

INFORMATION HANDOUT

**For Contract No. 08-0K3104
At 08-SBd-95-51.2/51.7**

**Identified by
Project ID 0800000340**

PERMITS

California Department of Fish and Wildlife

Incidental Take Permit 2081-2012-052-06

U.S. Fish and Wildlife Service

Biological Assessment and Not Likely to Adversely Affect Letter

U. S. Army Corps of Engineers

Nationwide Permit No. 14

WATER QUALITY

California Regional Water Quality Control Board

Colorado River Basin

AGREEMENTS

California Department of Fish and Wildlife

Streambed Alteration Agreement
Notification No. 1600-2012-0160-R6 Revision 2



State of California –The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

EDMUND G. BROWN, JR., Governor
CHARLTON H. BONHAM, Director



March 12, 2013

Scott Quinnell, Senior Environmental Planner
California Department of Transportation
464 W 4th Street, 6th Floor, MS 822
San Bernardino, CA 92401

Subject: Incidental Take Permit for the Caltrans US 95 Curve Realignment Project (2081-2012-052-06)

Dear Mr. Quinnell:

Enclosed you will find two originals of the incidental take permit for the above referenced Project, which have been signed by the Department. Please read the permit carefully, sign the acknowledgement on both copies of the permit, and return one original **no later than 30 days from Department signature**, and prior to initiation of ground-disturbing activities, to:

Department of Fish and Wildlife
Habitat Conservation Planning Branch, CESA Permitting
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

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

The permit will not take effect until the signed acknowledgement is received by the Department. If you wish to discuss these instructions or have questions regarding the permit, please contact Charles Land, Environmental Scientist, at (760) 200-9418.

Sincerely,

Kimberly Nicol, Regional Manager
Inland Deserts Region
California Department of Fish and Wildlife

Enclosures (2)

Conserving California's Wildlife Since 1870



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

California Endangered Species Act
Incidental Take Permit No. 2081-2012-052-06

Caltrans US-95 Curve Realignment Project

Authority: This California Endangered Species Act (CESA) incidental take permit (ITP) is issued by the Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met (see Cal. Code Regs., tit. 14, § 783.4).

Permittee: California Department of Transportation (Caltrans)
Principal Officer: Scott Quinnell, Senior Environmental Planner, Caltrans District 8/Riverside and San Bernardino Counties
Contact Person: Josh Jaffery, (909) 383-6386
Mailing Address: 464 West 4th Street
San Bernardino, CA 92401

Effective Date and Expiration Date of this ITP:

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **December 31, 2015**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 6.7 of this ITP.

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

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

Project Location:

The Caltrans US-95 Curve Realignment Project (Project) is on United States Route 95 (US-95) about 5.5 miles south of Interstate Route 40 (I-40) and 41.5 miles north of California Route 62 in San Bernardino County (see Figure 1). The Project is within a zone of intergradation between the Sonoran and Mojave deserts. The project is located at 34° 44' 55.25" North; 114° 36' 2.17" West in Township 8 North, Range 23 East, Section 32 as shown on the United States Geological Survey (USGS) 7.5 minute Whale Mountain Topographic map. The project is located between Post Mile (PM) 51.22 to PM 51.65 along US-95 within the area defined in the Project Impact Area Map included as Figure 2. The project is located approximately 2.5 miles west of the Colorado River.

Project Description:

The Project (Figure 2) includes the realignment of US-95 from Post Mile (PM) 51.22 to 51.65 in order to improve sight distance by eliminating crest vertical curves within the project limits. Accident rates on this segment of US-95 are much higher than the average rate for similar facilities. Caltrans is proposing to construct a flatter vertical curve by realigning the highway horizontally to the east as well as providing paved shoulders throughout the project limits to provide more space for motorists to negotiate the curve. The project will permanently impact 2.05 acres for the construction of the new road, temporarily impact 2.04 acres for construction of new road, and temporarily impact 2.55 acres with the removal of the existing road. In total, 2.05 acres of permanent impacts and 4.59 acres of temporary impacts will occur as a result of this project (see below), for a total of 6.64 acres of impacts. The project includes new road construction, removal of the existing road, erosion control and revegetation of impacted areas. The project will consist of creating a new road which will replace the current road traversing the curve. The new road will consist of two 12-foot hot mix asphalt (HMA) lanes with two 8-foot HMA shoulders and restriping the centerline for no passing from PM 51.22 to 51.65. The new road will run leveled to the limits of construction, to reduce the current grade. Engineering plans have the new road at a lower level, through the middle portion of the project limits, than the current road. To accomplish a lower level road, work crews must cut and remove a hill that lies adjacent to the east of the current road. After the new road has been created, the old road will be eliminated. All removed material not used as fill will be trucked out and disposed off-site as per Caltrans Best Management Practices (BMPs). No borrow pits will be created because no other fill material will be imported. The earth surface beneath the new road will be prepared by compaction prior to asphalt overlay. The new road will follow the contours of existing streambeds to allow waters to flow over it through existing channels during rainfall events. During construction, graded areas will have topsoil removed and stockpiled. Existing vegetation will be removed and crushed. After construction is completed, stockpiled soil and crushed vegetation (duff) will be spread back on to exposed areas to form natural mulch with a native seed bank. After the replacement of stockpiled soil and crushed vegetation is performed, additional erosion control and revegetation actions will be implemented (Figures 3a-3b). Erosion control/revegetation will consist of replacement of stockpiled topsoil, replacement of duff, hydroseeding,

Incidental Take Permit
No. 2081-2012-052-06
CALIFORNIA DEPARTMENT OF TRANSPORTATION
CALTRANS US-95 CURVE REALIGNMENT PROJECT

application of a rolled erosion control blanket, planting, irrigation and invasive species control. The project is estimated to start on approximately August 1, 2013 and be completed by August 1, 2015. The project is expected to require approximately 365 work-days to complete within that period.

Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

Name	CESA Status
1. Desert tortoise (<i>Gopherus agassizii</i>)	Threatened ³

This species and only this species is the “Covered Species” for the purposes of this ITP.

Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include clearing and grading, fence installation, earthmoving and backfilling, road construction, cleanup, restoration activities, and other activities described in the Project Description Section of this ITP (Covered Activities).

Incidental take in the form of mortality (“kill”) of individuals of the Covered Species may occur as a result of Covered Activities such as: habitat removal, degradation and alteration, increased construction vehicle traffic, and increased human presence in the Project area. Direct impacts on desert tortoises due to construction may include: loss or displacement of individuals, disturbance to burrows, and removal and/or damage of vegetation comprising suitable habitat. Individuals could be injured or lost due to direct impacts such as collisions with vehicles or other construction equipment. Desert tortoises may void their bladders during interactions with Project personnel or equipment, causing a loss of critical water stores that could lead to mortality by dehydration.

Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species by corralling the Covered Species into a confined area when barrier fencing is constructed. Take as defined by state law could occur within the project area (Figure 2) and immediate surrounding area.

The Project is expected to cause the permanent loss of 2.05 acres and temporary loss of 4.59 acres of habitat for the Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project’s incremental contribution to cumulative

³See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(4)(A).

impacts (indirect impacts). These impacts to the Covered Species include: stress from noise and vibrations from vehicles, earth-moving and other heavy equipment; long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

Incidental Take Authorization of Covered Species:

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

Conditions of Approval:

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

1. **Legal Compliance:** Permittee shall comply with all applicable state, federal, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Mitigated Negative Declaration and Initial Study (SCH No.: 2011111051) adopted for the Project by the lead agency, California Department of Transportation, District 8, pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), on February 1, 2012.
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA)(Notification No. 1600-2012-0160-R6) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the Conditions of Approval of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.

5. General Provisions:

- 5.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
- 5.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collection and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
- 5.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.
- 5.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.

- 5.5. Construction Monitoring Notebook. The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.
- 5.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in closed (animal-proof) containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 5.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.
- 5.8. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as mono-filament netting (erosion control matting) or similar material, in potential Covered Species habitat.
- 5.9. Firearms and Dogs. Permittee shall prohibit firearms and domestic dogs from the Project Area and site access routes during Covered Activities except those in the possession of authorized security personnel or local, state, or federal law enforcement officials.
- 5.10. Delineation of Project Boundaries. Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes or flags. Permittee shall restrict all Covered Activities to within the fenced, staked or flagged areas. Permittee shall maintain all fencing, stakes and flags until the completion of Covered Activities in that area.
- 5.11. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 5.12. Project Access. Project-related personnel shall access the Project Area using existing routes, and shall not cross Covered Species' habitat outside of or en route to the

Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP if additional take of Covered Species will occur as a result of the Project modification.

5.13. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 5.12 of this ITP.

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

5.15. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.

5.16. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

6. Monitoring, Notification and Reporting Provisions:

6.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.

6.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated

failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.

- 6.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Designated Biologist shall conduct compliance inspections a minimum of once a week during periods of inactivity and after clearing, grubbing, and grading are completed.
- 6.4. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 6.3 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to CDFW's Regional Office at the office listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative. At the time of this ITP's approval, the CDFW Regional Representative is Charley Land (Charles.Land@wildlife.ca.gov). CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.
- 6.5. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than March 1 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 6.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other

Project impacts on the Covered Species.

- 6.6. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 6.7. Final Mitigation Report. No later than 90 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information. Permittee's obligations pursuant to this ITP do not end until CDFW accepts the Final Mitigation Report as complete.
- 6.8. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related Activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (909) 484-0459. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

7. Take Minimization Measures:

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

- 7.1. Pre-Construction Surveys. No more than 30 days prior to Covered Activities, the Designated Biologist shall conduct pre-construction surveys for Covered Species. These surveys shall cover 100 percent of the Project Area and an additional 50-foot

buffer zone. The Designated Biologist shall follow the survey methodology in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise Field Manual. The Designated Biologist shall flag all potential burrows within this area and avoid these burrows to the maximum extent possible during Project activities. Within 30 days of performing the pre-construction surveys, the Designated Biologist shall submit a report to CDFW documenting results (using the USFWS Protocol data sheet). Permittee shall also include the survey results in the ASR.

- 7.2. Temporary Fencing. With the Designated Biologist present and prior to ground-disturbing activities, Permittee shall install temporary desert tortoise exclusionary fencing around any active construction area, lay down area, and storage area (whether on-site or off-site), prior to the on-set of vegetation removal, or any other project related activities for any construction activities that require overnight work or disturbance of desert tortoise habitat.
- 7.3. Vehicle Inspection. Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall wait for the Covered Species to move unimpeded to a safe location.
- 7.4. Minimization of Vegetation Removal. Permittee shall minimize vegetation removal associated with construction activities to the fullest extent possible. The Designated Biologist shall review and approve or deny any grubbing or clearing of vegetation.
- 7.5. Clearance Survey. No more than 48 hours prior to start of ground disturbance activities, the Designated Biologist shall resurvey the Project Area and access route for Covered Species. Survey results may be combined with pre-construction survey results report. Permittee shall also include the survey results in the ASR.
- 7.6. Covered Species Observations. All personnel on the Project site shall immediately report all encounters with the Covered Species to the Designated Biologist. If a Covered Species is identified during Project activities, the Permittee shall immediately stop all work in the area and the Designated Biologist shall allow it to escape unimpeded. Permittee shall not resume work until the Designated Biologist has determined that the animal has moved outside the Project Area on its own. The Designated Representative shall immediately, or no later than noon on the next business day, notify CDFW of any Covered Species observations. Notification to CDFW shall be via telephone and e-mail, followed by a written report. Notification and the written report shall include the ITP number, date, location, and circumstances of the observation and the name of the Designated Biologist.
- 7.7. Ambient Air Temperature. The Designated Biologist shall ensure that desert tortoises are not captured, moved, transported, released, or purposefully caused to leave their burrow for any reason when the ambient air temperature is above 95 degrees Fahrenheit (35 degrees Celsius).

- 7.8. Trench Inspection. The Designated Biologist shall inspect all open holes and trenches within the Project Area at the beginning, middle, and end of each day for trapped animals. To prevent inadvertent entrapment of Covered Species or any other animals, the Designated Biologist shall oversee the covering of all excavated, steep-walled holes or trenches more than two feet deep, or of any depth if they contain water or other material at the close of each working day by plywood or other barrier materials such that animals are unable to enter and become entrapped. Permittee shall provide escape ramps in holes greater than two feet deep that do not hold water or other material to allow animals to escape. Before holes or trenches are filled, the Designated Biologist shall thoroughly inspect them for trapped animals. If any worker discovers that Covered Species have become trapped, they shall halt Project-related activities and notify the Designated Biologist immediately. Project workers and the Designated Biologist shall allow the Covered Species to escape unimpeded. If the animal is unable to escape, CDFW must be contacted immediately. Any other animal would need to be removed by the Permittee as long as it is not a listed species. The use of temporary fencing, as indicated in Condition of Approval 7.2, around the perimeter of trenches or holes is an acceptable minimization measure.
- 7.9. Covered Species Observation Records. The Designated Biologist shall maintain a record of all Covered Species observed. This information shall include the following for each desert tortoise: (1) the locations (using GPS technology) and dates of observation; (2) the general condition and health, including injuries, state of healing, and whether the desert tortoise voided its bladder; (3) diagnostic markings observed (i.e., identification numbers or marked lateral scutes); (4) ambient temperature at location when and where it was observed; and (5) digital photographs of each observed desert tortoise. The Designated Representative or Biologist shall record the information detailed above in the daily observation and inspection records for inclusion in the Construction Compliance Report as directed in Condition of Approval 6.3 above.
- 7.10. Care of Injured Covered Species. If a Covered Species is injured or killed as a result of Project-related activities or if a Covered Species is otherwise found dead within the Project Area, Permittee shall immediately notify the Designated Biologist as described in Condition of Approval 6.8. The Designated Biologist shall immediately take injured individuals to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility prior to the start of Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species.
- 7.11. Vehicular Traffic Restrictions. Permittee shall restrict Project-related vehicle traffic to established roads and the delineated Project Area; cross-country (off-road) vehicle travel is prohibited and signs shall be posted to this affect during maintenance activities. If a Covered Species is encountered, drivers shall stop, wait for the Covered Species to move off the road, and immediately notify the Designated Biologist of the Covered Species location.

7.12. Emergency Activities. For emergency situations involving a leak or spill or any other immediate safety hazard, Permittee will notify CDFW Regional Office within 48 hours. As a part of this emergency response, CDFW may require specific measures to protect listed species. Following completion of emergency work, CDFW also may require additional measures to facilitate recovery of damaged habitat(s).

8. Habitat Management Land Acquisition:

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

To meet this requirement, the Permittee shall provide for the permanent protection and management of 19.92 acres of Habitat Management (HM) lands by completing the transfer of fee title to a CDFW-approved public agency or the recordation of a conservation easement pursuant to Government Code section 65965, and calculation and deposit of the management funds (Condition of Approval 8.3). HM lands will contain a minimum of 0.39 acres of streambed habitat. Permanent protection and perpetual management of compensatory habitat must be complete before starting Covered Activities or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 9 below.

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

8.1.1. Land acquisition costs for HM lands identified in Condition of Approval 8.2 below, estimated at \$1,458.00/acre for 19.92 acres: **\$29,043.36**. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;

8.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 8.2.5 below, estimated at \$290.00/Acre for 19.92 acres; **\$5,776.80**;

8.1.3. Interim management period funding as described in Condition of Approval 8.2.6 below, estimated at \$1,490.00/acre for 19.92 acres; **\$29,680.80**;

8.1.4. Long-term management funding as described in Condition of Approval 8.3 below, estimated at \$1,490.00/acre for 19.92 acres plus a ten percent

contingency fee as described in Condition of Approval 8.3.2.1: **\$32,648.88**. The long-term management endowment fund is estimated initially for the purpose of providing Security to ensure implementation of HM land management;

8.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM Lands to CDFW as described in Condition of Approval 8.4, estimated at **\$3,000.00**.

