a qualified botanist knowledgeable in the complex biology of the local flora, and consistent with CDFG (2009) and BLM (2009) protocols. The botanical survey crew shall be prepared to mobilize quickly to conduct appropriately timed surveys. Each field botanist shall be equipped with a GPS unit and record a complete tracklog; these data shall be compiled and submitted along with the Summer-Fall Survey Botanical Report (described below). Prior to the start of surveys, all crew members shall, at a minimum, visit target species reference sites (where available) and/or review herbarium specimens to confirm detectability and obtain a search image.
3. Target Species. Field surveys shall be designed and scheduled to locate target species, defined as all BLM Sensitive plants, CNPS List 1B or 2 (Nature Serve rank S1 and S2) or proposed List 1B or 2 taxa, and any newly reported or documented taxa. Because the potential for range extensions is unknown, the list of potentially occurring special-status plants shall include all special-status taxa known from comparable habitats in the central portion of the Mojave Desert in California. At a minimum, the list shall include all summer or fall-flowering species identified as potentially occurring on the site in the applicant's spring 2010 botanical survey report (TS 2010i) and by Andre (2010, Intervenor

Defenders of Wildlife Rebuttal Testimony). Determination of flowering season shall be based upon field visits to reference populations and data available online from the Consortium of California Herbaria and California Native Plant Society. Target species also shall include taxa with bloom seasons that begin in fall and extend into the early spring as many of these are reported to be easier to detect in fall, following the start of the fall rains.

4. Survey Coverage. At a minimum, the Applicant shall conduct comprehensive surveys (i.e., 100 percent visual coverage) of the washes, dune swales, and other lowlands within the project site. In the intervening uplands (e.g., bajadas and rock outcrops) surveys shall be conducted to ensure a 25 percent visual coverage. Other special or unique habitats associated with rare plants (such as dunes, washes, and chenopod scrubs) shall also be surveyed at 100 percent visual coverage. Transects shall be “intuitive controlled” (per BLM 2009b) to ensure a focus on habitat most likely to support rare plants (such as desert washes or dunes), rather than on pre-defined, evenly-spaced survey grids.
5. Documenting Occurrences. If a special-status plant is detected, the full extent of the population onsite shall be recorded using GPS in accordance with BLM survey protocols. Additionally, the extent and density of the occupied habitat within one mile of project boundaries shall be assessed at least qualitatively to facilitate an accurate estimation of the proportion of the occurrence affected by the project. For occurrences that are very dense or very large, the plant numbers may be estimated by simple sampling techniques and the survey report must provide qualitative or quantitative data describing the density and roughly mapping the extent on a topographic map. All but the smallest populations (e.g., a population occupying less than 100 square feet) shall be recorded as area polygons; small populations may be recorded as point features. All GPS-recorded occurrences shall include: the number of plants, phenology, observed threats (e.g., OHV or invasive exotics), and habitat or community type. The map of occurrences, to be submitted with the final botanical report, shall be prepared to ensure consistency with mapping protocol and definitions of occurrences in CNDDDB: occurrences found within 0.25 miles of another occurrence of the same taxon, and not separated by significant habitat discontinuities, shall be combined into a single ‘occurrence.’ The Project Owner shall also submit the raw GPS shape files and metadata, and completed CNDDDB forms to CNDDDB for each occurrence as defined by CNDDDB.
6. Reporting. Raw GPS data, metadata, and CNDDDB field forms shall be provided to the CPM within two weeks of completion of each survey. If field surveys take place during two or more phases (e.g., late summer and fall), then a summary letter shall be submitted following each survey.

The Final Summer-Fall Botanical Survey Report shall be prepared consistent with CDFG guidelines (CDFG 2009), and BLM guidelines (2009) and shall include the following components:

- a. the BLM designation, NatureServe Global and State Rank of each species or taxon found (or proposed rank, or CNPS List);
- b. the number or percent of the occurrence that will be directly affected, and indirectly affected by changes in drainage patterns or altered geomorphic processes;
- c. the habitat or plant community that supports the occurrence and the total acres of that habitat or community type that occurs in the Project Disturbance Area;
- d. an indication of whether the occurrence has any local or regional significance (e.g., if it exhibits any unusual morphology, occurs at the periphery of its range in California, represents a significant range extension or disjunct occurrence, or occurs in an atypical habitat or substrate);
- e. a completed CNDDDB field form for every occurrence (i.e., the summed locations of a given species within 0.25 mile distance of another location, consistent with CNDDDB methodology), and;
- f. two maps: one that depicts the raw GPS data (as collected in the field) on a topographic base map with Project features; and a second map that follows the CNDDDB protocol for occurrence mapping, which lumps two or more occurrences of the same species within one-quarter mile or less of each other into one occurrence.

### **Section C: Avoidance Mitigation Requirements for Special-Status Plants Detected in the Summer/Fall 2010 Surveys**

The Project owner shall apply the following avoidance standards to special-status plants that might be detected during late summer/fall season surveys. Avoidance and/or the mitigation measures described in Section D below would reduce impacts to special-status plant species to less than significant levels.

**Mitigation for CNDDDB Rank S1 and S2 Plants:** If species with a CNDDDB rank of S1 (CDFG 2010b), excluding small-flowered androstephium (CNDDDB S1.2), are detected within the Project Disturbance Area or would be directly impacted by discharges from or the diversion of streams around the Project, the Project owner shall implement avoidance measures to protect at least 75 percent of the local occurrence(s) of the species. For perennial species, the local occurrence(s) shall be measured by the number of individual plants

located on the Project site or on public lands contiguous to the project site. For annual species, the occurrence(s) shall be measured as areal extent of contiguous occupied habitat on the site and on contiguous public lands. Avoidance shall include protection of the ecosystem processes essential for maintenance of the protected plant occurrence. Plants located within the ESAs established pursuant to Section A above shall be considered to be "avoided" to the extent that direct impacts on the plants are avoided and that these processes would be maintained. If special status plant occurrences are isolated by the Project from natural fluvial,-aeolian, or other processes known to be necessary for their persistence or reproduction, these occurrences shall not be considered "avoided." This evaluation shall be made in consultation among the project Botanist and the CPM, in consultation with CDFG and BLM, on a case by case basis, dependent on the species and its location on the site. The Project owner shall provide compensatory mitigation as described below in Section D for Project impacts to CNDDDB Rank S1 and S2 plants that are not avoided. If, after consultation among the project Botanist, CPM, CDFG, and BLM, on-site avoidance is determined not to satisfy the long-term viability of the plant occurrence(s), then compensatory mitigation may be substituted for avoidance ~~would be allowed~~ for up to 100% of impacts to Rank S1 and S2 plants on the site, as described below in Section D.

**Mitigation for CNDDDB Rank S3 Plants:** If species with a CNDDDB rank of 3 are detected within the Project Disturbance Area, no onsite avoidance or compensatory mitigation shall be required unless the occurrence has local or regional significance, in which case the plant occurrence shall be treated as a CNDDDB 2 ranked plant. A plant occurrence would be considered to have local or regional significance if:

- a. It occurs at the outermost periphery of its range in California;
- b. It occurs in an atypical habitat, region, or elevation for the taxon that suggests that the occurrence may have genetic significance (e.g., that may increase its ability to survive future threats), or;
- c. It exhibits any unusual morphology that is not clearly attributable to environmental factors that may indicate a potential new variety or sub-species.