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

8.2.1. Fee Title/Conservation Easement. Transfer fee title to the HM lands to CDFW pursuant to terms approved by CDFW. Alternatively, CDFW in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity or person meets the requirements of Government Code sections 65965-65968, as amended. If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW does not hold the conservation easement, CDFW shall be expressly named as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation;

8.2.2. HM Lands Approval. Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, a formal Proposed Lands for Acquisition Form (see Attachment 2B) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;

8.2.3. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;

- 8.2.4. Land Manager. Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified;
- 8.2.5. Start-up Activities. Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see <http://www.wildlife.ca.gov/habcon/conplan/mitbank/>); (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;
- 8.2.6. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM Lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management. Permittee shall either (1) provide a security to CDFW for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense; (2) establish an escrow account with written instructions approved in advance in writing by CDFW to pay the land manager annually in advance; or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager.
- 8.3. Endowment Fund. The Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by

establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 8.2.5. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate sections 18501-18510, as amended.

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

- 8.3.1. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code section 65965-65968, as amended, and approved in writing by CDFW in its sole discretion. Permittee shall submit to CDFW a written proposal for an Endowment Manager along with a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). CDFW shall notify Permittee in writing of its approval or disapproval of the proposed Endowment Manager. If CDFW does not approve the proposed Endowment Manager, it shall provide Permittee with a written explanation of the reasons for its disapproval;
- 8.3.2. Calculate the Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Fund Manager.
- 8.3.2.1. Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the PAR and adjust for any additional administrative, periodic, or annual fees.
- 8.3.2.2. Endowment Buffers/Assumptions. Permittee shall include in PAR assumptions the following buffers for endowment establishment and use

that will substantially ensure long-term viability and security of the Endowment:

8.3.2.2.1. 10 Percent Contingency. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.

8.3.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.

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

8.3.3. Transfer Long-term Endowment Funds. Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 18501-18510, as amended.

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

9. Performance Security

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

9.1. Security Amount. The Security shall be in the amount of **\$100,149.84**. This amount is based on the cost estimates identified in Condition of Approval 8.1 above;

9.2. Security Form. The Security shall be in the form of an irrevocable letter of credit

(see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel;

- 9.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 180 days after the effective date of this ITP, whichever occurs first;
- 9.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW;
- 9.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other;
- 9.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP;
- 9.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied as evidenced by:
 - Written documentation of the acquisition of the HM lands;
 - Copies of all executed and recorded conservation easements;
 - Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and
 - Timely submission of all required reports.

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

Amendment:

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable law. This ITP may be amended without the concurrence of the Permittee as required by law, including if CDFW determines that continued implementation of the Project as authorized by this ITP would jeopardize the

continued existence of the Covered Species, or where Project changes or changed biological conditions necessitate an ITP amendment to ensure that all Project-related impacts of the taking to the Covered Species are minimized and fully mitigated.

Stop-Work Order:

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 days to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting, monitoring, or habitat acquisition obligations or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to the Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 25 additional days. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

Compliance with Other Laws:

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

Notices:

The Permittee shall deliver a fully executed duplicate original ITP by registered first class mail or overnight delivery to the following address:

Habitat Conservation Planning Branch
California Department of Fish and Wildlife
Attention: CESA Permitting Program
1416 Ninth Street, Suite 1260
Sacramento, CA 95814

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following addresses, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2012-052-06) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Kimberly Nicol, Regional Manager
California Department of Fish and Wildlife
Inland Deserts Region

Incidental Take Permit
No. 2081-2012-052-06
CALIFORNIA DEPARTMENT OF TRANSPORTATION
CALTRANS US-95 CURVE REALIGNMENT PROJECT

3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
Telephone (909) 484-0459
Fax (909) 481-2945

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

Charley Land, Environmental Scientist
California Department of Fish and Wildlife
78078 Country Club Drive, Suite 109
Bermuda Dunes, CA 92203
Telephone (760) 200-9418
Fax (760) 200-9358

Compliance with CEQA:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, California Department of Transportation. (See generally Pub. Resources Code, §§ 21067, 21069.). The lead agency's prior environmental review of the Project is set forth in the United States Route 95 (US-95) Vertical Profile Realignment Project Initial Study with Mitigated Negative Declaration (SCH No. 2011111051) dated January 12, 2012 that the California Department of Transportation certified on February 1, 2012. At the time the lead agency certified the Mitigated Negative Declaration (MND) and approved the Project it also adopted various mitigation measures for the Covered Species described in the MND as conditions of Project approval.

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

Incidental Take Permit
No. 2081-2012-052-06
CALIFORNIA DEPARTMENT OF TRANSPORTATION
CALTRANS US-95 CURVE REALIGNMENT PROJECT

Findings Pursuant to CESA:

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

CDFW finds based on substantial evidence in Permittee's ITP application, the lead agency's MND for the Project, one CDFW site visit and multiple telephone consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 19.92 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;
- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and

(8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

Attachments:

FIGURE 1	Project Vicinity Map
FIGURE 2	Project Map
FIGURE 3a	Erosion Control Diagram (Southern Area)
FIGURE 3b	Erosion Control Diagram (Northern Area)
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2A, 2B	Habitat Management Lands Checklist; Proposed Lands for Acquisition Form
ATTACHMENT 3	Letter of Credit Form
ATTACHMENT 4	Mitigation Payment Transmittal Form

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on March 12, 2013

Chris Hayes for
Kimberly Nicol, Regional Manager
INLAND DESERTS REGION

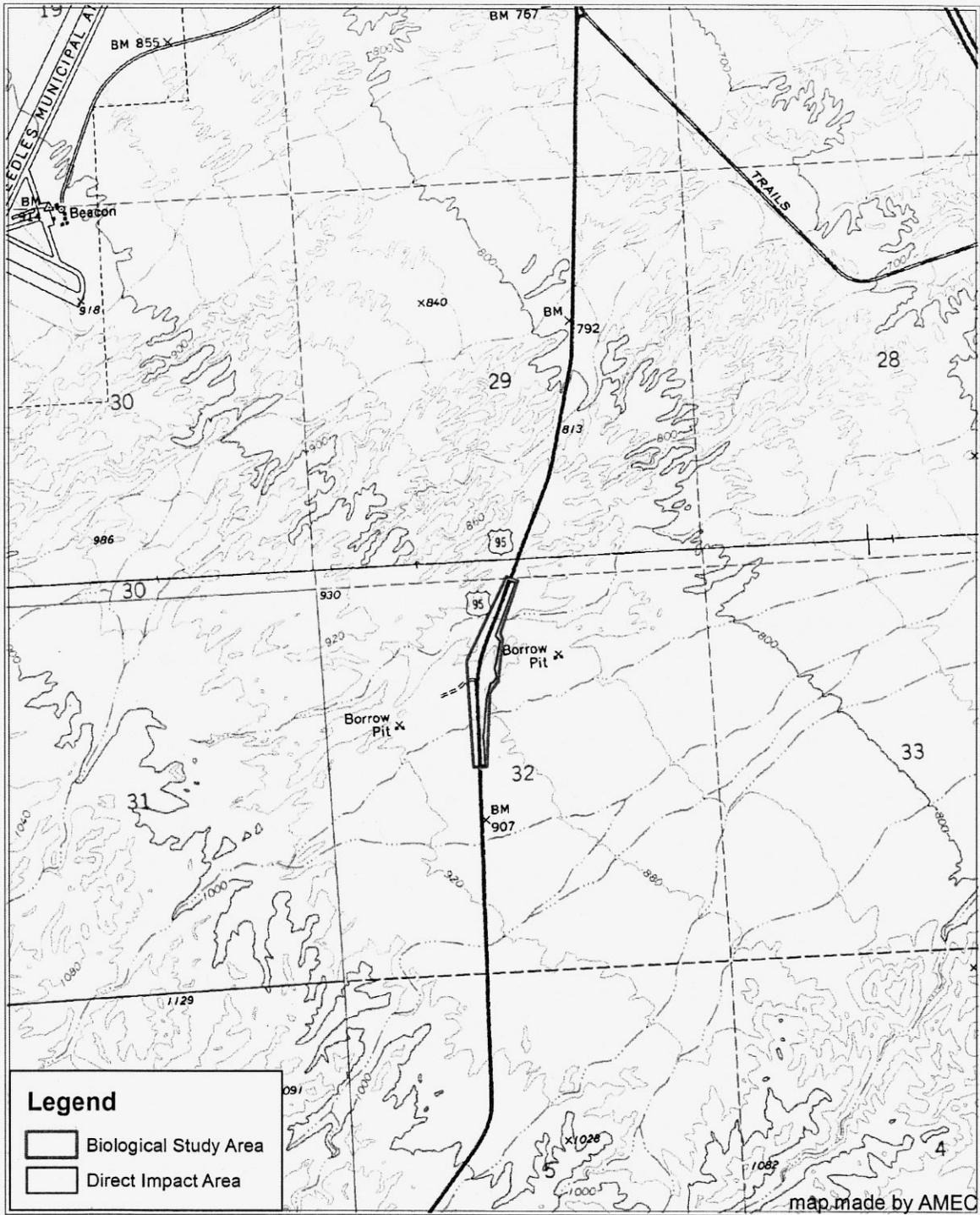
ACKNOWLEDGMENT

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

By: Scott Quinnell Date: 3-13-13

Printed Name: Scott Quinnell Title: Branch Chief/SEP

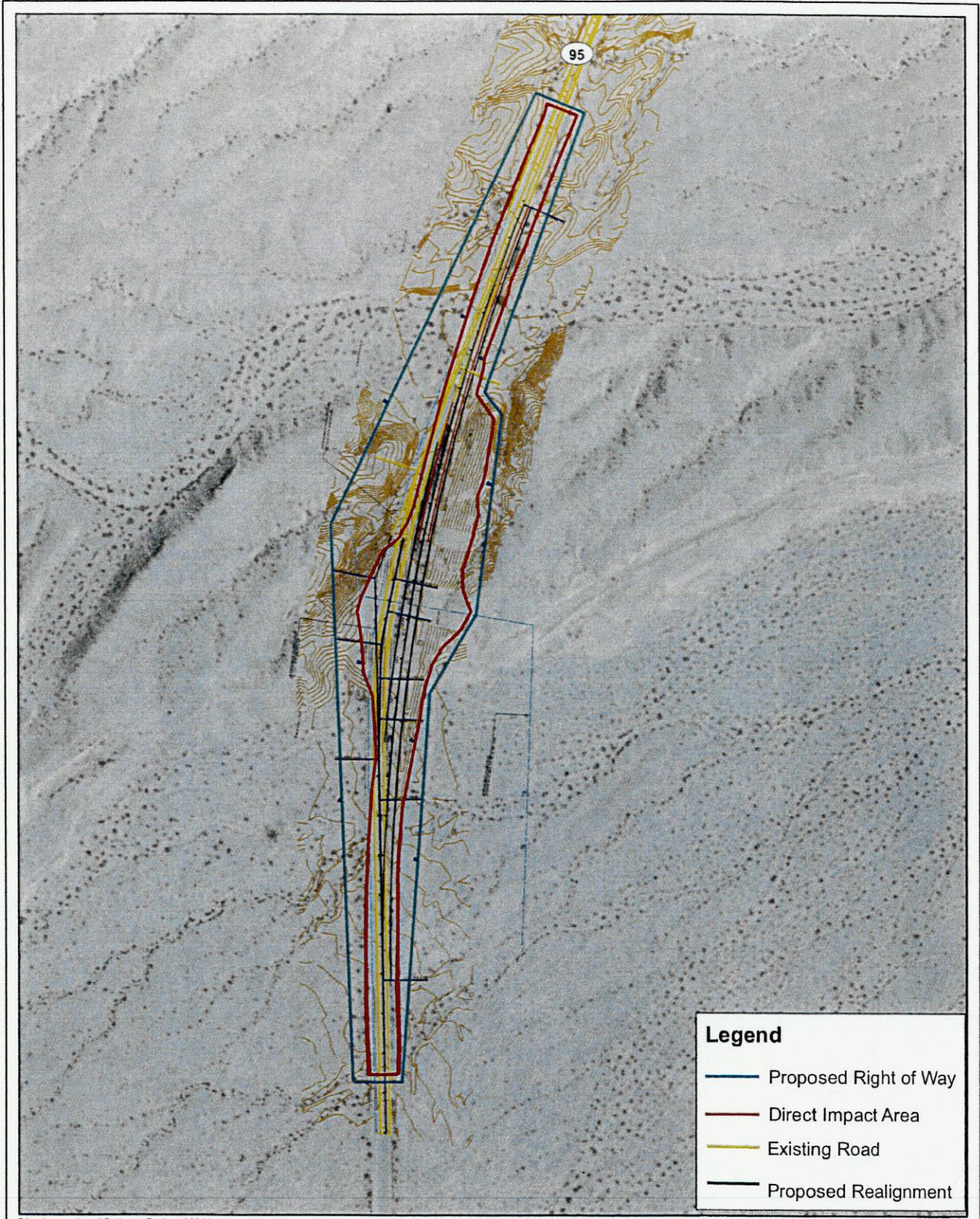
Incidental Take Permit
No. 2081-2012-052-06
CALIFORNIA DEPARTMENT OF TRANSPORTATION
CALTRANS US-95 CURVE REALIGNMENT PROJECT



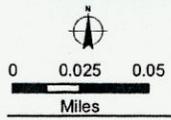
US-95 Curve Realignment
Vicinity Map

FIGURE

1



S:\active projects\Caltrans Projects\2010 - 08A1820 - District #\Task Orders\Task Order No. 29. caltrans-080k.310e.001 & 002.dgn



Project Design
 US-95 Curve Realignment
 California Department of Transportation

FIGURE

2

DATE REVISIONS
 09-05-12 TIME PLOTTED 4:08:28
 08-04-12 TIME PLOTTED 4:08:28
 08-04-12 TIME PLOTTED 4:08:28

DIST COUNTY ROUTE POST MILES SHEET TOTAL
 08 SBG 95 51.2/51.7 1
 TOTAL PROJECT NO. SHEETS 1

PLANS APPROVED 03-05-12
 THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
 DIVISION OF HIGHWAYS
 1000 S ST. SUITE 1000
 SACRAMENTO, CALIFORNIA 95833

DESIGNED BY: CLAUDE
 CHECKED BY: MATEW HALL
 DATE REVISIONS: MATEW HALL

BYRON STROUT
 SENIOR LANDSCAPE ARCHITECT

LANDSCAPE ARCHITECTURE
 1000 S ST. SUITE 1000
 SACRAMENTO, CALIFORNIA 95833

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
 DIVISION OF HIGHWAYS

PROJECT NUMBER & PHASE
 08000003401
 UNIT 2271

SCALE: 1"=50'
 EROSION CONTROL
 EC-1

08000003401

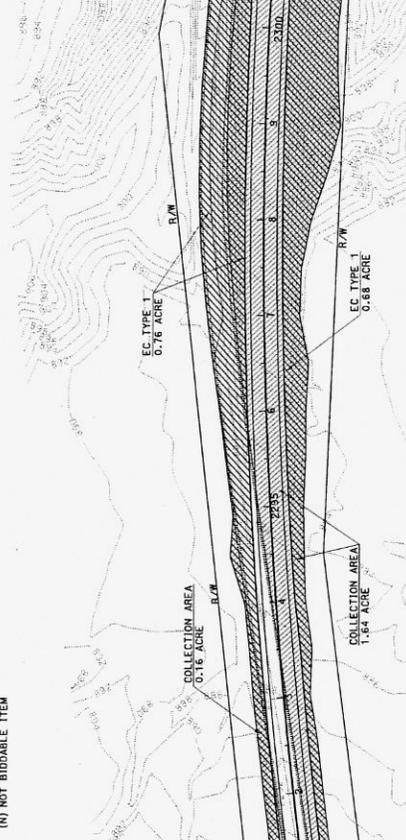
EROSION CONTROL TYPE 1

SEQUENCE	BID ITEM	MATERIAL DESCRIPTION	TYPE	APPLICATION RATE	REMARKS
STEP 1	LOCAL TOPSOIL (N)	UNIFORM THICKNESS	-----	-----	-----
STEP 2	DUFF	DUFF	-----	-----	-----
STEP 3	HYROSEED	TACKIFIER	WOOD	1,200 LB/ACRE	-----
STEP 4	ROLLED EROSION CONTROL PRODUCT (BLANKET)	SEED	BFM	35 LBS/ACRE	-----
STEP 5	PLANT GROUP A	EC BLANKET	A, B, C	-----	COLOR TAN

(N) NOT BIDDABLE ITEM

NOTES:
 1. FOR ACCURATE RIGHT OF WAY DATA, CONTACT RIGHT OF WAY ENGINEERING AT THE DISTRICT OFFICE.
 2. COLLECTION AREA FOR DUFF, AND LOCAL TOPSOIL (2" DEEP).
 3. COLLECTION AREA FOR DUFF & LOCAL TOPSOIL AND SPREADING OF DUFF & LOCAL TOPSOIL WITH PLANTING OVERLAP.
 4. INSTALLATION AREA FOR EROSION CONTROL TYPE 1. PLANTS WILL BE SPOTTED BY ENGINEER ON SITE TO REPRODUCE A NATURAL SEEDING PATTERN. PLANTS SHALL BE SPOTTED TOGETHER IN GROUPS OF 3'S WITH THE SPACING PROVIDED BELOW.

LEGEND:
 [Hatched Box] COLLECTION AREA FOR DUFF, AND LOCAL TOPSOIL (2" DEEP).
 [Dotted Box] COLLECTION AREA FOR DUFF & LOCAL TOPSOIL AND SPREADING OF DUFF & LOCAL TOPSOIL WITH PLANTING OVERLAP.
 [Diagonal Lines] INSTALLATION AREA FOR EROSION CONTROL TYPE 1.



MATCH LINE SEE SHEET EC-2

PLANT LIST AND PLANTING SPECIFICATIONS

PLANT GROUP	PLANT No.	SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	QUANTITY EACH	HOLE SIZE (INCH) Dig DEPTH	BASIN TYPE	IRON SULFATE	SOIL AMEND	COMMERCIAL FERTILIZER	BASIN MULCH (CY)	STAKING	PLANTING LIMITS MINIMUM DISTANCE (FT) FROM CENTER	REMARKS
A	1	[Hatched Box]	ACACIA GREGGII	CATCLAW ACACIA	No. 1	400	①	II	---	---	---	---	---	15 15 15 15 17 12	SHRUB
	2	[Diagonal Lines]	HYMENOCLEA SALSOLA	CHEESEBUSH	No. 1	71	②	II	---	---	---	---	---	12 12 12 12 14 10	SHRUB
	3	[Diagonal Lines]	LARREA TRIDENTATA	CREOSOTE BUSH	No. 1	500	③	II	---	---	---	---	---	17 17 17 17 19 15	SHRUB

APPLICABLE WHEN CIRCLED:
 1 - QUANTITIES SHOWN ARE "PER PLANT" UNLESS NOTED OTHERWISE.
 2 - BASIN MULCH IS INCLUDED WITH MULCH QUANTITIES SHOWN ON PLANTING PLAN.
 ③ - SUFFICIENT TO RECEIVE ROOT BALL AND AMENDMENTS.
 4 - SEE DETAIL.
 5 - SEE SPECIAL PROVISIONS.
 6 - SEE STANDARD SPECIFICATIONS.
 7 - AS SHOWN ON PLANS.
 8 - UNLESS OTHERWISE SHOWN ON PLANS.
 9 - FOLIAGE PROTECTOR REQUIRED.
 10 - ROOT PROTECTOR REQUIRED.
 11 - FOLIAGE PROTECTOR REQUIRED.
 12 - STAKE FURNISHED.

RELATIVE BORDER SCALE
 0 1 2 3
 15 IN. TILES

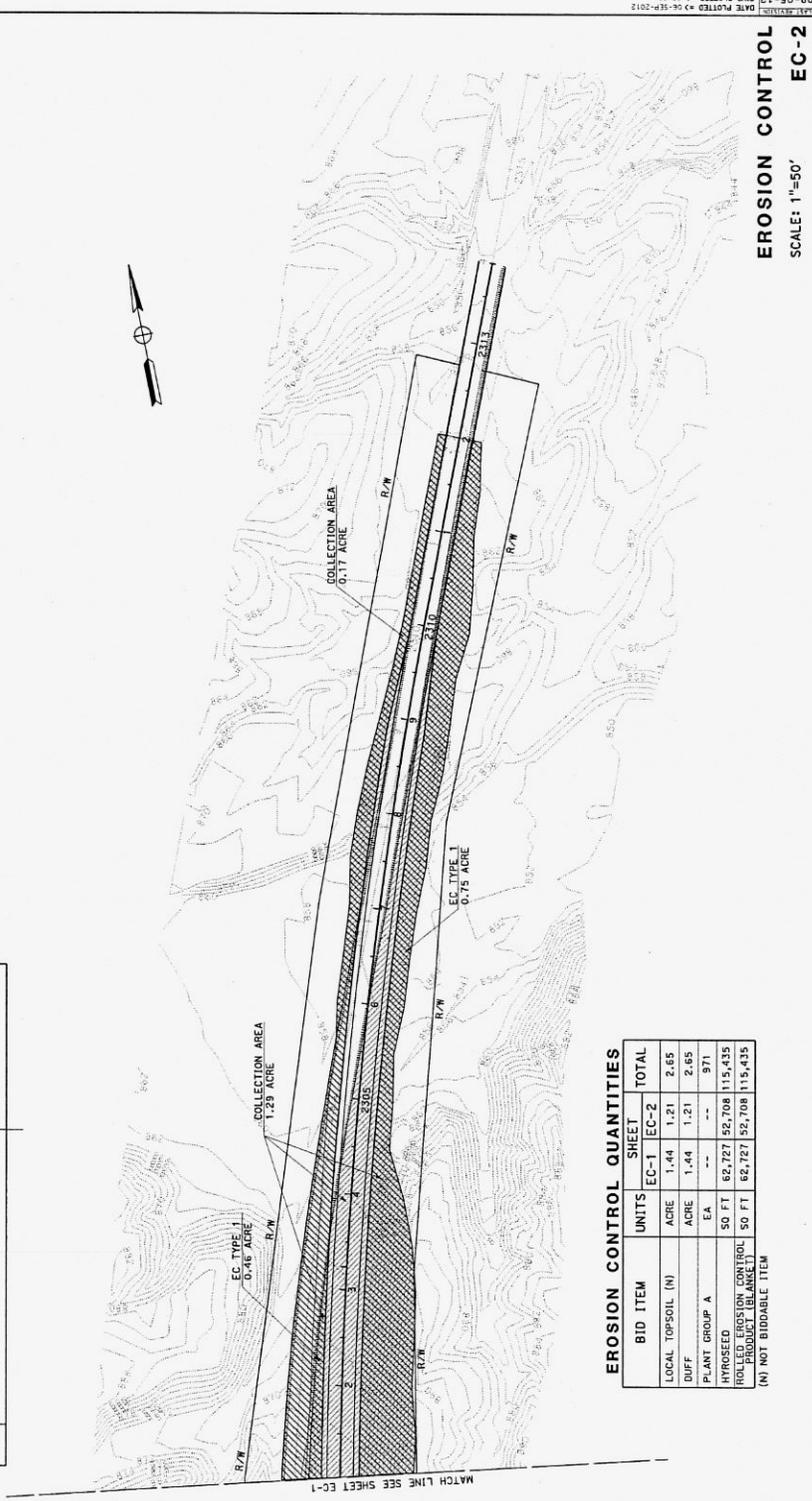
DATE REVISIONS
 09-05-12 TIME PLOTTED 4:08:28
 08-04-12 TIME PLOTTED 4:08:28
 08-04-12 TIME PLOTTED 4:08:28

Figure 3a. Erosion Control Diagram for US-95 Curve Realignment Project (Southern Area).

DIST COUNTY ROUTE 08 SBG 95
 TOTAL PROJECT 51.2/51.7 SHEET TOTAL
 PROJECT NO. 0800003401
 DATE PLOTTED 06-28-2012
 DATE PRINTED 06-28-2012
 9-05-12
 LICENSED LANDSCAPE ARCHITECT
 6-05-12
 THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
 DIVISION OF HIGHWAYS
 CONTRACT NO. 95-12
 SHEET NO. 271 OF 271
 PROJECT NO. 0800003401

SEED MIX

SEED	POTENTIAL NAME (COMMON NAME)	PERCENT GERMINATION (MINIMUM)	POUNDS PURE LIVE SEED PER ACRE (SLOPE MEASUREMENT)
MIX 1	<i>Dactyloctenium aegyptium</i> (Sativgrass)	30	4.00
	<i>Phacelia campanularia</i> (Lobster Tail)	40	2.00
	TOTAL		6.00



EROSION CONTROL QUANTITIES

BID ITEM	UNITS	SHEET		TOTAL
		EC-1	EC-2	
LOCAL TOPSOIL (N)	ACRE	1.44	1.21	2.65
DIFF	ACRE	1.44	1.21	2.65
PLANT GROUP A	EA.	--	--	971
HYROSEED	50 FT	62,727	52,708	115,435
ROLLED EROSION CONTROL PRODUCT (GENSET)	50 FT	62,727	52,708	115,435

(N) NOT BIDDABLE ITEM

EROSION CONTROL
 SCALE: 1"=50'
 EC-2

PROJECT NUMBER & PHASE: 0800003401
 UNIT: 271
 RELATIVE BORDER SCALE: 15 IN. FICHES
 USERNAME: s110220
 DGN FILE: 0800003401.dgn
 BORDER LAST REVISED: 7/2/2010

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
 SENIOR LANDSCAPE ARCHITECT: BYRON STROUT
 CHECKED BY: MIKE BASH
 DATE REVISED: [blank]
 CALIFORNIA REGISTERED SEAL: MATTEN HALL
 DATE REVISED: [blank]

Figure 3b. Erosion Control Diagram for US-95 Curve Realignment Project (Northern Area).