Should CNDDDB Rank S3 plant locations meeting any of the three criteria above be found on the project site during summer or fall field surveys, then mitigation requirements for those species shall be as described above for CNDDDB Rank S1 and S2 species.

**Pre-Construction Notification for State- or Federal-Listed Species, or BLM Sensitive Species.** If a state or federal-listed species or BLM Sensitive species is detected, the Project owner shall immediately notify the CDFG, USFWS, BLM, and the CPM.

**Preservation of the Germplasm of Affected Special-Status Plants.** For all impacts to CNPS List 1 or List 2 plants, excluding small-flowered androstephium, mitigation shall include seed collection from the affected special-status plants on-site prior to construction to conserve the germplasm and provide a seed source for restoration efforts. Where construction schedules or seed availability prevents seed collection from plant locations to be impacted during a given season, seed must be collected from another portion of the project site or, as approved by the CPM in consultation with BLM's State Botanist, from public lands off-site. Seed collection must only be done under permit from the BLM; the project owner shall be responsible for obtaining and complying with applicable permit(s). The seed shall be collected under the supervision or guidance of a reputable seed storage facility such as the Rancho Santa Ana Botanical Garden Seed Conservation Program, San Diego Natural History Museum, or the Missouri Botanical Garden. The costs associated with the long-term storage of the seed shall be the responsibility of the Project owner. Any efforts to propagate and reintroduce special-status plants from seeds in the wild shall be carried out under the direct supervision of specialists such as those listed above and as part of a Habitat Restoration/Enhancement Plan approved by the CPM.

#### **Section D: Off-Site Compensatory Mitigation for Special-Status Plants**

Where compensatory mitigation is required under the terms of Section C, above, the Project owner shall mitigate Project impacts to CNPS List 1 or List 2 plants, excluding small-flowered androstephium with compensatory mitigation. Compensatory mitigation shall consist of acquisition of habitat supporting the target species, restoration/enhancement of populations of the target species, or a combination of acquisition and restoration/enhancement as provided within this Condition. Compensatory mitigation shall be at a 3:1 ratio. For annual species, compensation shall provide three acres of habitat acquired or restored/enhanced for every acre of special-status plant habitat disturbed by the Project Disturbance Area. For perennial species, compensation lands shall supporting three living plants of the same species for each plant disturbed within the project area. The Project owner shall provide funding for the acquisition and/or restoration/enhancement, initial improvement, and long-term maintenance and management of the acquired or restored lands. The actual costs to comply with this condition will vary depending on the Project Disturbance Area, the actual costs of acquiring compensation habitat, the actual costs of initially improving the habitat, the actual costs of long-term management as determined by a Property Analysis Record (PAR) or PAR-like analysis, and other transactional costs related to the use of compensatory mitigation.

The Project owner shall comply with other related requirements in this condition:

**I. 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 include all of the following:

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

1. Occupied Habitat, No Habitat Threats: The compensation lands selected for acquisition shall be occupied by the target plant species 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.
2. Occupied Habitat, Habitat Threats. Occupied compensation lands characterized by habitat threats may also be acquired as long as the population could be reasonably expected to recover with minor restoration (e.g., OHV or grazing exclusion, pest plant removal) and is accompanied by a Habitat Enhancement/Restoration Plan as described in Section D.II, below.
3. 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.

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.

Management Plan. The Project owner or approved third party shall prepare a management plan for the compensation lands in consultation with the entity that will be managing the lands. The goal of the management plan shall be to support and enhance the long-term viability of the target special-status plant occurrences. The Management Plan shall be submitted for review and approval to the CPM.

Integrating Special-Status Plant Mitigation with Other Mitigation lands. If all or any portion of the acquired Desert Tortoise, 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.



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, the Fish and Game Commission 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 must be to CDFG, 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 CDFG or another entity approved by the CPM. If an entity other than CDFG holds a conservation easement over the compensation lands, the CPM may require that CDFG or another entity approved by the CPM, in consultation with CDFG, be named a third party beneficiary of the conservation easement. The Project owner shall obtain approval of the CPM of the terms 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 costs of these activities are estimated to be \$750 per acre (\$250 per acre, using the estimated cost per acre for Desert Tortoise mitigation as a best available proxy, at a 3:1 ratio, but actual costs will vary depending on the measures that are required for the compensation lands). A non-profit organization, CDFG or another public agency may hold and expend the habitat

improvement funds if it is qualified to manage the compensation lands (pursuant to California Government Code section 65965), if it meets the approval of the CPM in consultation with CDFG, and if it is authorized to participate in implementing the required activities on the compensation lands. If CDFG takes fee title to the compensation lands, the habitat improvement fund must be paid to CDFG 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 provide money to establish an account with non-wasting capital that will be used to fund the long-term maintenance and management of the compensation lands. The amount of money to be paid will be determined through an approved PAR or PAR-like analysis conducted for the compensation lands. Until an approved PAR or PAR-like analysis is conducted for the compensation lands, the amount of required funding is initially estimated to be \$4,350 for every acre of compensation lands, using as the best available proxy the estimated cost of \$1,450 per acre for Desert Tortoise compensatory mitigation, at a 3:1 ratio. This amount may be revised by the CPM in consultation with DFG, BLM and USFWS, based on further analysis of long-term management and maintenance costs. If compensation lands will not be identified and a PAR or PAR-like analysis completed within the time period specified for this payment (see the verification section at the end of this condition), the Project owner shall either: (i) provide initial payment equal to the amount of \$4,350 multiplied by the number of acres the Project owner proposes to acquire for compensatory mitigation; or (ii) provide security to the Energy Commission under subsection (g), "Mitigation Security," below, in an amount equal to \$4,350 multiplied by the number of acres the Project owner proposes to acquire for compensatory mitigation. The amount of the required initial payment or security for this item shall be adjusted for any change in the Project Disturbance Area as described above. If an initial payment is made based on the estimated per-acre costs, the Project owner shall deposit additional money as may be needed to provide the full amount of long-term maintenance

and management funding indicated by a PAR or PAR-like analysis, once the analysis is completed and approved. If the approved analysis indicates less than \$4,350 per acquired acre (at a 3:1 ratio) will be required for long-term maintenance and management, the excess paid will be returned to the Project owner. The Project owner must obtain the CPM's approval of the entity that will receive and hold the long-term maintenance and management fund for the compensation lands. The CPM will consult with CDFG before deciding whether to approve an entity to hold the Project's long-term maintenance and management funds.