Attachment 1

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

INCIDENTAL TAKE PERMIT NO. 2081-2012-052-06

PERMITTEE: California Department of Transportation

PROJECT: Caltrans US-95 Curve Realignment Project

PURPOSE OF THE MMRP

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

OBLIGATIONS OF PERMITTEE

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

VERIFICATION OF COMPLIANCE, EFFECTIVENESS

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

TABLE OF MITIGATION MEASURES

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

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
BEFORE DISTURBING SOIL OR VEGETATION					
1	Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.	ITP Condition # 5.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collection and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed.	ITP Condition # 5.2	Before commencing ground- or vegetation-disturbing activities	Permittee	/
3	Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.	ITP Condition # 5.4	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
4	Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in closed (animal-proof) containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.	ITP Condition # 5.6	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
5	Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.	ITP Condition # 5.7	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
6	Before starting Covered Activities Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes or flags. Permittee shall restrict all Covered Activities to within the fenced, staked or flagged areas. Permittee shall maintain all fencing, stakes and flags until the completion of Covered Activities in that area.	ITP Condition # 5.10	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
7	Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.	ITP Condition # 5.11	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
8	The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.	ITP Condition # 6.1	Before commencing ground- or vegetation-disturbing activities	Permittee	
9	No more than 30 days prior to Covered Activities, the Designated Biologist shall conduct pre-construction surveys for Covered Species. These surveys shall cover 100 percent of the Project Area and an additional 50-foot buffer zone. The Designated Biologist shall follow the survey methodology in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise Field Manual. The Designated Biologist shall flag all potential burrows within this area and avoid these burrows to the maximum extent possible during Project activities. Within 30 days of performing the pre-construction surveys, the Designated Biologist shall submit a report to CDFW documenting results (using the USFWS Protocol data sheet). Permittee shall also include the survey results in the Annual Status Report (ASR).	ITP Condition # 7.1	Before commencing ground- or vegetation-disturbing activities	Permittee	
10	With the Designated Biologist present and prior to ground-disturbing activities, Permittee shall install temporary desert tortoise exclusionary fencing around any active construction area, lay down area, and storage area (whether on-site or off-site), prior to the on-set of vegetation removal, or any other project related activities for any construction activities that require overnight work or disturbance of desert tortoise habitat.	ITP Condition # 7.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
11	No more than 48 hours prior to start of ground disturbance activities, the Designated Biologist shall resurvey the Project Area and access route for Covered Species. Survey results may be combined with pre-construction survey results report. Permittee shall also include the survey results in the ASR.	ITP Condition # 7.5	Before commencing ground- or vegetation-disturbing activities	Permittee	
12	The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation.	ITP Condition # 6.6	Before commencing ground- or vegetation-disturbing activities AND Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
13	<p>All personnel on the Project site shall immediately report all encounters with the Covered Species to the Designated Biologist. If a Covered Species is identified during Project activities, the Permittee shall immediately stop all work in the area and the Designated Biologist shall allow it to escape unimpeded. Permittee shall not resume work until the Designated Biologist has determined that the animal has moved outside the Project Area on its own. The Designated Representative shall immediately, or no later than noon on the next business day, notify CDFW of any Covered Species observations. Notification to CDFW shall be via telephone and e-mail, followed by a written report. Notification and the written report shall include the ITP number, date, location, and circumstances of the observation and the name of the Designated Biologist.</p>	ITP Condition # 7.6	Before commencing ground- or vegetation-disturbing activities AND Entire Project	Permittee	
14	<p>The Designated Biologist shall inspect all open holes and trenches within the Project Area at the beginning, middle, and end of each day for trapped animals. To prevent inadvertent entrapment of Covered Species or any other animals, the Designated Biologist shall oversee the covering of all excavated, steep-walled holes or trenches more than two feet deep, or of any depth if they contain water or other material at the close of each working day by plywood or other barrier materials such that animals are unable to enter and become entrapped. Permittee shall provide escape ramps in holes greater than two feet deep that do not hold water or other material to allow animals to escape. Before holes or trenches are filled, the Designated Biologist shall thoroughly inspect them for trapped animals. If any worker discovers that Covered Species have become trapped, they shall halt Project-related activities and notify the Designated Biologist immediately. Project workers and the Designated Biologist shall allow the Covered Species to escape unimpeded. If the animal is unable to escape, CDFW must be contacted immediately. Any other animal would need to be removed by the Permittee as long as it is not a listed species. The use of temporary fencing, as indicated in Condition of Approval 7.2, around the perimeter of trenches or holes is an acceptable minimization measure.</p>	ITP Condition # 7.8	Before commencing ground- or vegetation-disturbing activities AND Entire Project	Permittee	
15	<p>The Designated Biologist shall maintain a record of all Covered Species observed. This information shall include the following for each desert tortoise: (1) the locations (using GPS technology) and dates of observation; (2) the general condition and health, including injuries, state of healing, and whether the desert tortoise voided its bladder; (3) diagnostic markings observed (i.e., identification numbers or marked lateral scutes); (4) ambient temperature at location when and where it was observed; and (5) digital photographs of each observed desert tortoise. The Designated Representative or Biologist shall record the information detailed above in the daily observation and inspection records for inclusion in the Construction Compliance Report as directed in Condition of Approval 6.3.</p>	ITP Condition # 7.9	Before commencing ground- or vegetation-disturbing activities AND Entire Project	Permittee	
16	<p>The Permittee shall provide for the permanent protection and management of 19.92 acres of Habitat Management (HM) lands by completing the transfer of fee title to a CDFW-approved public agency or the recordation of a conservation easement pursuant to Government Code section 65965, and calculation and deposit of the management funds (Condition of Approval 8.3). HM lands will contain a minimum of 0.39 acres of streambed habitat. Permanent protection and perpetual management of compensatory habitat must be complete before starting Covered Activities or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 9.</p>	ITP Condition # 8	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
17	<p>CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands as follows:</p> <ul style="list-style-type: none"> i) Land acquisition costs for HM lands identified in Condition 8.2 below, estimated at \$1,458,000/acre for 19.92 acres: \$29,043.36. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements; ii) Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition 8.2.5 below, estimated at \$5,776.80; iii) Interim management period funding as described in Condition 8.2.6 below, estimated at \$29,680.80; iv) Long-term management funding as described in Condition 8.3 below, estimated at \$1,490,000/acre for 19.92 acres: \$29,680.80 plus \$2,968.08 (the ten percent contingency fee as described in Condition of Approval 8.3.2.1 for a total of \$32,648.88. The long-term management endowment fund is estimated initially for the purpose of providing Security to ensure implementation of HM land management. v) Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM Lands to CDFW as described in Condition 8.4, estimated at \$3,000.00. 	ITP Condition #8.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
18	<p>To provide for the acquisition and protection of the HM lands, the Permittee shall transfer fee title to the HM lands to CDFW pursuant to terms approved by CDFW. Alternatively, CDFW in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity or person meets the requirements of Government Code sections 65965-65968, as amended. If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW does not hold the conservation easement, CDFW shall be expressly named as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation.</p>	ITP Condition #8.2.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
19	<p>Permittee shall obtain CDFW approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, a formal Proposed Lands for Acquisition Form (see Attachment 2B) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species.</p>	ITP Condition #8.2.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
20	<p>Permittee shall provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services.</p>	ITP Condition #8.2.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
21	<p>Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified.</p>	ITP Condition #8.2.4	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
22	<p>Permittee shall provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see http://www.dfg.ca.gov/habcon/complan/mitbank/); (2) conducting a baseline biological assessment and land survey report within 4 months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage.</p>	ITP Condition #8.2.5	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
23	<p>Permittee shall Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM Lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management. Permittee shall either (1) provide a security to CDFW for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense; (2) establish an escrow account with written instructions approved in advance in writing by CDFW to pay the land manager annually in advance; or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager.</p>	ITP Condition #8.2.6	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
24	<p>The Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 8.2.5. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate sections 18501-18510, as amended.</p> <p>After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment Fund.</p>	ITP Condition #8.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
25	<p>The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code section 65965-65968, as amended, and approved in writing by CDFW in its sole discretion. Permittee shall submit to CDFW a written proposal for an Endowment Manager along with a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). CDFW shall notify Permittee in writing of its approval or disapproval of the proposed Endowment Manager. If CDFW does not approve the proposed Endowment Manager, it shall provide Permittee with a written explanation of the reasons for its disapproval.</p>	ITP Conditions #8.3.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
26	<p>After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Fund Manager.</p>	ITP Conditions #8.3.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
27	<p>Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the PAR and adjust for any additional administrative, periodic, or annual fees.</p>	ITP Conditions #8.3.2.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
<p>28</p> <p>Permittee shall include in PAR assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment Fund:</p> <ul style="list-style-type: none"> • A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events. • The endowment shall be established assuming spending will not occur for the first three years after full funding. • For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Fund Manager and CDFW. 	<p>ITP Conditions #8.3.2.2</p>	<p>Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)</p>	<p>Permittee</p>	
<p>29</p> <p>Permittee shall transfer the long-term endowment funds to the Endowment Fund Manager upon CDFW approval of the Endowment Deposit Amount identified above. The approved Endowment Fund Manager may pool the Endowment Fund with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment Fund.</p>	<p>ITP Conditions #8.3.3</p>	<p>Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)</p>	<p>Permittee</p>	
<p>30</p> <p>Permittee shall reimburse CDFW for all reasonable expenses incurred by CDFW such as transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM Lands to CDFW.</p>	<p>ITP Conditions #8.4</p>	<p>Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)</p>	<p>Permittee</p>	

Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
<p>31</p> <p>The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition 8 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:</p> <ol style="list-style-type: none"> <u>Security Amount</u>. The Security shall be in the amount of \$100,149.84. This amount is based on the cost estimates identified in Condition 8.1 above; <u>Security Form</u>. The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel; <u>Security Timeline</u>. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first; <u>Security Holder</u>. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW; <u>Security Transmittal</u>. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other; <u>Security Drawing</u>. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP; <u>Security Release</u>. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied as evidenced by: <ul style="list-style-type: none"> • Written documentation of the acquisition of the HM lands; • Copies of all executed and recorded conservation easements; • Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and • Timely submission of all required reports. <p>Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.</p>	<p>ITP Condition # 9</p>	<p>Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)</p>	<p>Permittee</p>	

Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
DURING CONSTRUCTION				
32	The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Designated Biologist shall conduct compliance inspections a minimum of once a week during periods of inactivity and after clearing, grubbing, and grading are completed.	ITP Condition # 6.3	Entire Project	Permittee
33	The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 6.3 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to CDFW's Regional Office at the office listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative. At the time of this ITP's approval, the CDFW Regional Representative Charley Land (Charles.Land@wildlife.ca.gov). CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.	ITP Condition # 6.4	Entire Project	Permittee
34	Permittee shall provide CDFW with an Annual Status Report (ASR) no later than March 1 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 6.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.	ITP Condition # 6.5	Entire Project	Permittee
35	The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.	ITP Condition # 6.2	Entire Project	Permittee
36	The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.	ITP Condition # 5.5	Entire Project	Permittee

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
37	Permittee shall prohibit use of erosion control materials, potentially harmful to Covered Species and other species, such as mono-flament netting (erosion control matting) or similar material, in potential Covered Species habitat.	ITP Condition # 5.8	Entire Project	Permittee	
38	Permittee shall prohibit firearms and domestic dogs from the Project Area and site access routes during Covered Activities except those in the possession of authorized security personnel or local, state, or federal law enforcement officials.	ITP Condition # 5.9	Entire Project	Permittee	
39	Project-related personnel shall access the Project Area using existing routes, and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to the ITP if additional take of Covered Species will occur as a result of the Project modification.	ITP Condition # 5.12	Entire Project	Permittee	
40	Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 5.12 of the ITP.	ITP Condition # 5.13	Entire Project	Permittee	
41	Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.	ITP Condition # 5.14	Entire Project	Permittee	
42	Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.	ITP Condition # 5.15	Entire Project	Permittee	
43	Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall wait for the Covered Species to move unimpeded to a safe location.	ITP Condition # 7.3	Entire Project	Permittee	
44	Permittee shall minimize vegetation removal associated with construction activities to the fullest extent possible. The Designated Biologist shall review and approve or deny any grubbing or clearing of vegetation.	ITP Condition # 7.4	Entire Project	Permittee	
45	The Designated Biologist shall ensure that desert tortoises are not captured, moved, transported, released, or purposefully caused to leave their burrow for any reason when the ambient air temperature is above 95 degrees Fahrenheit (35 degrees Celsius).	ITP Condition # 7.7	Entire Project	Permittee	
46	If a Covered Species is injured or killed as a result of Project-related activities or if a Covered Species is otherwise found dead within the Project Area, Permittee shall immediately notify the Designated Biologist as described in Condition of Approval 6.8. The Designated Biologist shall immediately take injured individuals to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility prior to the start of Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species.	ITP Condition # 7.10	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
47	Permittee shall restrict Project-related vehicle traffic to established roads and the delineated Project Area; cross-country (off-road) vehicle travel is prohibited and signs shall be posted to this effect during maintenance activities. If a Covered Species is encountered drivers shall stop, wait for the Covered Species to move off the road, and immediately notify the Designated Biologist of the Covered Species location.	ITP Condition # 7.11	Entire Project	Permittee	
48	For emergency situations involving a leak or spill or any other immediate safety hazard, Permittee will notify CDFW Regional Office within 48 hours. As a part of this emergency response, CDFW may require specific measures to protect listed species. Following completion of emergency work, CDFW also may require additional measures to facilitate recovery of damaged habitat(s).	TP Condition # 7.12	Entire Project	Permittee	
49	Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related Activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (909) 484-0459. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.	ITP Condition # 6.8	Entire Project	Permittee	
50	To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species, or a species not covered by this ITP.	ITP Condition # 5.3	Entire Project	CDFW	
POST-CONSTRUCTION					
51	Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.	ITP Condition # 5.16	Post-construction	Permittee	
52	No later than 90 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.	ITP Condition # 6.7	Post-construction and after completion of mitigation	Permittee	
53	CDFW accepts the Final Mitigation Report as complete.	ITP Condition # 6.7	Post-construction	CDFW	

ATTACHMENT 2A
DEPARTMENT OF FISH AND WILDLIFE

HABITAT MANAGEMENT LAND ACQUISITION PACKAGE CHECKLIST FOR PROJECT APPLICANTS
The following checklist is provided to inform you of what documents are necessary to expedite the Department of Fish and Wildlife (CDFW) processing of your Habitat Management Land acquisition proposal. Any land acquisition processing requests which are incomplete when received, will be returned. The Region contact will review and approve the document package and forward it to the Habitat Conservation Planning Branch Senior Land Agent with a request to process the land acquisition for formal acceptance.

To: Kimblerly Nicol, Inland Deserts Region (6)
Regional Manager, Region Name
From: California Department of Transportation District 8
Project Applicant

Phone: _____

Tracking #: 2081-2012-052-06 _____
CDFW assigned permit or agreement #

Project Name: _____

Enclosed is the complete package for the Conservation Easement OR Grant Deed

Documents in this package include:

Fully executed, approved as to form Conservation Easement Deed or Grant Deed.

Date executed: _____

Proposed Lands for Acquisition Form (PLFAF)

Phase I Environmental Site Assessment Report Date on report: _____
(An existing report may be used, but it must be less than two years old.)

Preliminary Title Report(s) for subject property is enclosed and has been reviewed for encumbrances and other easements. The title report must be less than six months old when final processing is conducted.

Included are additional documents:

document(s) to support title exceptions

document(s) to explain title encumbrances

a plot or map of easements/encumbrances on the property

Policy of Title Insurance (an existing title policy is not acceptable)

County Assessor Parcel Map(s) for subject property

Site Location Map (Site location with property boundaries outline on a USGS 1:24,000 scale topo)

Final Permit or Agreement (or other appropriate instrument)

Type of agreement: Bank Agreement Mitigation Agreement

Permit _____ Other: _____

(write in type of permit)

Final Management Plan (if required prior to finalizing permit or agreement or if this package is for a Grant Deed)

Biological Resources Report

Draft Summary of Transactions hard copy electronic copy (both are required)

PROPOSED LANDS FOR ACQUISITION FORM ("PLFAF")

Date: _____

TO: Regional Representative

Facsimile:

FROM: _____

Applicant proposes that the following parcel of land be considered for approval by the CDFW as suitable for purposes of habitat management lands to replace the adverse environmental impacts of the Project:

<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Number of Acres</u>
_____	_____	_____	_____

Current Legal Owner(s), include Parcel Number(s):

Location of Parcel:

APPROVED _____
REJECTED _____

By: _____
_____ Region

DATE: _____

Explanation: _____

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

Issue Date: [*date*]

Beneficiary:

Department of Fish and Wildlife
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Attn: HCPB Mitigation Account Coordinator

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

Expiry: [*Date*] at our counters

Dear Sirs:

1. At the request and on the instruction of our customer, [*name of applicant*] ("Applicant"), we, [*Name of financial institution*] ("Issuer"), hereby establish in favor of the beneficiary, the California Department of Fish and Wildlife ("CDFW"), this irrevocable standby letter of credit ("Credit") in the principal sum of U.S. \$[*dollar number*] [(*dollar amount*)] ("Principal Sum").
2. We are informed this Credit is and has been established for the benefit of the CDFW pursuant to the terms of the incidental take permit for the [*name of project*] issued by the CDFW to the Applicant on [*date*] (No. [*number*]) ("Permit").
3. We are further informed that pursuant to the Permit, the Applicant has agreed to complete certain mitigation requirements, as set forth in Conditions [*numbers*] in the Permit ("Mitigation Requirements").
4. We are finally informed that this Credit is intended by the CDFW and the Applicant to serve as a security device for the performance by the Applicant of the Mitigation Requirements.
5. The CDFW shall be entitled to draw upon this Credit only by presentation of a duly executed Certificate for Drawing ("Certificate") in the same form as Attachment A, which is attached hereto, at our office located at [*name and address of financial institution*].
6. The Certificate shall be completed and signed by an "Authorized Representative" of the CDFW as defined in paragraph 12 below. Presentation by the CDFW of a

completed Certificate may be made in person or by registered mail, return receipt requested, or by overnight courier.

7. Upon presentation of a duly executed Certificate as above provided, payment shall be made to the CDFW, or to the account of the CDFW, in immediately available funds, as the CDFW shall specify.
8. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give the CDFW prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Credit, state the reasons therefore, and await further instruction.
9. Upon being notified that the demand for payment was not effected in conformity with the Credit, the CDFW may correct any such non-conforming demand for payment under the terms and conditions stated herein.
10. All drawings under this Credit shall be paid with our funds. Each drawing honored by us hereunder shall reduce, *pro tanto*, the Principal Sum. By paying to the CDFW an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.
11. This Credit will be cancelled upon receipt by us of Certificate of Cancellation, which: (i) shall be in the form of Attachment B, which is attached hereto, and (ii) shall be completed and signed by an Authorized Representative of the CDFW, as defined in paragraph 12 below.
12. An "Authorized Representative" shall mean either the Director of the Department of Fish and Wildlife, the General Counsel of the Department of Fish and Wildlife, or a Regional Manager of the Department of Fish and Wildlife.
13. This Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof, unless at least sixty (60) days prior to any such date, we notify the CDFW in writing by registered mail, return receipt requested, or by overnight courier that we elect not to consider this Credit extended for any such period.
14. Communications with respect to this Credit shall be in writing and addressed to us at [**name and address of financial institution**], specifically referring upon such writing to this credit by number. The address for notices with respect to this Credit shall be: (i) for the CDFW: Department of Fish and Wildlife, Habitat Conservation Planning Branch, 1416 Ninth Street, 12th Floor, Sacramento, California 95814-2090 Attn: HCPB Mitigation Account Coordinator; and (ii) for the Applicant: [**name and address of applicant**].
15. This Credit may not be transferred.

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

[Name of financial institution]

By: _____
Name: _____
Title: _____

ATTACHMENT A

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [*Number issued by financial institution*]
CERTIFICATE FOR DRAWING

To:

[Name and address of financial institution]

Re: Incidental Take Permit No. [*permit number*]

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

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

Therefore, the CDFW has executed and delivered this Certificate as of the ___ day of _____, _____.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: _____

[Insert one of the following: "DIRECTOR" or "GENERAL COUNSEL" or "REGIONAL MANAGER, [NAME OF REGIONAL OFFICE]"

ATTACHMENT B

IRREVOCABLE LETTER OF CREDIT NO. [**Number issued by financial institution**]
CERTIFICATE FOR CANCELLATION

To:

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

Re: Incidental Take Permit No. [**permit number**]

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

1. [**Insert one of the following statements:** "The Applicant has presented documentary evidence of full compliance with the Mitigation Requirements referenced in paragraph 3 of the Credit." **or** "The natural expiration of this Credit has occurred."]

2. The CDFW therefore requests the cancellation of the Credit.

Therefore, the CDFW has executed and delivered this Certificate for Cancellation as of the ____ day of _____, _____.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: _____

[**Insert one of the following:** "DIRECTOR" **or** "GENERAL COUNSEL" **or** "REGIONAL MANAGER, [**NAME OF REGIONAL OFFICE**"]]

California Department of Fish and Wildlife
Mitigation Payment Transmittal Form

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

(1) **DATE:** _____

TO: _____ Kimberly Nicol _____
[CDFW Regional Manager]
3602 Inland Empire Blvd, Suite C-220, Ontario, CA 91764_
[CDFW Region Office Address]

(2) **FROM:** _____
Name

_____ Mailing Address

_____ City, State, Zip

_____ Telephone Number/FAX Number

(3) **RE:** _____ Caltrans US-95 Curve Realignment Project _____
[Project Name as appears on permit/agreement]

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

2081 Permit Conservation Bank 1802 Agreement

2835 NCCP Other _____

_____ 2081-2012-052-06 _____
[Project Tracking Number]

_____ [FASB Mitigation Tracking Number (if available)] _____

Index _____ PCA _____

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

Check information:

Total \$ _____ Check No. _____

Account No. _____ Bank Routing No. _____

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

b. Habitat Enhancement Subtotal \$ _____

c. Security:

1. Cash Refundable Security Deposit Subtotal \$ _____

2. Letter of Credit Subtotal \$ _____

1. Financial Institution: _____

2. Letter of Credit Number: _____

3. Date of Expiration: _____



RECEIVED
BUREAU OF LAND
United States Department of the Interior



2011 DEC -5 AM 11:22
FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003
NEEDLES FIELD OFFICE
NEEDLES, CA

IN REPLY REFER TO:
08EVEN00-2012-I-0031

December 2, 2011

Memorandum

To: Field Manager, Needles Field Office, Bureau of Land Management, Needles, California

From:  Assistant Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California

Subject: U.S. Highway 95 Curve Realignment Project, San Bernardino County, California

This letter is in response to your inquiry dated November 7, 2011 requesting our concurrence that the proposed curve realignment project is not likely to adversely affect the federally threatened Mojave desert tortoise (*Gopherus agassizii*; desert tortoise). The original request for formal consultation dated September 22, 2011 was withdrawn by the Needles Bureau of Land Management (Bureau) on October 25, 2010 as a result of an additional site visit and discussions regarding mitigation measures between the U.S. Fish and Wildlife Service (Service), the Bureau and the California Department of Transportation (Caltrans). Your request and our response are made pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended.

The Bureau's Needles Field Office proposes to authorize Caltrans to carry out a curve realignment project on U.S. Highway 95, 5.5 miles south of Needles, between post miles 51.22 and 51.65 in a rural area surrounded by Bureau lands. Caltrans is proposing to flatten a vertical curve by realigning the highway horizontally to the east of the existing road. This project would consist of constructing 2, 12-foot lanes with 8-foot shoulders. The entire project will stay within the existing Caltrans' right of way. Approximately 6.64 acres would be directly impacted by project activities, with 4.09 acres being creosote bush scrub. No designated critical habitat for the desert tortoise will be impacted by project activities.

Desert tortoise surveys were conducted on May 19, 2010. During the surveys, no desert tortoise or sign were found within the project area, but desert tortoise sign and a single live desert tortoise were found during belt transects beyond the perimeter of the project site. Additionally, a single desert tortoise was incidentally found by Caltrans' biologists outside of the project area on November 17, 2008. An additional site visit by Service, Bureau, and Caltrans biologists on October 5, 2011 also revealed no desert tortoises or sign within the project area; however, several burrows in caliche caves and scat were identified within side washes both east and west of the project site. All conservation measures outlined in the in the 2011 *US-95 Curve Realignment Biological Assessment, San Bernardino County, California* would be followed, with

the exception of the following: no desert tortoises would be handled or translocated during project activities. If a desert tortoise is discovered on the site, project activities would cease until the desert tortoise leaves the area on its own accord.

Desert tortoises are unlikely to be present within the project site; however, the right of way where native vegetation will be removed contains moderate quality habitat. Desert tortoises that move onto the site could be injured or killed during project activities. However, Caltrans has proposed to implement conservation measures to ensure desert tortoises are not adversely affected. These measures include the use of temporary desert tortoise fencing and biological monitors, and worker education programs describing the sensitivity and nature of desert tortoise issues. In addition, no desert tortoises will be handled or moved at any time.

We concur with your decision that the proposed action is not likely to adversely affect the desert tortoise. We have reached this conclusion because no desert tortoises were found within the project area during surveys, densities of desert tortoises in areas adjacent to busy highways are typically low, the project area contains minimal habitat that will be disturbed and Caltrans proposes to implement measures to ensure any desert tortoise in the project area would not be adversely affected. Consequently, further consultation, pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended, is not required. If the proposed action changes in any manner that may affect the desert tortoise, please contact us immediately to determine whether additional consultation is required.

In a related matter, on October 24, 2011, Caltrans inquired about the validity of the existing May 15, 2010 species list for this project (in reply, refer to 81440-2010-SL-0262). The existing species list is still valid. The desert tortoise is still the only listed species that may occur in the vicinity of the proposed project site. The project site is not located within critical habitat.

If you have any questions regarding this matter, please contact Amy Torres of the Ventura Fish and Wildlife Office, San Bernardino sub-office at (909) 382-2654.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

Los Angeles District Corps of Engineers
P.O. Box 532711
Los Angeles, CA 90017-3401

December 13, 2012

Regulatory Division

Scott Quinnell, Senior Environmental Planner
California Department of Transportation, District 8
464 West 4th Street, 6th Floor
San Bernardino, California 92401-1400

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT AUTHORIZATION

Dear Mr. Quinnell,

This correspondence is in reply to your application, dated October 11, 2012, for a Department of the Army Permit. Your proposed project, US-95 Curve Realignment Project, would result in discharges of permanent fill into approximately 0.134 acre of non-wetland waters of the U.S. Therefore, pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344; 33 C.F.R. parts 323 and 330), your proposed project requires a Department of the Army permit. The proposed work would take place within unnamed tributaries near the City of Needles, San Bernardino County, California (see attached figures).

I have determined construction of US-95 Curve Realignment Project complies with Nationwide Permit (NWP) No. 14 Linear Transportation Projects, if conducted as described in your application.

Specifically, you are authorized to (as shown on the enclosed figures):

- Discharge permanent fill material into approximately 0.134 acre (247 linear feet) of non-wetland waters of the U.S. to realign the U.S. Highway 95 with a flatter vertical curve.

For this NWP No. 14 verification letter to be valid, you must comply with all of the terms and conditions in Enclosure 1. Furthermore, you must comply with the following non-discretionary Special Conditions listed below:

1. The Permittee shall abide by the terms and conditions of the project's Clean Water Act (CWA) section 401 Water Quality Standards Certification, dated November 21, 2012.
2. The Permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter avoided waters of the U.S. areas shown in the attached figures. Adverse impacts to waters of the U.S. beyond the Corps Regulatory Division-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial, additional, compensatory mitigation requirements.

3. Upon project completion, temporary fills shall be removed and the stream shall be re-contoured to pre-construction conditions. In addition, the Permittee shall hydroseed, where possible, the disturbed portions of the earthen stream banks with native, non-invasive species, as appropriate, to reduce the potential for erosion. The Permittee shall submit the proposed planting palette for review and approval by the Corps Regulatory Division prior to initiation of construction. The Permittee shall ensure the hydroseeded areas are maintained and monitored for a period of two years after completing the seeding activities, such that less than 10 percent of the areas disturbed by the project are vegetated by non-natives and invasive plant species.
4. Within 45 calendar days of completing authorized work in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a memo including the following:
 - A) Date(s) work within waters of the U.S. was initiated and completed;
 - B) Summary of compliance status with each special condition of this permit (including any noncompliance that previously occurred or is currently occurring and corrective actions completed or being taken to achieve compliance);
 - C) Color photographs taken at the project site before and after construction for those aspects directly associated with impacts to waters of the U.S.; and
 - D) One copy of as-built drawings for the entire project (all sheets must be signed, dated, to-scale, and no larger than 8.5 x 11 inches); and
 - E) Signed Certification of Compliance.
5. The Permittee has proposed to mitigate for impacts to waters of the U. S. through implementation of the draft conceptual habitat mitigation and monitoring plan (HMMP): " US-95 Curve Realignment Project Habitat Mitigation and Monitoring Plan" (dated December 2012, and prepared by, AMEC Environment & Infrastructure, Inc.). According to the draft HMMP, responsible parties would be as follows: a) Implementation: California Department of Transportation District 8; b) Long-term management: California Department of Transportation District 8. The Permittee retains ultimate legal responsibility for meeting the requirements of the final HMMP (i.e., this is permittee-responsible mitigation). Detailed mitigation site information is described in the referenced HMMP. Any requirements for long-term management provisions are also described in the referenced HMMP, as well as in special conditions 6 and 7, below.
6. At least 90 days prior to initiating construction in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a final habitat mitigation and monitoring plan (HMMP) prepared in accordance with the Corps' Los Angeles District Mitigation Guidelines and Monitoring Requirements, dated April 19, 2004, as amended, and the Mitigation Rule (33 C.F.R. Part 332; 73 FR 19670-19687 (April 10, 2008)). The final HMMP addresses the 0.134 acres of permanent impact to waters of the U.S. through preservation of at least 1.02 acres of waters of the U.S. with a 50-foot-wide upland buffer around each drainage. All maps and drawings shall be in compliance with the Final Map and Drawing Standards for the Los Angeles District Regulatory Division dated September 15, 2010 (http://www.spl.usace.army.mil/Portals/17/docs/regulatory/Permit_Process/SPD-RG_map-drawing-standards_final_20120806v3.pdf). No work in waters of the U.S. is authorized until

the Permittee receives, in writing (by letter or e-mail), Corps Regulatory Division approval of the final HMMP.

GIS DATA: Within 30 days following written Corps Regulatory Division approval of the HMMP, the Permittee shall provide to the Corps Regulatory Division GIS data (polygons only) depicting the boundaries of all compensatory mitigation sites, as authorized in the final HMMP referenced above. All GIS data and associated metadata shall be provided by the Permittee on a digital medium (CD or DVD) or via file transfer protocol (FTP), preferably using the Environmental Systems Research Institute (ESRI) shapefile format. GIS data for mitigation sites shall conform to the data dictionary, as specified in the current Map and Drawing Standards for the Los Angeles District Regulatory Division, and shall include a text file of metadata, including datum, projection, and mapper contact information. Within 60 days following completion of compensatory mitigation construction activities, if any deviations have occurred, the Permittee shall submit as-built GIS data (polygons only) accompanied by a narrative description listing and explaining each deviation.

7. At least 90 days prior to initiation of work in waters of the U.S., the Permittee shall submit a draft Conservation Easement (CE) or other Corps-approved protection tool that has been reviewed by the long-term manager of the mitigation site, for review and approval by the Corps Regulatory Division. Prior to commencing work in waters of the U.S., the Permittee shall record the approved CE, in a form approved by the Corps Regulatory Division, which shall run with the land, obligating the Permittee, its successors and assigns to protect and maintain the minimum 1.02 acres of waters of the U.S. as natural open space in perpetuity (as shown on the enclosed Figure 3). The CE must include a 3rd party easement holder qualified to hold easements pursuant to California Civil Code section 815.3 and Government Code section 65965. The Permittee must provide monies in the form of an endowment (endowment amount to be determined by Property Analysis Record or similar methodology) for the purposes of fulfilling the 3rd party easement holder's responsibilities under the CE. The CE shall preclude establishment of fuel modification zones, paved public trails, drainage facilities, walls, maintenance access roads and/or future easements, except as provided in the approved CE. Further, to the extent practicable, any such facilities outside the CE shall be sited to minimize indirect impacts on the preserved waters of the U.S. and buffer habitat. The Permittee shall receive written approval (by letter or e-mail) from the Corps Regulatory Division of this CE prior to it being executed and recorded. A recorded copy of the CE shall be furnished by the Permittee to the Corps Regulatory Division within one year after start of work within waters of the U.S.

GIS DATA: Concurrent with the submittal of the draft CE, the Permittee shall provide to the Corps Regulatory Division GIS data (polygons only) depicting the CE boundaries, as authorized by the Corps Regulatory Division. All GIS data and associated metadata shall be provided by the Permittee on a digital medium (CD or DVD) or via file transfer protocol (FTP), preferably using the Environmental Systems Research Institute (ESRI) shapefile format. GIS data for CE sites shall conform to the data dictionary, as specified in the current Map and Drawing Standards for the Los Angeles District Regulatory Division, and shall include a text file of metadata, including datum, projection, and mapper contact information.

Endangered Species Act:

8. This Corps permit does not authorize you to take any threatened or endangered species, in particular the Mojave desert tortoise (*Gopherus agassizii*) or adversely modify its designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA section 10 permit, or a Biological Opinion (BO) under ESA section 7, with "incidental take" provisions with which you must comply). Pursuant to the U.S. Fish and Wildlife Service (USFWS) correspondence, dated December 2, 2011, including the required avoidance and minimization measures, the Corps Regulatory Division has determined and the USFWS has concurred that your activity is not likely to adversely affect the above species. Your authorization under this Corps Regulatory Division permit is conditional upon your compliance with all of the required avoidance and minimization measures, which are incorporated by reference in this permit. Failure to comply with the required avoidance and minimization measures would constitute non-compliance with your Corps Regulatory Division permit. The Corps Regulatory Division and USFWS are the appropriate authority to determine compliance with the avoidance and minimization measures.

Cultural Resources:

9. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Regulatory Division and Archeology staff (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861) within 24 hours. The Permittee shall immediately suspend all work within 100 feet of any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.

Your verification is valid through December 13, 2014. All nationwide permits will expire on March 18, 2017. It is incumbent upon you to remain informed of changes to the nationwide permits. A public notice of the change(s) will be issued when any of the NWP's are modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date on which the relevant NWP is reissued, modified, or revoked, you will have twelve (12) months from the date of the reissuance, modification, or revocation of the NWP to complete the activity under the present terms and conditions of the relevant NWP.

A preliminary jurisdictional determination (PJD) has been conducted to determine the extent of U.S. Army Corps of Engineers (Corps) geographic jurisdiction, upon which this NWP verification is based. A preliminary JD is advisory in nature and is a written indication that Corps geographic jurisdiction may be present on a particular site, but is not appealable. Please refer to the enclosed Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form for more information.

A NWP does not grant any property rights or exclusive privileges. Additionally, it does not authorize any injury to the property, rights of others, nor does it authorize interference with

any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, state, or local authorizations required by law.

Thank you for participating in our regulatory program. If you have any questions, please contact Veronica Chan at 213-452-3292 or via e-mail at Veronica.C.Chan@usace.army.mil.

Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: <http://per2.nwp.usace.army.mil/survey.html>.