The Project owner shall ensure that an agreement is in place with the long-term maintenance and management fund holder/manager to ensure the following requirements are met:

- i. Interest. Interest generated from the initial capital long-term maintenance and management fund shall be available for reinvestment into the principal and for the long-term operation, management, and protection of the approved compensation lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action that is approved by the CPM and is designed to protect or improve the habitat values of the compensation lands.
- ii. Withdrawal of Principal. The long-term maintenance and management fund principal shall not be drawn upon unless such withdrawal is deemed necessary by the CPM or by the approved third-party long-term maintenance and management fund manager, to ensure the continued viability of the species on the compensation lands.
- iii. Pooling Long-Term Maintenance and Management Funds. An entity approved to hold long-term maintenance and management funds for the Project may pool those funds with similar non-wasting funds that it holds from other projects for long-term maintenance and management of compensation lands for special-status plants. However, for reporting purposes, the long-term maintenance and management funds for this Project must be tracked and reported individually to the CPM.
- f. Other Expenses. In addition to the costs listed above, the Project owner shall be responsible for all other costs related to acquisition of compensation lands and conservation easements, including but not limited to the title and document review costs incurred from other state agency reviews, overhead related to providing compensation lands to CDFG or an approved third

party, escrow fees or costs, environmental contaminants clearance, and other site cleanup measures.

- g. **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 this condition that are not completed prior to the start of ground-disturbing Project activities. Financial assurances shall be provided to the CPM in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security") approved by the CPM. The amount of the Security shall be based upon staff's estimate of per-acre acquisition, transaction, and management costs as described in Condition of Certification BIO-17 \$10,509 per for each acre of occupied habitat impacted (~~\$3,503 per acre~~, using the estimated cost per acre for Desert Tortoise mitigation as a best available proxy, at a 3:1 ratio; see **Revised Biological Resources Tables 5 and 7**) for every acre of habitat supporting the target special-status plant species which is significantly impacted by the project. The actual costs to comply with 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 or PAR-like analysis. Prior to submitting the Security to the CPM, the Project owner shall obtain the CPM's approval of the form of the Security. The CPM may draw on the Security if the CPM determines the Project owner has failed to comply with the requirements specified in this condition. The CPM may use money from the Security solely for implementation of the requirements of this condition. The CPM's use of the Security to implement measures in this condition may not fully satisfy the Project owner's obligations under this condition, and the Project owner remains responsible for satisfying the obligations under this condition if the Security is insufficient. The unused Security shall be returned to the Project owner in whole or in part upon successful completion of the associated requirements in this condition.
- h. The Project owner may elect to comply with the requirements in this condition for acquisition of compensation lands, initial protection and habitat improvement on the compensation lands, or long-term maintenance and management of the compensation lands by funding, or any combination of these three requirements, by providing funds to implement those measures into the Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF). To use this option, the Project owner must

make an initial deposit to the REAT Account in an amount equal to the estimated costs (as set forth in the Security section of this condition) of implementing the requirement. If the actual cost of the acquisition, initial protection and habitat improvements, or long-term funding is more than the estimated amount initially paid by the Project owner, the Project owner shall make an additional deposit into the REAT Account sufficient to cover the actual acquisition costs, the actual costs of initial protection and habitat improvement on the compensation lands, and the long-term funding requirements as established in an approved PAR or PAR-like analysis. If those actual costs or PAR projections are less than the amount initially transferred by the applicant, the remaining balance shall be returned to the Project owner.

- i. The responsibility for acquisition of compensation lands may be delegated to a third party other than NFWF, such as a non-governmental organization supportive of desert habitat conservation, by written agreement of the Energy Commission. Such delegation shall be subject to approval by the CPM, in consultation with CDFG, BLM and USFWS, prior to land acquisition, enhancement or management activities. Agreements to delegate land acquisition to an approved third party, or to manage compensation lands, shall be executed and implemented within 18 months of the Energy Commission's certification of the Project.

**II. Compensatory Mitigation by Habitat Enhancement/Restoration:** As an alternative or adjunct to land acquisition for compensatory mitigation the Project owner may undertake habitat enhancement or restoration for the target special-status plant species. Habitat enhancement or restoration activities must achieve protection at a 3:1 ratio as described above, with improvements applied to three acres of habitat for every acre of special-status plant habitat directly or indirectly disturbed by the Project Disturbance Area for annual species; or to habitat supporting three living plants for each individual perennial plant directly or indirectly disturbed by the project. Examples of suitable enhancement projects include but are not limited to the following: i) control unauthorized vehicle use into an occurrence (or pedestrian use if clearly damaging to the species); ii) control noxious weeds that infest or pose an immediate threat to an occurrence; iii) exclude grazing by wild burros or livestock from an occurrence; or iv) restore lost or degraded hydrologic or geomorphic functions critical to the species by restoring previously diverted flows, removing obstructions to the wind sand transport corridor above an occurrence, or increasing groundwater availability for dependent species.

If the Project owner elects to undertake a habitat enhancement project for mitigation, the project must meet the following performance standards: The proposed enhancement project shall achieve rescue of an off-site occurrence that is currently assessed, based on the NatureServe threat ranking system (Master et al. 2009; Morse et al. 2004) with one of the following threat ranks: a) long-term decline >30%;

b) an immediate threat that affects >30% of the population, or c) has an overall threat impact that is High to Very High. "Rescue" would be considered successful if it achieves an improvement in the occurrence trend to "stable" or "increasing" status, or downgrading of the overall threat rank to slight or low (from "High" to "Very High").

If the Project owner elects to undertake a habitat enhancement project for mitigation, they shall submit a Habitat Enhancement/Restoration Plan to the CPM for review and approval, and shall provide sufficient funding for implementation and monitoring of the Plan. The amount of the Security shall be based upon staff's estimate of per-acre acquisition, transaction, and management costs as described in Condition of Certification BIO-17 ~~\$10,509 per for each~~ acre of occupied habitat impacted by the project ~~(\$3,503 per acre~~, using the estimated cost per acre for Desert Tortoise mitigation as a best available proxy, at a 3:1 ratio (see Revised Biological Resources Tables 5 and 7). The amount of the security may be adjusted based on the actual costs of implementing the enhancement, restoration and monitoring. The implementation and monitoring of the enhancement/restoration may be undertaken by an appropriate third party such as NFWF, subject to approval by the CPM. The Habitat Enhancement/Restoration Plan shall include each of the following:

1. Goals and Objectives. Define the goals of the restoration or enhancement project and a measurable course of action developed to achieve those goals. The objective of the proposed habitat enhancement plan shall include restoration of a target special-status plant occurrence that is currently threatened with a long-term decline. The proposed enhancement plan shall achieve an improvement in the occurrence trend to "stable" or "increasing" status, or downgrading of the overall threat rank to slight or low (from "High" to "Very High").
2. Historical Conditions. Provide a description of the pre-impact or historical conditions (before the site was degraded by weeds or grazing or ORV, etc.), and the desired conditions.
3. Site Characteristics. Describe other site characteristics relevant to the restoration or enhancement project (e.g., composition of native and pest plants, topography and drainage patterns, soil types, geomorphic and hydrologic processes important to the site or species).
4. Ecological Factors. Describe other important ecological factors of the species being protected, restored, or enhanced such as total population, reproduction, distribution, pollinators, etc.
5. Methods. Describe the restoration methods that will be used (e.g., invasive exotics control, site protection, seedling protection, propagation techniques, etc.) and the long-term maintenance required. The implementation phase of the enhancement must be completed within five years.
6. Budget. Provide a detailed budget and timeline; develop clear, measurable, objective-driven annual success criteria.

7. Monitoring. Develop clear, measurable monitoring methods that can be used to evaluate the effectiveness of the restoration and the benefit to the affected species. The Plan shall include a minimum of five years of quarterly monitoring, and then annual monitoring for the remainder of the enhancement project, ~~and or~~ until the performance standards for rescue of a threatened occurrence are met, whichever comes first. At a minimum the progress reports shall include: quantitative measurements of the projects progress in meeting the enhancement project success criteria, detailed description of remedial actions taken or proposed, and contact information for the responsible parties.
8. Reporting Program. The Plan shall ensure accountability with a reporting program that includes progress toward goals and success criteria. Include names of responsible parties.
9. Contingency Plan. Describe the contingency plan for failure to meet annual goals.
10. Long-term Protection. Include proof of long-term protection for the restoration site. For private lands this would include conservations easements or other deed restrictions; projects on public lands must be contained in a Desert Wildlife Management Area, Wildlife Habitat Management Area, or other land use protections that will protect the mitigation site and target species.

### **Section E: Conformance with BLM and San Bernardino County Plant Protection Policies**

It is BLM policy to salvage yucca and cactus plants (excluding cholla species, genus *Cylindropuntia*) and transplant them to undisturbed sites within project Rights of Way. The San Bernardino County Plant Protection and Management Ordinance regulates the following where they occur on non-government land (San Bernardino County Code 88.01): desert native plants with stems 2 inches or greater in diameter or 6 feet or greater in height: *Psoralea* [*Dalea*] *spinosa* (smoke tree), *Prosopis* spp. (mesquites), all species of the family Agavaceae (century plants, nolinias, yuccas), creosote rings 10 feet or greater in diameter, all Joshua trees; and any part of any of the following species, whether living or dead: *Olneya tesota* (desert ironwood), all species of the genus *Prosopis* (mesquites), and all species of the genus *Cercidium* (palo verdes). Staff recognizes that the project site is on public land and thus not strictly subject to the County ordinance-but believes the County ordinance establishes an additional mitigation standard that should be applied to the project, as follows:

- a. The project owner shall inventory all plants subject to BLM and County policies on the project site that would be removed or damaged by proposed project construction.

- b. The project owner shall include salvaged plants or potted nursery stock of any species named in BLM or County policies in on-site revegetation planning and implementation, as described in **BIO-10**. The project owner shall include a Protected Plant Salvage and Replacement Section in the Revegetation Plan, in conformance with BLM. The Section also shall provide for incorporation of salvaged or potted stock of any species identified in the San Bernardino County standards that would be impacted by project development affected. The Section shall be made available for review and approval by the CPM. For salvaged plants, the Section shall include detailed descriptions of proposed methods to salvage plants; transport them; store them temporarily (as needed); and maintain them in temporary storage (i.e., irrigation, shade protection, etc.). For both salvaged plants and potted nursery stock, the Section shall include detailed descriptions of proposed planting locations and methods; proposed irrigation and maintenance methods at planting sites; and a monitoring plan to verify survivorship and establishment of the plants for a minimum of five years.
- c. Concurrent with any ground-disturbing activities within any phase of the project, the project owner shall implement the Protected Plant Replacement measures as approved by the CPM and BLM's State Botanist.

**Verification:**

The Special-Status Plant Impact Avoidance and Minimization Measures shall be incorporated into the BRMIMP as required under Condition of Certification **BIO-7**.

Implementation of the special-status plant impact avoidance and minimization measures shall be reported in the Monthly Compliance Reports prepared by the Designated Botanist. Within 30 days after completion of Project construction, the Project owner shall provide to the CPM, for review and approval in consultation with the BLM State Botanist, a written construction termination report identifying how measures have been completed.

The Project owner shall submit a monitoring report every year for the life of the project to monitor effectiveness of protection measures for all avoided special-status plants to the CPM and BLM State Botanist. The monitoring report shall include: dates of worker awareness training sessions and attendees, an inventory of the special-status plant occurrences and description of the habitat conditions, an indication of population and habitat quality trends, and description of the remedial action, if warranted and planned for the upcoming year.

**Section A.** No less than 30 days prior to the start of ground-disturbing activities the Project owner shall submit grading plans and construction drawings depicting the location of Environmentally Sensitive Areas and the Avoidance and Minimization Measures contained in Section A of this Condition. The project owner shall coordinate



with the CPM and BLM's Wildlife Biologist to revise and finalize boundaries of the ESAs. The 30 day limit may be reduced by the CPM.

No less than 30 days prior to the start of ground-disturbing activities the Project owner shall submit to the CPM for review and approval, in consultation with the BLM State Botanist, the name and resume of the project's Designated Botanist. If a Designated Botanist needs to be replaced, the specified information of the proposed replacement must be submitted to BLM's Wildlife Biologist and the CPM as soon as possible prior to the termination or release of the Designated Biologist. In an emergency, the project owner shall immediately notify the BLM's Wildlife Biologist and the CPM to discuss the qualifications and approval of a short-term replacement while a permanent Designated Botanist is proposed to BLM's Wildlife Biologist and the CPM and for consideration. The 30 day limit may be reduced by the CPM.

No less than 30 days prior to ground-disturbing activities the Project owner shall submit a draft White-margined Beardtongue Impact Avoidance and Minimization Plan to the CPM for review and approval, in consultation with the BLM State Botanist. Implementation of the white-margined beardtongue impact avoidance and minimization measures shall be reported in the Monthly Compliance Reports prepared by the Designated Botanist. Within 30 days after completion of Project construction, the Project owner shall provide to the CPM, for review and approval in consultation with the BLM State Botanist, a written construction termination report identifying how measures have been completed. The 30 day limit may be reduced by the CPM.

The Project owner shall submit a monitoring report every year for the life of the project to monitor effectiveness of protection measures for all avoided white-margined beardtongue ESAs to the CPM and BLM State Botanist. The monitoring report shall include: dates of worker awareness training sessions and attendees, an inventory of the special-status plant occurrences and description of the habitat conditions, an indication of population and habitat quality trends, and description of the remedial action, if warranted and planned for the upcoming year. The project owner shall coordinate with the CPM and BLM's Wildlife Biologist to revise and finalize monitoring reports and all reports described in this section, and shall specifically report any difficulties in meeting the protection goals and cooperatively develop adaptive measures as needed.

**Section B.** Raw GPS data, metadata, and CNDDDB field forms shall be submitted to the CPM within two weeks of the completion of each survey. A preliminary summary of results for the late summer/fall botanical surveys shall also be submitted to the CPM and BLM's State Botanist within two weeks following the completion of the surveys. If surveys are split into more than one period, then a summary letter shall be submitted following each survey period. The Final Summer-Fall Botanical Survey Report, GIS shape files and metadata shall be submitted to the BLM State Botanist and the CPM no less than 30 days prior to the start of ground-disturbing activities. The Final Report shall include a detailed accounting of the acreage of Project impacts to special-status plant occurrences.

**Section C.** The Project owner shall immediately provide written notification to the CPM, CDFG, USFWS, and BLM if it detects a State- or Federal-Listed Species, or BLM Sensitive Species at any time during its late summer/fall botanical surveys or at any time thereafter through the life of the Project, including conclusion of Project decommissioning.