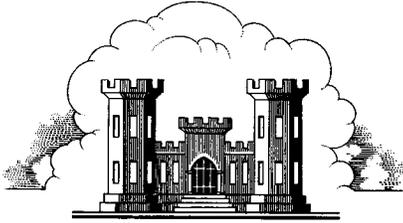
“Building Strong and Taking Care of People!”

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark D. Cohen', with a long horizontal flourish extending to the right.

For Mark D. Cohen
Deputy Chief, Regulatory Division

Enclosure(s)



**LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS**

**CERTIFICATE OF COMPLIANCE WITH
DEPARTMENT OF THE ARMY NATIONWIDE PERMIT**

Permit Number: *SPL-2012-00733-VCC*

Name of Permittee: *California Department of Transportation, District 8 (POC: Scott Quinnell)*

Date of Issuance: *December 13, 2012*

Upon completion of the activity authorized by this permit and the mitigation required by this permit, sign this certificate, and return it to the following address:

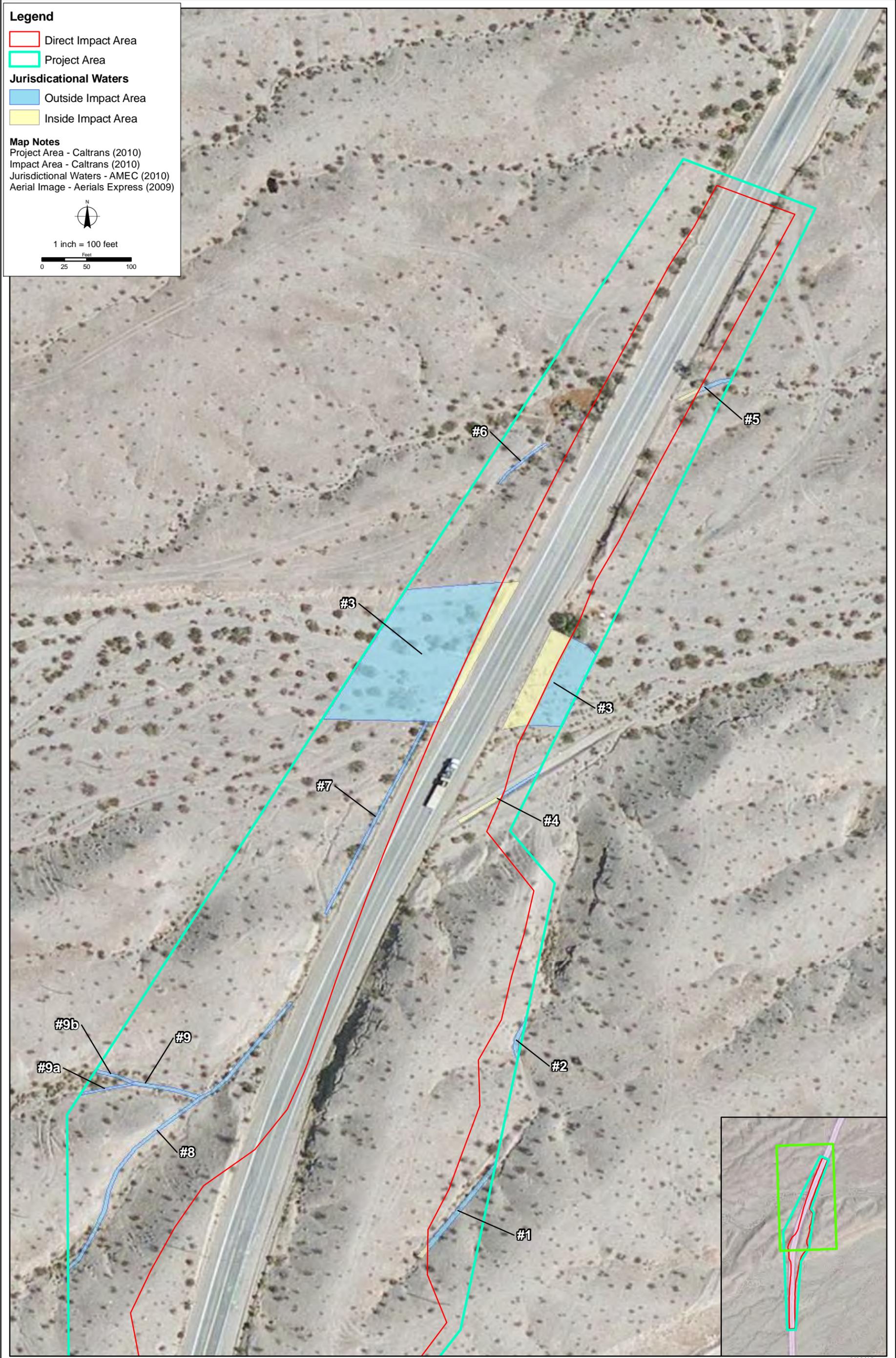
U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division
ATTN: CESPL-RG-SPL-2012-00733-VCC
P.O. Box 532711
Los Angeles, CA 90017-3401

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this Nationwide Permit, you may be subject to permit suspension, modification, or revocation procedures as contained in 33 C.F.R. § 330.5 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit condition(s).

Signature of Permittee

Date

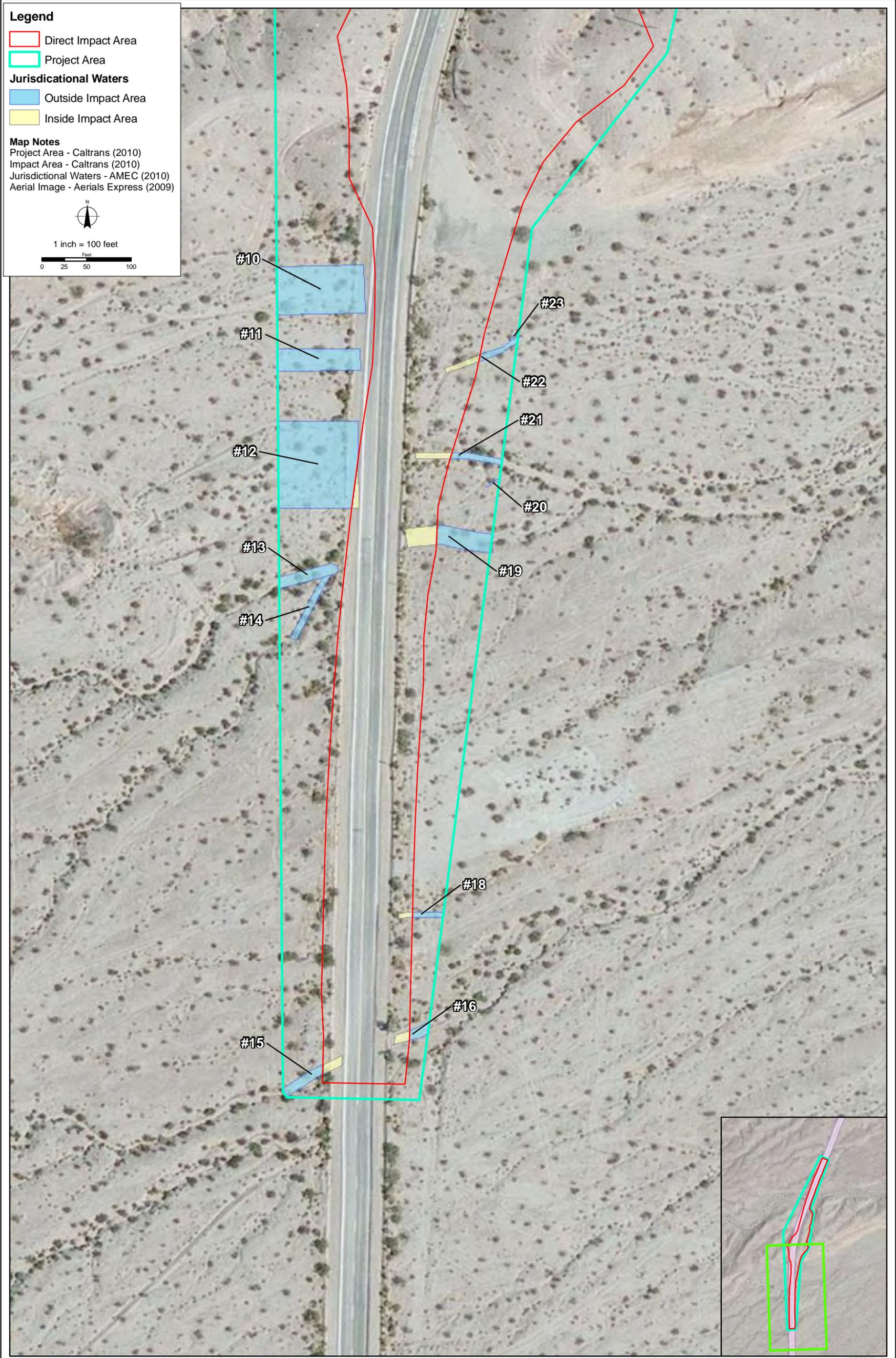


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8/28/12

Jurisdictional Waters
U.S. Route 95 Curve Realignment
California Department of Transportation

FIGURE
3a



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8/28/12

Jurisdictional Waters
U.S. Route 95 Curve Realignment
California Department of Transportation

FIGURE
3b

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: California Department of Transportation, District 8 (POC: Scott Quinnell)		File Number: SPL-201200733-VCC	Date: 12-13-12
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
	APPROVED JURISDICTIONAL DETERMINATION	D	
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/cecw/pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

If you only have questions regarding the appeal process you may also contact: Thomas J. Cavanaugh
Administrative Appeal Review Officer,
U.S. Army Corps of Engineers
South Pacific Division
1455 Market Street, 2052B
San Francisco, California 94103-1399
Phone: (415) 503-6574 Fax: (415) 503-6646
Email: thomas.j.cavanaugh@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

Enclosure 1: NATIONWIDE PERMIT (NWP) NUMBER(S) 14 Linear Transportation Projects. TERMS AND CONDITIONS

1. Nationwide Permit(s) (NWP) No. 14 Linear Transportation Projects. Terms:

Your activity is authorized under Nationwide Permit (NWP) Number(s) 14 Linear Transportation Projects, subject to the following terms:

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project. This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate. This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars. Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404) Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

2. Nationwide Permit General Conditions: The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. **1. Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.
(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of

the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.
(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the

project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWP.

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.
20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.
(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on,

determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.
- (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
- (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.
23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:
- (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
- (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
- (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.
- (1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.
- (2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.
- (3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.
27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.
29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required

compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer.

However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation.

Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300

linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

3. Regional Conditions for the Los Angeles District:

In accordance with General Condition Number 27, "Regional and Case-by-Case Conditions," the following Regional Conditions, as added by the Division Engineer, must be met in order for an authorization by any Nationwide to be valid:

1. For all activities in waters of the U.S. that are suitable habitat for federally listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed, unless determined to be impracticable by the Corps.
2. Nationwide Permits (NWP) 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, or 39-46, 48-52 cannot be used to authorize structures, work, and/or the discharge of dredged or fill material that would result in the "loss" of wetlands, mudflats, vegetated shallows or riffle and pool complexes as defined at 40 CFR Part 230.40-45. The definition of "loss" for this regional condition is the same as the definition of "loss of waters of the United States" used for the Nationwide Permit Program. Furthermore, this regional condition applies only within the State of Arizona and within the Mojave and Sonoran (Colorado) desert

regions of California. The desert regions in California are limited to four USGS Hydrologic Unit Code (HUC) accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).

3. When a pre-construction notification (PCN) is required, the appropriate U.S. Army Corps of Engineers (Corps) District shall be notified in accordance with General Condition 31 using either the South Pacific Division PCN Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. The PCN Checklist and application form are available at: <http://www.spl.usace.army.mil/regulatory>. In addition, the PCN shall include:
 - a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;
 - b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for projects located within the boundaries of the Los Angeles District shall comply with the most current version of the *Map and Drawing Standards for the Los Angeles District Regulatory Division* (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and
 - c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the project site, and all waters proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.
4. Submission of a PCN pursuant to General Condition 31 and Regional Condition 3 shall be required for all regulated activities in the following locations:
 - a. All perennial waterbodies and special aquatic sites within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California, excluding the Colorado River in Arizona from Davis Dam to River Mile 261 (northern boundary of the Fort Mojave Indian Tribe Reservation). The desert region in California is limited to four USGS HUC accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).
 - b. All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092)), in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.
 - c. All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south.
 - d. The Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River.

5. Individual Permits shall be required for all discharges of fill material in jurisdictional vernal pools, with the exception that discharges for the purpose of restoration, enhancement, management or scientific study of vernal pools may be authorized under NWP 5, 6, and 27 with the submission of a PCN in accordance with General Condition 31 and Regional Condition 3.
6. Individual Permits shall be required in Murrieta Creek and Temecula Creek watersheds in Riverside County for new permanent fills in perennial and intermittent watercourses otherwise authorized under NWP 29, 39, 42 and 43, and in ephemeral watercourses for these NWP 14 for projects that impact greater than 0.1 acre of waters of the United States. In addition, when NWP 14 is used in conjunction with residential, commercial, or industrial developments the 0.1 acre limit would also apply.
7. Individual Permits (Standard Individual Permit or 404 Letter of Permission) shall be required in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects, and in Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures.
8. In conjunction with the Los Angeles District's Special Area Management Plans (SAMPs) for the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California, the Corps' Division Engineer, through his discretionary authority has revoked the use of the following 26 selected NWP within these SAMP watersheds: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, and 50. Consequently, these NWP are no longer available in those watersheds to authorize impacts to waters of the United States from discharges of dredged or fill material under the Corps' Clean Water Act section 404 authority.
9. Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWP 29, 39, 40 and 42, 43, 44, 51 and 52 or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:
 - a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characters observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line, or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the associated vegetation community (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.
 - b. An analysis of the proposed impacts to the waterbody in accordance with General Condition 31 and Regional Condition 3;
 - c. Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and
 - d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be compensated, in accordance with 33 CFR Part 332.
10. The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

4. Further information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - (a) This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - (b) This permit does not grant any property rights or exclusive privileges.
 - (c) This permit does not authorize any injury to the property or rights of others.
 - (d) This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - (a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - (b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - (c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - (d) Design or construction deficiencies associated with the permitted work.
 - (e) Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - (a) You fail to comply with the terms and conditions of this permit.
 - (b) The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - (c) Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 330.5 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time.
7. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition H below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
8. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Colorado River Basin Regional Water Quality Control Board

November 21, 2012

Mr. Scott Quinnell
California Department of Transportation – District 8
464 West 4th Street
San Bernardino, California 92401

RE: ORDER FOR TECHNICALLY-CONDITIONED CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR DISCHARGE OF DREDGED AND/OR FILL MATERIALS

PROJECT: California Department of Transportation – District 8, Caltrans US-95 Curve Realignment Project, WDID No. 7B363028001

APPLICANT: California Department of Transportation – District 8

- ACTION:**
- 1. Order for Standard Certification
 - 2. Order for Technically-Conditioned Certification
 - 3. Order for Denial of Certification

STANDARD CONDITIONS:

The following standard conditions apply to all certification actions, except as noted above under Action 3 for denials.

- 1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
- 2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

ELLEN WAY, CHAIR | ROBERT PERDUE, EXECUTIVE OFFICER

3. The validity of any non-denial certification action (Actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.
4. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under State law. For purposes of Clean Water Act (CWA) section 401(d), the applicability of any State law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Water Quality Certification (WQC).
 - a. In response to a suspected violation of any condition of this WQC, the Regional Water Quality Control Board (Regional Water Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - b. In response to any violation of the conditions of this WQC, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

ADDITIONAL CONDITIONS:

The following additional conditions apply to this certification:

1. This WQC applies towards the proposed project (Project) as described in the 401 application received by the Regional Water Board on October 10, 2012 and additional information was received on November 16, 2012.
2. The Applicant shall provide the Regional Water Board and other interested agencies with written notification of any significant modifications made to the Project prior to implementation of the modifications.
3. This WQC does not convey any property rights of any sort or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.
4. This WQC does not authorize the Applicant or any associated party to trespass on any land or property unless the applicant has obtained written authorization or acquired a special use authorization permit from the land or property owner.