Prior to construction, the project owner shall provide written verification that seed of any special status plants on the project site have collected and conveyed to a facility (as described in this measure) and that suitable long-term funding has been provided by the project owner. As needed, the project owner shall consult with the CPM and BLM's State Botanist to identify appropriate seed collection sites and dates.

**Section D.** If compensatory mitigation is required (based upon field survey results and mitigation strategy adopted by the project owner, as described in Sections C and D), no less than 30 days prior to the start of ground-disturbing activities, the Project owner shall submit to the CPM Security adequate to acquire compensatory mitigation lands and/or undertake habitat enhancement or restoration activities, as described in this condition. The 30 day limit may be reduced by the CPM.

No fewer than 90 days prior to acquisition of compensatory mitigation lands, the Project owner shall submit a formal acquisition proposal and draft Management Plan for the proposed lands to the CPM, with copies to CDFG, USFWS, and BLM, describing the parcels intended for purchase and shall obtain approval from the CPM prior to the acquisition. No fewer than 90 days prior to acquisition of compensatory mitigation lands, the Project owner shall submit to the CPM and obtain CPM approval of any agreements to delegate land acquisition to an approved third party, or to manage compensation lands; such agreement shall be executed and implemented within 18 months of the Energy Commission's certification of the Project.

The Project owner or an approved third party shall complete the acquisition and all required transfers of the compensation lands, and provide written verification to the CPM of such completion no later than 18 months after the start of Project ground-disturbing activities. If NFWF or another approved third party is being used for the acquisition, the Project owner shall ensure that funds needed to accomplish the acquisition are transferred in timely manner to facilitate the planned acquisition and to ensure the land can be acquired and transferred prior to the 18-month deadline. If habitat enhancement is proposed, no later than six months following the start of ground-disturbing activities, the Project owner shall obtain CPM approval of the final Habitat Enhancement/Restoration Plan, prepared in accordance with Section D, and submit to the CPM or a third party approved by the CPM Security adequate for long-term implementation and monitoring of the Habitat Enhancement/Restoration Plan.

Enhancement/restoration activities shall be initiated no later than 12 months from the start of construction. The implementation phase of the enhancement project shall be completed within five years of initiation. Until completion of the five-year implementation portion of the enhancement action, a report shall be prepared and submitted as part of the Annual Compliance Report. This report shall provide, at a minimum: a summary of

activities for the preceding year and a summary of activities for the following year; quantitative measurements of the Project's progress in meeting the enhancement project success criteria; detailed description of remedial actions taken or proposed; and contact information for the responsible parties.

Within 18 months of ground-disturbing activities, the Project owner shall transfer to the CPM or an approved third party the difference between the Security paid and the actual costs of (1) acquiring compensatory mitigation lands, completing initial protection and habitat improvement , and funding the long-term maintenance and management of compensatory mitigation lands; and/or (2) implementing and providing for the long-term protection and monitoring of habitat enhancement or restoration activities.

**Section E.** The project owner shall coordinate with the CPM and BLM's Wildlife Biologist to revise and finalize all plans and reports named in this section. Verification and reporting shall be as described in **BIO-10** and shall be included in reports described therein. Within 90 days after completion of each year of project construction, the project owner shall provide to the CPM verification of the numbers or acreage of plants covered in this Condition (i.e., species named in BLM and County policies) which have been removed or salvaged over the course of the year. Annual revegetation reports described in **BIO-10** verification shall include summaries of salvage and planting operations and monitoring results. Compliance reports shall include summaries of written and photographic records of the plan implementation described above. Compliance reports shall be submitted annually for a period not less than 5 years to document irrigation, maintenance, and monitoring results, including plant survival.

## **RAVEN MONITORING, MANAGEMENT, AND CONTROL PLAN**

**BIO-18** The project owner shall design and implement a Raven Monitoring, Management, and Control Plan (Raven Plan) that is consistent with the most current USFWS-approved raven management guidelines and that meets the approval of the USFWS, CDFG, and the CPM. Any subsequent modifications to the approved Raven Plan shall be made only with approval of the CPM in consultation with USFWS and CDFG. The Raven Plan shall include but not be limited to a program to monitor increased raven presence in the Project vicinity and to implement raven control measures as needed based on that monitoring. The purpose of the plan is to avoid any Project-related increases in raven numbers during construction, operation, and decommissioning. The threshold for implementation of raven control measures shall be any increases in raven numbers from baseline conditions, as detected by monitoring to be proposed in the Raven Plan. Regardless of raven monitoring results, the project owner shall be responsible for all other aspects of the Raven Plan, including avoidance and minimization of project-related trash, water sources, or perch/roost sites that could contribute to increased raven numbers. In addition, to offset the cumulative contributions of the Project to desert tortoise from increased raven numbers, the Project owner shall also contribute to the USFWS Regional Raven Management Program. The Project owner shall do all of the following:

1. Prepare and Implement a Raven Management Plan that includes the following:
  - a. Identify conditions associated with the Project that might provide raven subsidies or attractants;
  - b. Describe management practices to avoid or minimize conditions that might increase raven numbers and predatory activities;
  - c. Describe control practices for ravens;
  - d. Address monitoring and nest removal during construction and for the life of the Project, and;
  - e. Discuss reporting requirements.
2. Contribute to the USFWS Regional Raven Management Program. The project owner shall submit payment to the project sub-account of the REAT Account held by the National Fish and Wildlife Foundation (NFWF) to support the USFWS Regional Raven Management Program. The amount shall be a one-time payment of \$105 per acre of permanent disturbance and a 2% fund management fee (totaling \$665,626.50). Payments may be made in phases corresponding to the phasing of the project described in Condition of Certification **BIO-31**, but payment in full for each phase must be made within the designated time period prior to start of construction for the relevant phase.

**Verification:** No later than 30 days prior to the start of construction, the project owner shall provide written verification to the CPM that NFWF has received and accepted payment into the project's sub-account of the REAT Account to support the USFWS Regional Raven Management Program.

No later than 30 days prior to any construction-related ground disturbance activities, the Project owner shall provide the CPM, USFWS, and CDFG with the final version of a Raven Plan. All modifications to the approved Raven Plan shall be made only with approval of the CPM in consultation with USFWS and CDFG.

Within 30 days after completion of Project construction, the Project owner shall provide to the CPM for review and approval, a written report identifying which items of the Raven Plan have been completed, a summary of all modifications to mitigation measures made during the Project's construction phase, and which items are still outstanding.

On January 31st of each year following construction the Designated Biologist shall provide a report to the CPM that includes: a summary of the results of raven management and control activities for the year; a discussion of whether raven control and management goals for the year were met; and recommendations for raven management activities for the upcoming year.

## **BURROWING OWL IMPACT AVOIDANCE AND MINIMIZATION MEASURES**

**BIO-21** The Project owner shall implement the following measures to avoid, minimize and offset impacts to burrowing owls. Nothing in this condition requires the project owner to conduct burrowing owl surveys by entering private lands adjacent to the project site when the project owner has made reasonable attempts to obtain permission to enter the property for survey work but was unable to obtain such permission. In this situation only, the project owner may substitute binocular surveys for protocol field surveys.

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1. Pre-Construction Surveys. The Designated Biologist or Biological Monitor shall conduct pre-construction surveys for burrowing owls no more than 30 days prior to initiation of construction activities. Surveys shall be focused exclusively on detecting burrowing owls, and shall be conducted from two hours before sunset to one hour after or from one hour before to two hours after sunrise. The survey area shall include the Project Disturbance Area and surrounding 500 foot survey buffer.
2. Implement Avoidance Measures. If an active burrowing owl burrow is detected within 500 feet from the Project Disturbance Area the following avoidance and minimization measures shall be implemented:
  - a. Establish Non-Disturbance Buffer. Fencing shall be installed at a 250-foot radius from the occupied burrow to create a non-disturbance buffer around the burrow. The non-disturbance buffer and fence line may be reduced to 160 feet if all Project-related activities that might disturb burrowing owls would be conducted during the non-breeding season (September 1<sup>st</sup> through January 31<sup>st</sup>). Signs shall be posted in English and Spanish at the fence line indicating no entry or disturbance is permitted within the fenced buffer.
  - b. Monitoring: If construction activities would occur within 500 feet of the occupied burrow during the nesting season (February 1 – August 31<sup>st</sup>) the Designated Biologist or Biological Monitor shall monitor to determine if these activities have potential to adversely affect nesting efforts, and shall implement measures to minimize or avoid such disturbance.
3. Passive Relocation of Burrowing Owls. If pre-construction surveys indicate the presence of burrowing owls within the Project Disturbance Area (the Project Disturbance Area means all lands disturbed in the construction and operation of the Genesis Project), the Project owner shall prepare and implement a Burrowing Owl Relocation and Mitigation Plan, in addition to the avoidance measures described above. The final Burrowing Owl Relocation and Mitigation Plan shall be

approved by the CPM, in consultation with USFWS, BLM and CDFG, and shall:

- a. Identify and describe suitable relocation sites within 1 mile of the Project Disturbance Area, and describe measures to ensure that burrow installation or improvements would not affect sensitive species habitat or existing burrowing owl colonies in the relocation area;
  - b. Provide guidelines for creation or enhancement of at least two natural or artificial burrows per relocated owl, including a discussion of timing of burrow improvements, specific location of burrow installation, and burrow design. Design of the artificial burrows shall be consistent with CDFG guidelines (CDFG 1995) and shall be approved by the CPM in consultation with CDFG, BLM and USFWS;
  - c. Passive relocation sites shall be in areas of suitable habitat for burrowing owl nesting, and be characterized by minimal human disturbance and access. Relative cover of non-native plants within the proposed relocation sites shall not exceed the relative cover of non-native plants in the adjacent habitats;
  - d. Provide detailed methods and guidance for passive relocation of burrowing owls occurring within the Project Disturbance Area; and
4. Acquire Compensatory Mitigation Lands for Burrowing Owls. The following measures for compensatory mitigation shall apply only if burrowing owls that are detected within the Project Disturbance Area. The Project owner shall acquire, in fee or in easement, 19.5 acres of land for each burrowing owl that is displaced by construction of the Project. This compensation acreage of 19.5 acres per single bird or pair of nesting owls assumes that there is no evidence that the compensation lands are occupied by burrowing owls. If burrowing owls are observed to occupy the compensation lands, then only 9.75 acres per single bird or pair is required, per CDFG (1995) guidelines. If the compensation lands are contiguous to currently occupied habitat, then the replacement ratio will be 13.0 acres per pair or single bird. The Project owner shall provide funding for the enhancement and long-term management of these compensation lands. The acquisition and management of the compensation lands may be delegated by written agreement to CDFG or to a third party, such as a non-governmental organization dedicated to habitat conservation, subject to approval by the CPM, in consultation with CDFG and USFWS prior to land acquisition or management activities. Additional funds shall be based on the adjusted market value of compensation lands at the time of construction to acquire and manage habitat. In lieu of acquiring lands

itself, the Project owner may satisfy the requirements of this condition by depositing funds into the Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF), as described in Section 3.i. of Condition of Certification BIO-17.

- a. Criteria for Burrowing Owl Mitigation Lands. The terms and conditions of this acquisition or easement shall be as described in Paragraph 1 of Condition of Certification BIO-17 [Desert Tortoise Compensatory Mitigation], with the additional criteria to include: 1) the mitigation land must provide suitable habitat for burrowing owls, and 2) the acquisition lands must either currently support burrowing owls or be within dispersal distance from an active burrowing owl nesting territory (generally approximately 5 miles). The burrowing owl mitigation lands may be included with the desert tortoise mitigation lands ONLY if these two burrowing owl criteria are met. If the burrowing owl mitigation land is separate from the acquisition required for desert tortoise compensation lands, the Project owner shall fulfill the requirements described below in this condition.
  
- b. Security. If burrowing owl mitigation land is separate from the acreage required for desert tortoise compensation lands the Project owner or an approved third party shall complete acquisition of the proposed compensation lands prior to initiating ground-disturbing Project activities. Alternatively, financial assurance can be provided by the Project owner to the CPM with copies of the document(s) to CDFG, BLM and the USFWS, to guarantee that an adequate level of funding is available to implement the mitigation measure described in this condition. These funds shall be used solely for implementation of the measures associated with the Project. Financial assurance can be provided to the CPM in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security") prior to initiating ground-disturbing Project activities. Prior to submittal to the CPM, the Security shall be approved by the CPM, in consultation with CDFG, BLM and the USFWS to ensure funding. The estimated costs of enhancement and endowment shall be based upon land acquisition and management costs as discussed in Condition of Certification BIO-17 and shall include all associated costs as described in that Condition. See Revised Biological Resources Tables 5 and 7. ~~(see subsection C.2.4.2, Desert Tortoise, for a discussion of the assumptions used in calculating the Security, which are based on an estimate of \$3501.23 per acre to fund acquisition, enhancement, and long-term management).~~ This amount may be revised by the CPM in consultation with DFG, BLM and USFWS, based on further analysis of long-term management and maintenance costs. The



final amount due will be determined by the PAR analysis conducted pursuant to Condition of Certification BIO-17.

**Verification:** If pre-construction surveys detect burrowing owls within 500 feet of proposed construction activities, the Designated Biologist shall provide to the CPM, BLM, CDFG and USFWS documentation indicating that non-disturbance buffer fencing has been installed at least 10 days prior to the start of any construction-related ground disturbance activities. The Project owner shall report monthly to the CPM, CDFG, BLM and USFWS for the duration of construction on the implementation of burrowing owl avoidance and minimization measures. Within 30 days after completion of construction the Project owner shall provide to the CPM, BLM, CDFG and USFWS a written construction termination report identifying how mitigation measures described in the plan have been completed.