5. A copy of this WQC shall be provided to the appropriate onsite Supervisor for the Project. All personnel performing work on the proposed Project shall be familiar with the content of this WQC. Copies of the WQC shall be readily available at the Project site at all times during periods of active work and shall be presented to regulatory agency representatives upon request.
6. The Applicant shall grant Regional Water Board staff, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to enter the Project site at reasonable times, to ensure compliance with the terms and conditions of this WQC and/or to determine the impacts the Project may have on waters of the United States.
7. The proposed Project shall not be enlarged or extend beyond the proposed Project impact area. The Applicant shall delineate the Project boundaries and staging areas with stakes, flags and/or temporary construction fencing.
8. The area of vegetation and soil disturbance shall be restricted to the smallest extent possible.
9. The Project shall not discharge substances in concentrations toxic to human, plant, animal, or aquatic life or that produce detrimental physiological responses.
10. The Project shall not discharge waste classified as "hazardous" as defined in Title 23 California Code of Regulations (CCR) section 2521, California Health and Safety Code section 25140, and Title 22, CCR, section 66260.10 et seq.
11. No oil, petroleum products, or rubbish shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the United States.
12. No equipment maintenance will be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter waters of the United States.
13. Equipment refueling shall not occur within waters of the United States.
14. Any oil or grease leaks shall be immediately cleaned up.
15. The Applicant shall ensure that all contaminated material and/or contaminated soil removed or excavated from the Project site is properly loaded, transported, and disposed of in accordance with Federal, State, and local regulations.
16. Staging/storage areas for equipment and materials shall be located outside of waters of the United States.

17. The Applicant shall ensure that all disturbed and filled areas are adequately stabilized and protected from erosion and siltation by implementing appropriate soil stabilization, sedimentation and silt control measures.
18. Any flow diversion used during construction shall be designed in a manner to prevent pollution, minimize siltation, and shall provide flows to downstream reaches. Flows shall be maintained to support existing aquatic life and riparian wetlands and habitat that may be located upstream and downstream from any temporary diversion.
19. The Applicant shall restore drainages, to the greatest extent possible, to the original bank configuration, stream bottom width, and channel gradient.
20. All temporary facilities and impacts shall be removed and restored to the preexisting conditions and contours to the extent practicable.
21. Construction related materials and wastes shall be removed from the Project site upon completion of the Project.
22. The Applicant shall submit Notice to the Regional Water Board within 60-days of completion of the Project. The Notice shall include: 1) a detailed summary of the mitigation and restoration activities implemented during the Project and 2) provide photographic documentation that supports the information summarized in the Notice.
23. The Regional Water Board reserves the right to suspend, cancel, or modify and reissue this WQC, after providing notice to the Applicant and/or responsible Site-Supervisor, if the Regional Water Board determines that the Project fails to comply with any of the terms or conditions of this WQC.
24. The Applicant shall orally notify the Regional Water Board of any noncompliance that may impact the beneficial uses of waters of the United States, as soon as notification is possible and notification can be provided without substantially impeding measures necessary to address the noncompliance.

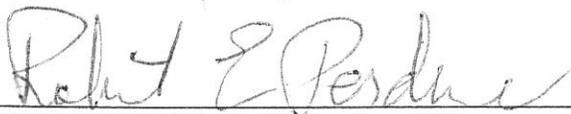
REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

If you have any questions, please contact Jay Mirpour, Water Resources Control Engineer, at (760) 776-8981 or jmirpour@waterboards.ca.gov.

WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that any discharge from the referenced Project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law.

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' Project description and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the Regional Water Quality Control Board's Water Quality Control Plan (Basin Plan).



ROBERT PERDUE, Executive Officer
Colorado River Basin Regional Water Quality Control Board

JJM/

cc: James E. Mace, USACE Los Angeles, Regulatory Division
Bill Orme, SWRCB, Division of Water Quality, Water Quality Certification Unit
Elizabeth Goldmann, U.S. Environmental Protection Agency, Region 9
Thomas A. Vandenberg, Office of Chief Counsel, SWRCB

File: California Department of Transportation – District 8, Caltrans US-95 Curve
Realignment Project, WDID No. 7B363028001

Mailing List:

James E. Mace
Senior Project Manager
Regulatory Division
U.S. Army Corps of Engineers
Los Angeles District
Riverside Regulatory Field Office
1451 Research Park Drive, Suite 100
Riverside, CA 92507-2154

Bill Orme (*)
Water Quality Certification Unit
Division of Water Quality
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Elizabeth Goldmann
Wetlands Regulatory Office
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Thomas A. Vandenberg (*)
Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Note: (*) will e-mail electronic copy

PROJECT INFORMATION

Application Date: The original application was submitted on October 10, 2012 and additional information was received on November 16, 2012.

Applicant: California Department of Transportation – District 8
Contact: Mr. Scott Quinnell, (909) 383 6936

Applicant Representative: California Department of Transportation – District 8
Contact: Mr. Josh Jaffery, (909) 383 6386

Project Name: California Department of Transportation – District 8, Caltrans US-95 Curve Realignment Project, WDID No. 7B363028001

Start and Completion: Construction will occur between August 1, 2013 and August 1, 2014.

Project Description: To improve sight distance by eliminating crest vertical curves within the project limits (from post mile (PM) 51.22 to 51.65 and the addition of paved shoulders throughout the project limits. Under existing conditions, motorists approach the combination of horizontal and vertical curves with restricted sight distances following a long straight segment of the highway at a greater speed than the advisory warning signs posted speed (50 mph), which results in vehicle overturning, loss of control or running off the roadway. Accident rates for this segment of US-95 within the project limits are much higher than the average rate for a similar facility. Project activities will provide more space for motorists to negotiate the curve.

Caltrans proposes to construct a flatter vertical curve by realigning the highway horizontally to the east of existing US-95. The improvements will consist of constructing two 12 foot Hot Mix Asphalt (HMA) lanes with two 8 foot HMA shoulders and restriping the centerline for no passing from PM 51.22 to 51.65. Caltrans will use typical equipment for the project, including excavators, backhoes, trucks, rollers, and paving machines. The existing lanes will be utilized for traffic while the new alignment is constructed.

Project Location: US-95 near Needles, San Bernardino County, California
Longitude/ Latitude: 114°36' 4.9" W; 34° 44' 46.16" N
Township/Range: S32/T8N/R23E

Acres and Linear Feet impacted:

Streambed Unvegetated (permanent) 0.13 acres and 247 linear feet

Dredge: N/A

Receiving Water(s): Ephemeral desert washes as part of a dry land fluvial system with a downstream connection to the Colorado River

Federal Permit(s): The project was determined to fall under the U.S. Army Corps of Engineers Section 404 Permit, Nationwide Permit (NWP) 14 – (Linear Transportation Projects).

Status of CEQA: February 6, 2012, a Negative Declaration was prepared for this project pursuant to the provisions of CEQA. Lead Agency: Caltrans. State Clearinghouse Number: 2011111051

File: California Department of Transportation – District 8, Caltrans US-95 Curve Realignment Project, WDID No. 7B363028001

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
INLAND DESERTS REGION
78078 COUNTRY CLUB DRIVE, SUITE 109
BERMUDA DUNES, CA 92203



STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. 1600-2012-0160-R6 REVISION 2
UNNAMED WASHES/COLORADO RIVER
CALIFORNIA DEPARTMENT OF TRANSPORTATION
CALTRANS US-95 CURVE REALIGNMENT PROJECT

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the California Department of Transportation (Permittee) as represented by Scott Quinnell.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on October 23, 2012 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project (Figure 1) is located at multiple unnamed drainages tributary to the Colorado River along U.S. Highway 95 (US-95) about 5.5 miles south of Interstate Highway 40 (I-40) in an unincorporated area near the City of Needles, in the County of San Bernardino, State of California; Section 32, Township 8 North, Range 23 East, U.S. Geological Survey (USGS) Quad Map Whale Mountain. There is no Assessor's Parcel Number (APN) for the project area itself but it is adjacent to APNs 06-071-06529180, 06-071-065041103, and 06-071-065-41104. Latitude 34⁰ 44' 46.16" North, Longitude 114⁰ 36' 4.90" West.

PROJECT DESCRIPTION

The project (Figure 2) is limited to the realignment of US-95 from Post Mile (PM) 51.22

to 51.65 in order to improve sight distance by eliminating crest vertical curves within the project limits. Accident rates on this segment of US-95 are much higher than the average rate for similar facilities. Caltrans is proposing to construct a flatter vertical curve by realigning the highway horizontally to the east as well as providing paved shoulders throughout the project limits to provide more space for motorists to negotiate the curve. The project will consist of creating a new road which will replace the current road traversing the curve. The new road will consist of two 12-foot hot mix asphalt (HMA) lanes with two 8-foot HMA shoulders and restriping the centerline for no passing from PM 51.22 to 51.65. The new road will run leveled to the limits of construction, to reduce the current grade. Engineering plans have the new road at a lower level, through the middle portion of the project limits, than the current road. To accomplish a lower level road, work crews must cut and remove a hill that lies adjacent to the east of the current road. After the new road has been created, the old road will be eliminated. All removed material not used as fill will be trucked out and disposed off-site as per Caltrans Best Management Practices (BMPs). No borrow pits will be created because no other fill material will be imported. The earth surface beneath the new road will be prepared by compaction prior to asphalt overlay. The new road will follow the contours of existing streambeds to allow waters to flow over it through existing channels during rainfall events. During construction, graded areas will have topsoil removed and stockpiled. Existing vegetation will be removed and crushed. After construction is completed, stockpiled soil and crushed vegetation (duff) will be spread back on to exposed areas to form natural mulch with a native seed bank. After the replacement of stockpiled soil and crushed vegetation is performed, additional erosion control and revegetation actions will be implemented (Figures 3a-3b). Erosion control will be performed as described in Measure 2.7. Revegetation (see Measure 3.2) will also be performed with native plants. In general, erosion control and revegetation will consist of replacement of stockpiled topsoil, replacement of duff, hydroseeding, application of a biodegradable rolled erosion control blanket, planting, irrigation and invasive species control (see Measure 3.4).

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: desert tortoise (*Gopherus agassizii*), burrowing owl (*Athene cunicularia*), migrant bird species and all other fish and wildlife resources in the project vicinity.

The adverse effects the project could have on the fish or wildlife resources identified above include the permanent loss of nesting/breeding and/or foraging habitat and alteration of wildlife corridors. The project will also permanently impact 0.134 acres of ephemeral streambed and riparian habitat.

Total project impacts of 0.134 acres are authorized under this Agreement. If any additional impacts are anticipated to riparian habitat and/or streambed habitat, during project activities, Permittee shall submit an application for an amendment to this Agreement for authorization of those impacts.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Take of Nesting Birds. Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit the take of all birds and their active nests, including raptors and other migratory non-game birds (as listed under the United States Migratory Bird Treaty Act).

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

- 2.1 Desert Tortoise. The following measures will be implemented to avoid and minimize impacts to desert tortoise.
 - 2.1.1 At least 30 days prior to the initiation of construction activities, final plans and specifications will be prepared for all proposed construction areas, staging areas, parking areas and project elements to be surveyed for desert tortoise and such areas will be clearly flagged, prior to the initiation of preconstruction surveys.

- 2.1.2 Desert tortoise fencing will be installed and a pre-construction survey will be performed by a biological monitor (see Measure 2.8) at least 5 calendar days prior to construction activities.
- 2.1.3 All construction staging will be inspected and approved by a biological monitor (see Measure 2.8) prior to the initiation of construction activities. Burrows located within the proposed alignment of the temporary exclusion fencing shall be evaluated within 8 to 48 hours prior to any ground disturbing activity required for installation of the temporary exclusion fencing, with all burrows located beyond the limits of the proposed project and within 150 feet of the proposed alignment of the temporary exclusion fencing flagged for avoidance.
- 2.1.4 A biological monitor (see Measure 2.8) will develop and administer a worker education program to all construction personnel.
- 2.1.5 A biological monitor (see Measure 2.8) will be on site to monitor construction and will halt construction activities if a desert tortoise is observed (see Measure 2.8).
- 2.1.6 All activities will be conducted in accord with CDFW California Endangered Species Act (CESA) Incidental Take Permit No. 2081-2012-052-R6.
- 2.1.7 Speed limits will be 20 miles per hour between February 1 and July 1 and speed limits will be strictly enforced within the project construction area.
- 2.1.8 Firearms and pets will be restricted within the work area during construction.
- 2.1.9 A trash and litter management program will be implemented to reduce the appeal of the project area to potential tortoise predators.
- 2.2 Nesting Bird Surveys. Permittee shall not remove vegetation from the project site during the period of March 15 through September 15 to avoid impacts to nesting birds. If project construction cannot be avoided during the period of March 15 through September 15, Permittee shall have a CDFW-approved biologist(s) survey all potential nesting vegetation within the project site for nocturnal and diurnal nesting birds, prior to commencing project activities (including construction and/or site preparation). **Permittee shall obtain CDFW approval of the biologist(s) 90 days prior performing nesting bird surveys.** Surveys shall be conducted at the appropriate time of day, no more than three days prior to vegetation removal and/or disturbance. Documentation of surveys and findings shall be received by CDFW prior to conducting project activities. **Please reference SAA # 1600-2012-0160-R6.** If no nesting birds were observed, project activities may begin. If an active bird nest is located, the nest site shall be fenced a minimum of 200 feet (500 feet for endangered,

threatened, and candidate species; species of special concern; and all raptors) in all directions, and this area shall not be disturbed until after September 15 and until the nest becomes inactive. If threatened or endangered species are observed in the area, no work shall occur during the breeding season (March 15 through September 15) to avoid direct or indirect (noise) take of listed species.

- 2.3 Burrowing Owl. Prior to the initiation of any project activities in jurisdictional areas, Permittee shall conduct a burrowing owl habitat assessment. The assessment shall be conducted by a biologist knowledgeable of burrowing owl habitat, ecology, and field identification of the species and burrowing owl sign. The assessment shall consist of walking the project site and adjoining areas within 150 m or more where direct or indirect effects could potentially extend offsite to identify the presence of burrowing owl habitat. Burrowing owls use a variety of natural and modified habitats for nesting and foraging that is typically characterized by low growing vegetation. Burrowing owl habitat includes, but is not limited to: native and nonnative grassland, interstitial grassland with shrub lands, shrub lands with low density shrub cover, golf courses, drainage ditches, earthen berms, unpaved airfields, pastureland, dairies, fallow fields, and agricultural use areas. Burrowing owls typically use burrows made from fossorial (adapted for burrowing or digging) mammals such as ground squirrels or badgers, and often manmade structures such as earthen berms; cement culverts; cement, asphalt, rock, or wood debris piles; or openings beneath cement or asphalt pavement. A report summarizing the results of the habitat assessment shall be submitted to CDFW within 30 days following the completion of the assessment. Information to include in this report can be found in Appendix C of the *Staff Report on Burrowing Owl Mitigation* (California Department of Fish and Game, March 7 2012). Please note that burrowing owl habitat assessments dated more than one year prior to the construction start date will not be accepted by CDFW. If no suitable habitat is found on-site (i.e., if the site is completely covered in chaparral habitat, cement, or asphalt), no additional surveys are necessary. If suitable habitat is found onsite, burrowing owl surveys must be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (California Department of Fish and Game, March 7 2012). Survey results shall be submitted to CDFW within 30 days of completion of surveys. If burrowing owls are found onsite, the Permittee shall contact CDFW for further guidance prior to commencing project activities.