If pre-construction surveys detect burrowing owls within the Project Disturbance Area, the Project owner shall notify the CPM, BLM, CDFG and USFWS no less than 10 days of completing the surveys that a relocation of owls is necessary. The Project owner shall do all of the following if relocation of one or more burrowing owls is required:

- a. Within 30 days of completion of the burrowing owl pre-construction surveys, submit to the CPM, CDFG and USFWS a Burrowing Owl Relocation and Mitigation Plan.
- b. No less than 90 days prior to acquisition of the burrowing owl compensation lands, the Project owner, or an approved third party, shall submit a formal acquisition proposal to the CPM, CDFG, and USFWS describing the 39-acre parcel intended for purchase. At the same time the Project owner shall submit a PAR or PAR-like analysis for the parcels for review and approval by the CPM, CDFG and USFWS.
- c. Within 90 days of the land or easement purchase, as determined by the date on the title, the Project owner shall provide the CPM with a management plan for review and approval, in consultation with CDFG, BLM and USFWS, for the compensation lands and associated funds.
- d. No later than 30 days prior to the start of construction-related ground disturbing activities, the Project owner shall provide written verification of Security in accordance with this condition of certification.
- e. No later than 18 months after the start of construction-related ground disturbance activities, the Project owner shall provide written verification to the CPM, BLM, CDFG and USFWS that the compensation lands or conservation easements have been acquired and recorded in favor of the approved recipient.
- f. On January 31st of each year following construction for a period of five years, the Designated Biologist shall provide a report to the CPM, USFWS, BLM and CDFG that describes the results of monitoring and management of the burrowing owl relocation area. The annual report shall provide an assessment of the status of the relocation area with respect to burrow function and weed infestation, and shall

include recommendations for actions the following year for maintaining the burrows as functional burrowing owl nesting sites and minimizing the occurrence of weeds.

## **STREAMBED IMPACT MINIMIZATION AND COMPENSATION MEASURES**

**BIO-26** The project owner shall implement the following measures to avoid, minimize and mitigate for direct and indirect impacts to jurisdictional waters of the State and to satisfy requirements of California Fish and Game Code sections 1600 and 1607. Throughout this condition, “jurisdictional” refers to streambeds or acreages of streambed meeting CDFG criteria as waters of the State.

### **Section A: Acquire Off-Site State Waters.**

The project owner shall acquire, in fee or in easement, a parcel or parcels of land that includes no fewer than 288.8 acres of State jurisdictional waters. At least 9.9 acres must contain microphyll woodland. Prior to construction the applicant shall map the vegetation with emphasis on desert wash, including microphyll woodland, communities within the drainages subject to project disturbance and provide a map to the CPM, CDFG and BLM. Impacts to 3.3 acres of catclaw acacia or smoke tree habitat lost will be mitigated at a minimum 3:1 ratio. The parcel or parcels comprising the 288.8 acres of ephemeral washes shall include the same types of vegetation as mapped in the project footprint.

This compensation acreage may be included (“nested”) within the acreage acquired and managed as desert tortoise habitat compensation (Condition of Certification **BIO-17**) only if:

- Adequate acreage of qualifying state-jurisdictional streambed delineated within the desert tortoise compensation lands;
- The desert tortoise habitat compensation lands are acquired and dedicated as permanent conservation lands within 18 months of the start of project construction.

If these two criteria are not met, then the project owner shall provide no fewer than 288.8 acres of state-jurisdictional streambed compensation lands independent of any compensation land required under other conditions of certification (adjusted to reflect the final project footprint and expert’s delineation of streambed on the compensation lands), and shall also provide funding for the initial improvement and long-term maintenance and management of the acquired lands, and to comply with other related requirements this condition. Costs of these requirements cannot be estimated in advance because jurisdictional streambed would make up only a small portion of any acquired parcel and might vary widely among available parcels. In general, however shall be based upon land acquisition and management costs as discussed in Condition of Certification **BIO-17** and shall include all associated costs as described in that Condition. ~~staff anticipates that total costs would include per-acre cost of the land itself at approximately \$1,000, pre-acquisition liability surveys, appraisal fees, and other transaction costs, appraisal fees at \$3,000 per parcel, \$250 per acre for initial habitat improvement, BLM internal costs for transfer of land, and \$1,450 per acre for~~

long-term management, and (if applicable) NFWF management fees. This amount may be revised by the CPM in consultation with DFG, BLM and USFWS, based on further analysis of long-term management and maintenance costs. See **Revised Biological Resources Tables 5 and 7.**

The terms and conditions of this acquisition or easement shall be as described in Condition of Certification **BIO-17**. Mitigation for impacts to State waters shall occur within the surrounding watersheds, as close to the project site as possible.

The project owner may elect to comply with the requirements in this condition for acquisition of compensation lands, initial protection and habitat improvement on the compensation lands, or long-term maintenance and management of the compensation lands by funding, or any combination of these three requirements, by providing funds to implement those measures into the Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF). To use this option, the Project owner must make an initial deposit to the REAT Account in an amount equal to the estimated costs of implementing the requirement. If the actual cost of the acquisition, initial protection and habitat improvements, or long-term funding is more than the estimated amount initially paid by the project owner, the project owner shall make an additional deposit into the REAT Account sufficient to cover the actual acquisition costs, the actual costs of initial protection and habitat improvement on the compensation lands, or the long-term funding requirements as established in an approved PAR or PAR-like analysis. If those actual costs or PAR projections are less than the amount initially transferred by the applicant, the remaining balance shall be returned to the project owner.

The responsibility for acquisition of compensation lands may be delegated to a third party other than NFWF, such as a non-governmental organization supportive of desert habitat conservation, by written agreement of the Energy Commission. Such delegation shall be subject to approval by the CPM, in consultation with CDFG, BLM and USFWS, prior to land acquisition, enhancement or management activities. Agreements to delegate land acquisition to an approved third party, or to manage compensation lands, shall be executed and implemented within 18 months of the Energy Commission's certification of the project.

Management Plan for Acquired Lands: The project owner shall prepare and submit to Energy Commission CPM and CDFG a draft Management Plan that reflects site-specific enhancement measures for the drainages on the acquired compensation lands. The objective of the Management Plan shall be to enhance the wildlife value of the drainages, and may include enhancement actions such as weed control, fencing to exclude livestock, or erosion control. Where applicable, the management plan should be integrated with desert tortoise compensation land habitat management planning requirements as described in **BIO-17**.

**Section B: On-site Measures:**

1. Copies of Requirements, Stop Work Authority: The project owner shall provide a copy of the Streambed Impact Minimization and Compensation Measures to all contractors, subcontractors, and the applicant's project supervisors. Copies shall be readily available at work sites at all times during periods of active work and must be presented to any CDFG personnel or personnel from another agency upon demand. The CPM reserves the right to issue a stop work order after giving notice to the project owner, if the CPM, in consultation with CDFG, determines that the project owner is not in compliance with any of the requirements of this condition, including but not limited to the existence of any of the following:
  - a. The information provided by the applicant regarding streambed alteration is incomplete or inaccurate;
  - b. New information becomes available that was not known to the Energy Commission at the time of project certification; or
  - c. The project or project activities as described in the Supplemental Staff Assessment/ Final Environmental Impact Statement have changed.
2. Best Management Practices: The project owner shall comply with the following conditions to protect drainages near the Project Disturbance Area:
  - a. The project owner shall not operate vehicles or equipment in ponded or flowing water except as described in this condition.
  - b. With the exception of the retention basins and drainage control system installed for the project the installation of bridges, culverts, or other structures shall be such that water flow (velocity and low flow channel width) is not impaired. Bottoms of temporary culverts shall be placed at or below stream channel grade.
  - c. When any activity requires moving of equipment across a flowing drainage, such operations shall be conducted without substantially increasing stream turbidity.
  - d. Vehicles driven across ephemeral drainages when water is present shall be completely clean of petroleum residue and water levels shall be below the vehicles' axels.
  - e. The project owner shall minimize road building, construction activities and vegetation clearing within ephemeral drainages to the extent feasible.
  - f. The project owner shall not allow water containing mud, silt, or other pollutants from grading, aggregate washing, or other activities to enter ephemeral drainages or be placed in locations that may be subjected to high storm flows.

- g. The project owner shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws, and it shall be the responsibility of the project owner to ensure compliance.
  - h. Spoil sites shall not be located at least 30 feet from the boundaries and drainages or in locations that may be subjected to high storm flows, where spoils might be washed back into drainages.
  - i. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances that could be hazardous to vegetation or wildlife resources, resulting from project-related activities, shall be prevented from contaminating the soil and/or entering waters of the State. These materials, placed within or where they may enter a drainage by the project owner or any party working under contract or with the permission of the project owner, shall be removed immediately.
  - j. No broken concrete, debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into, or placed where it may be washed by rainfall or runoff into, waters of the State.
  - k. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any drainage.
  - l. No equipment maintenance shall occur within 150 feet of any ephemeral drainage where petroleum products or other pollutants from the equipment may enter these areas under any flow.
  - m. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to a drainage shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak. Clean up equipment such as booms, absorbent pads, and skimmers, shall be on site prior to the start of construction.
  - n. The cleanup of all spills shall begin immediately. The CDFG, BLM Wildlife Biologist, and CPM shall be notified immediately by the project owner of any spills and shall be consulted regarding clean-up procedures.
3. Non-Native Vegetation Removal. The owner shall remove any non-native vegetation (Consistent with the Weed Management Plan, see Condition of Certification **BIO-11**) from any on-site portion of any drainage that requires the placement of a bridge, culvert or other structure. Removal shall be done at least twice annually (Spring/Summer) throughout the life of the Project.

4. Reporting of Special-Status Species: If any special-status species are observed on or in proximity to the project site, or during project surveys, the project owner shall submit California Natural Diversity Data Base (CNDDDB) forms and maps to the CNDDDB within five working days of the sightings and provide the regional CDFG office with copies of the CNDDDB forms and survey maps. The CNDDDB form is available online at: [www.dfg.ca.gov/whdab/pdfs/natspec.pdf](http://www.dfg.ca.gov/whdab/pdfs/natspec.pdf). This information shall be mailed within five days to: California Department of Fish and Game, Natural Diversity Data Base, 1807 13th Street, Suite 202, Sacramento, CA 95814, (916) 324-3812. A copy of this information shall also be mailed within five days to CDFG, BLM Wildlife Biologist, and the CPM.
5. Notification: Prior to any activities that cross or have the potential to impact any jurisdictional drainage, the project owner shall provide a detailed map to the CDFG, BLM Wildlife Biologist, and CPM in a GIS format that identifies all potential crossings of jurisdictional habitats including retention basins, detention basins, reconfigured channels and culverts. The maps shall identify the type of crossing proposed by the owner such as bridges, culverts, or other mechanism and the best management practices that would be employed. The project owner shall notify the CPM, BLM Wildlife Biologist, and CDFG, in writing, at least five days prior to initiation of project activities in jurisdictional areas and at least five days prior to completion of project activities in jurisdictional areas. The project owner shall notify the CPM, BLM Wildlife Biologist, and CDFG of any change of conditions to the project, the jurisdictional impacts, or the mitigation efforts, if the conditions at the site of the proposed project change in a manner which changes risk to biological resources that may be substantially adversely affected by the proposed project. The notifying report shall be provided to the CPM, BLM Wildlife Biologist, and CDFG no later than 7 days after the change of conditions is identified. As used here, change of condition refers to the process, procedures, and methods of operation of a project; the biological and physical characteristics of a project area; or the laws or regulations pertinent to the project, as described below. A copy of the notifying change of conditions report shall be included in the annual reports.
  - a. Biological Conditions: a change in biological conditions includes, but is not limited to, the following: 1) the presence of biological resources within or adjacent to the project area, whether native or non-native, not previously known to occur in the area; or 2) the presence of biological resources within or adjacent to the project area, whether native or non-native, the status of which has changed to endangered, rare, or threatened, as defined in section 15380 of Title 14 of the California Code of Regulations.
  - b. Physical Conditions: a change in physical conditions includes, but is not limited to, the following: 1) a change in the morphology of a river, stream, or lake, such as the lowering of a bed or scouring of a bank, or

changes in stream form and configuration caused by storm events; 2) the movement of a river or stream channel to a different location; 3) a reduction of or other change in vegetation on the bed, channel, or bank of a drainage, or 4) changes to the hydrologic regime such as fluctuations in the timing or volume of water flows in a river or stream.

- c. Legal Conditions: a change in legal conditions includes, but is not limited to, a change in Regulations, Statutory Law, a Judicial or Court decision, or the listing of a species, the status of which has changed to endangered, rare, or threatened, as defined in section 15380 of Title 14 of the California Code of Regulations.

**Verification**: No fewer than 30 days prior to the start of any site or related facilities mobilization activities, the project owner shall implement the mitigation measures described in this condition. No fewer than 30 days prior to the start of work potentially affecting waters of the State, the project owner shall provide written verification (i.e., through incorporation into the BRMIMP) to the CPM and BLM Wildlife Biologist that the above best management practices will be implemented and provide a discussion of work in waters of the State in Compliance Reports for the duration of the project.

Within 30 days after completion of the first year of project construction, the project owner shall provide to the CPM for review and approval a report identifying that appropriate mitigation lands have been obtained, verification of the acreage of state jurisdictional streambeds on the compensation lands (to be delineated using methodology identical to the delineation of on-site jurisdictional streambeds), a draft Management Plan for review and approval by the CPM and CDFG, and verification on ongoing enhancement techniques, and a summary of all modifications made to the existing channels on the project site.





**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION**

***For the CALICO SOLAR (Formerly SES Solar One)***

**Docket No. 08-AFC-13**

**PROOF OF SERVICE  
(Revised 8/3/10)**

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DECLARATION OF SERVICE

I, Sabrina Savala, declare that on August 30, 2010, I served and filed copies of the attached Additional Staff Revisions to Calico BIO Conditions for the Proposed Calico Solar Project, dated August 27, 2010. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [[www.energy.ca.gov/sitingcases/solarone](http://www.energy.ca.gov/sitingcases/solarone)].

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

*(Check all that Apply)*

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

**AND**

FOR FILING WITH THE ENERGY COMMISSION:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

**OR**

- depositing in the mail an original and 12 paper copies, as follows:

**CALIFORNIA ENERGY COMMISSION**

Attn: Docket No. 08-AFC-13  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original Signed by: \_\_\_\_\_  
Sabrina Savala