CDFW recommends that breeding season burrowing owl surveys be conducted over all potential suitable habitat that were identified in the Habitat Assessment, even areas outside State jurisdiction pursuant to Section 1600 of the FGC. The burrowing owl is protected under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13) and Sections 3503, 3503.5 and 3513 of the FGC, which prohibit take of all birds and their nests, including raptors. Therefore, it is the responsibility of the Permittee to ensure compliance with these laws for the entire project site. Information to include in the survey report can be found in

Appendix D of the *Staff Report on Burrowing Owl Mitigation* (California Department of Fish and Game, March 7 2012).

- 2.4 Pollution and Litter. The Permittee 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 Permittee to ensure compliance.
- 2.4.1 The Permittee shall not allow water containing mud, silt, or other pollutants from grading, aggregate washing, or other activities to enter a lake, streambed, or flowing stream or be placed in locations that may be subjected to high storm flows.
- 2.4.2 Spoil sites shall not be located within a lake, streambed, or flowing stream or locations that may be subjected to high storm flows, where spoil shall be washed back into a lake, streambed, or flowing stream where it will impact streambed habitat and aquatic or riparian vegetation.
- 2.4.3 Raw cement/concrete or washings thereof, asphalt, paint, or other coating material, oil or other petroleum products, or any other substances which could be hazardous to fish and wildlife resources resulting from project related activities shall be prevented from contaminating the soil and/or entering the waters of the State. These materials, placed within or where they may enter a lake, streambed, or flowing stream by the Permittee or any party working under contract or with the permission of the Permittee, shall be removed immediately.
- 2.4.4 No broken concrete, cement, debris, soil, silt, sand, bark, slash, sawdust, rubbish, 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 be placed where it may be washed by rainfall or runoff into waters of the State. 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 lake, streambed, or flowing stream.
- 2.4.5 No equipment maintenance shall be done within or near any lake, streambed, or flowing stream where petroleum products or other pollutants from the equipment may enter these areas under any flow.
- 2.5 Nonnative plant species. CDFW recommends the use of native plants to the greatest extent feasible in the landscaped areas adjacent to and/or near mitigation/open space areas and within or adjacent to stream channels. Permittee shall not plant, seed, or otherwise introduce invasive nonnative plant species to the landscaped areas adjacent to and/or near mitigation/open space areas and within or adjacent to stream channels (minimum 100 foot setback from open space areas and 150 foot setback from stream channels and wetland/riparian

mitigation sites). Invasive nonnative plant species not to be used include those species listed on the "California Invasive Plant Inventory, February 2006" and the "February 2007 Inventory Update", (which are updates to Lists A & B of the California Exotic Pest Plant Council's list of "Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999"). This list includes: pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, bush lupine, sweet alyssum, English ivy, French broom, Scotch broom, Spanish broom, and pepperweed. A copy of the complete list can be obtained by contacting the California Invasive Plant Council by phone at (510) 843-3902, at their website at www.cal-ipc.org, or by email at info@cal-ipc.org.

- 2.6 Best Management Practices. Permittee shall actively implement best management practices (BMPs) to prevent erosion and the discharge of sediment in to streams and lakes during project activities. BMPs shall be monitored daily and repaired if necessary to ensure maximum erosion and sediment control. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the project site shall be free of nonnative plant materials. Fiber rolls or erosion control mesh shall be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.
- 2.7 Caltrans Best Management Practices/ Erosion Control. Caltrans Best Management Practices and Standard Special Provisions will be followed during construction to minimize impacts to the environment. Graded areas will have topsoil removed, existing vegetation will be removed and crushed and soil/vegetation will be stockpiled. After construction, the stockpiled soil/vegetation would be spread back onto exposed areas to form natural mulch with a native seed bank. Erosion control will be augmented by hydroseeding and planting of native vegetation (Figures 3a-3b) as described in Measure 3.2.
- 2.8 Biological Monitor. A CDFW-approved biologist shall be onsite to monitor all activities that result in the clearing of sensitive habitat as well as grading, excavation, and/or other ground-disturbing activities in jurisdictional areas. **Permittee shall obtain CDFW approval of the biological monitor(s) 30 days prior to initiation of any project activities in jurisdictional areas.** Permittee shall flag the limits of grading and the jurisdictional areas, perform necessary surveys, and take photographs during the construction process, as required by this Agreement. The biological monitor is required to halt construction activities if threatened or endangered species are identified and notify the appropriate agencies immediately. The biological monitor shall have proven knowledge of the general area and experience handling sensitive species present in the project area.

2.9 Lighting Impacts. No lighting shall be allowed to impact jurisdictional areas, and the lighting and fencing for infrastructure adjacent to jurisdictional areas shall be designed or reviewed by a qualified biologist to allow wildlife to move within the open space and conserved areas without hindrance.

3. Compensatory Measures

3.1 Mitigation for Permanent Impacts. CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary to fully mitigate impacts to streambed habitat that will result with implementation of project activities. The Permittee shall mitigate for 0.134 acres of permanent impacts to jurisdictional streambed that will result from project activities by providing for the permanent protection and management of a minimum of 0.39 acres of streambed habitat. Compensatory mitigation is calculated at a ratio of 3:1 (2:1 for CDFW and 1:1 for the Bureau of Land Management). Mitigation for streambed impacts will be incorporated into the habitat mitigation for impacts to desert tortoise habitat described and specified in CDFW California Endangered Species Act (CESA) Incidental Take Permit No. 2081-2012-052-R6.

3.2 On-site Habitat Restoration. **Within 30 days of project completion,** Permittee shall initiate restoration of all impacted areas by seeding/planting with California local native species. The plant palette shall be approved by CDFW. Planting schedule may be altered with CDFW concurrence. On-site habitat restoration (revegetation) will be performed on the project site as described in the HMMP (see Measure 4.1). Habitat restoration will consist of site preparation (replacement of removed topsoil and duff), hydroseeding with seeds of native plant species, the application of a biodegradable rolled erosion control blanket (if needed), planting with native plants, irrigation, invasive species control (see Measures 3.4 and 3.5) and monitoring. It is anticipated that seeds of saltgrass (*Distichlis spicata*) and desert bluebells (*Phacia campanularia*) will be used in hydroseeding. Shrubs will be planted that include catclaw acacia (*Acacia greggii*), cheesebush (*Hymenoclea salsola*) and creosote bush (*Larrea tridentata*). Seed application rates, planting design, planning schedule, irrigation design, irrigation schedule and success criteria will be described in a CDFW-approved revegetation plan and incorporated into the HMMP (see Measure 4.1). Revegetation irrigation and monitoring will continue for two years post-planting. Invasive species control and monitoring will continue for five years post-project (construction) completion.

3.3 Plant Palette. All plant species installed within temporary impact areas shall include only **local California native** container plants, cuttings, and/or seed mix, and shall be typical of the existing native plant species present in the existing riparian areas within and adjacent to the project site. DFG recommends that plant material be installed between October 1 and April 30 to maximize the benefits of the winter rainy season.

3.4 Invasive Species Control. Non-native plants will be removed and/or controlled within

the project area and for a period of five years post-project completion. Invasive species control will be accomplished through the means described in the HMMP (see Measure 4.1). Success criteria will also be described in the HMMP.

3.5 Invasive Plant Monitoring. Occurrence of non-native plants will be monitored within the project site and mitigation areas for five years post-project completion.

4. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 4.1 Habitat Mitigation and Monitoring Plan. **No later than 90 days** after the signature to this Agreement and prior to the initiation of any project activities in state jurisdictional areas, the Permittee will submit to CDFW a Habitat Mitigation and Monitoring Plan (HMMP) designed to meet the overall goals identified in section 3. This HMMP will incorporate habitat mitigation and monitoring at both the project site (where impacts will occur) and the mitigation site. At a minimum, the HMMP shall include the following information related to the project site: (a) a description of the existing physical conditions at the project site, (b) a revegetation plan for the project site (including success criteria), (c) a plan for control of non-native invasive plant species and (d) success criteria for achieving control. The HMMP will also describe habitat mitigation and monitoring for the mitigation site.
- 4.2 Photo Documentation. Two photo monitoring points will be established at the project site. Photo Point No. 1 will be established at or near the southern limit of the project site. Photo documentation will provide a view to the north from this point. Photo Point No. 2 will be established at or near the northern limit of the project site. Photo documentation will provide a view to the north from this point. A third point (Point No. 3) will be added if necessary if Points 1 and/or 2 do not provide a clear view of tortoise exclusion fencing (Measure 2.1.2). Photo documentation will be performed from each point prior to project initiation and after project completion. These photos will be included in the Project Completion Report (see Measure 4.3). Photo documentation will also be performed annually and included in the Annual Reports (see Measure 4.4). Photo documentation of Point 3 will not be necessary for Annual Reports. Photo documentation of the mitigation site will be described in the HMMP.
- 4.3 Project Completion Report. **No later than 90 days after project completion**, the Permittee will submit to CDFW a report that summarizes all project activities including the implementation of all items specified in Section 2. This report will include but not be limited to: photo documentation, all survey results, avoidance/minimization measures implemented and maps that display work areas, surveyed areas and locations of any species specified in Section 2 and/or any nest/burrow of species specified in Section 2.

- 4.4 Annual Reporting. An annual report will be submitted to CDFW for five years following signature of this Agreement providing photo documentation, documenting invasive species control and monitoring activities and degree of achievement of success criteria for each year of the Agreement. Reports will be due 60 days after the end of the calendar year. **The next annual report for the 2013 calendar year is due no later than March 1, 2014.**
- 4.5 Notification to the California Natural Diversity Data Base (CNDDDB). If any sensitive species are observed on or in proximity to the project site, or during project surveys, the Permittee shall submit CNDDDB forms and maps to the CNDDDB within five working days of the sightings, and provide the regional CDFW 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. **This information shall be mailed within five days to:** California Department of Fish and Wildlife Natural Diversity Data Base, 1807 13th Street, Suite 202, Sacramento, CA 95814. Phone (916) 324-3812. A copy of this information will be mailed within five days to the CDFW Region 6, 4665 Lampson Avenue, Suite J, Los Alamitos, CA 90720. **ATTN: Streambed Team. Please reference SAA# 1600-2012-0160-R6.**
- 4.6 Notification of Start of Construction. The Permittee shall notify CDFW, in writing, at least five days prior to initiation of project activities in state jurisdictional areas and at least five days prior to completion of project activities in jurisdictional areas. Notification shall be mailed to the CDFW Region 6, 4665 Lampson Avenue, Suite J, Los Alamitos, CA 90720. **ATTN: Streambed Team. Please reference SAA# 1600-2012-0160-R6.**

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

To Permittee:

Scott Quinnell
California Department of Transportation
464 West 4th Street, 6th Floor, MS 822
San Bernardino, CA 92401
(909) 383-6936
scott_quinnell@dot.ca.gov

To CDFW:

Department of Fish and Wildlife
Inland Deserts Region

78078 Country Club Drive, Suite 109
Attn: Lake and Streambed Alteration Program – Charley Land
Notification #1600-2012-0160-R6
(760) 200-9358
cland@wildlife.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 *et seq.* (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal.

Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (FGC section 1605(f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire on December 31, 2018, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

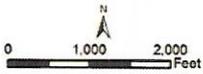
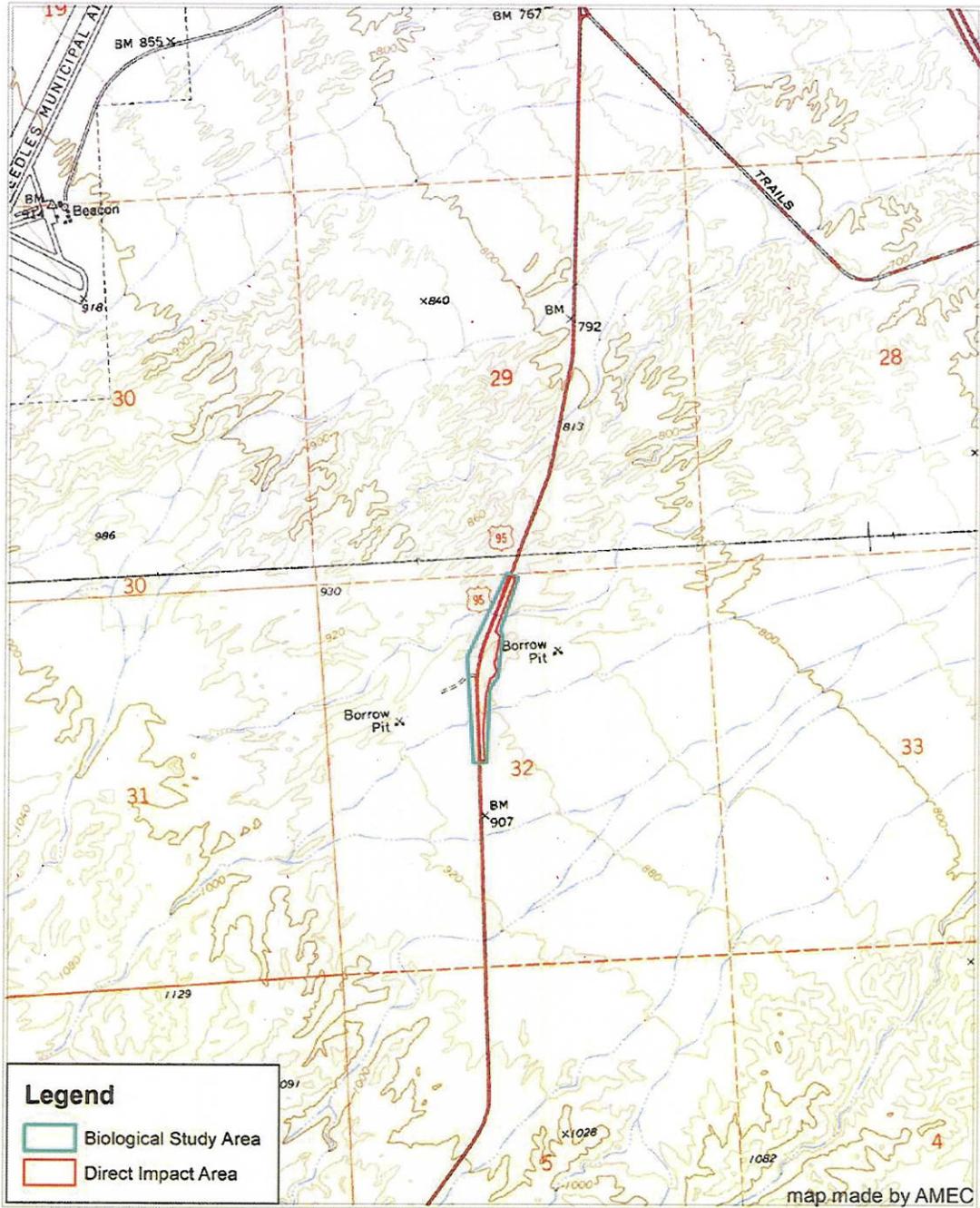
A. Exhibit A-Four Maps/Diagrams

Figure 1. US-95 Curve Realignment Vicinity Map

Figure 2. US-95 Curve Realignment Project Design Map

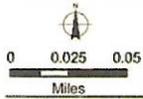
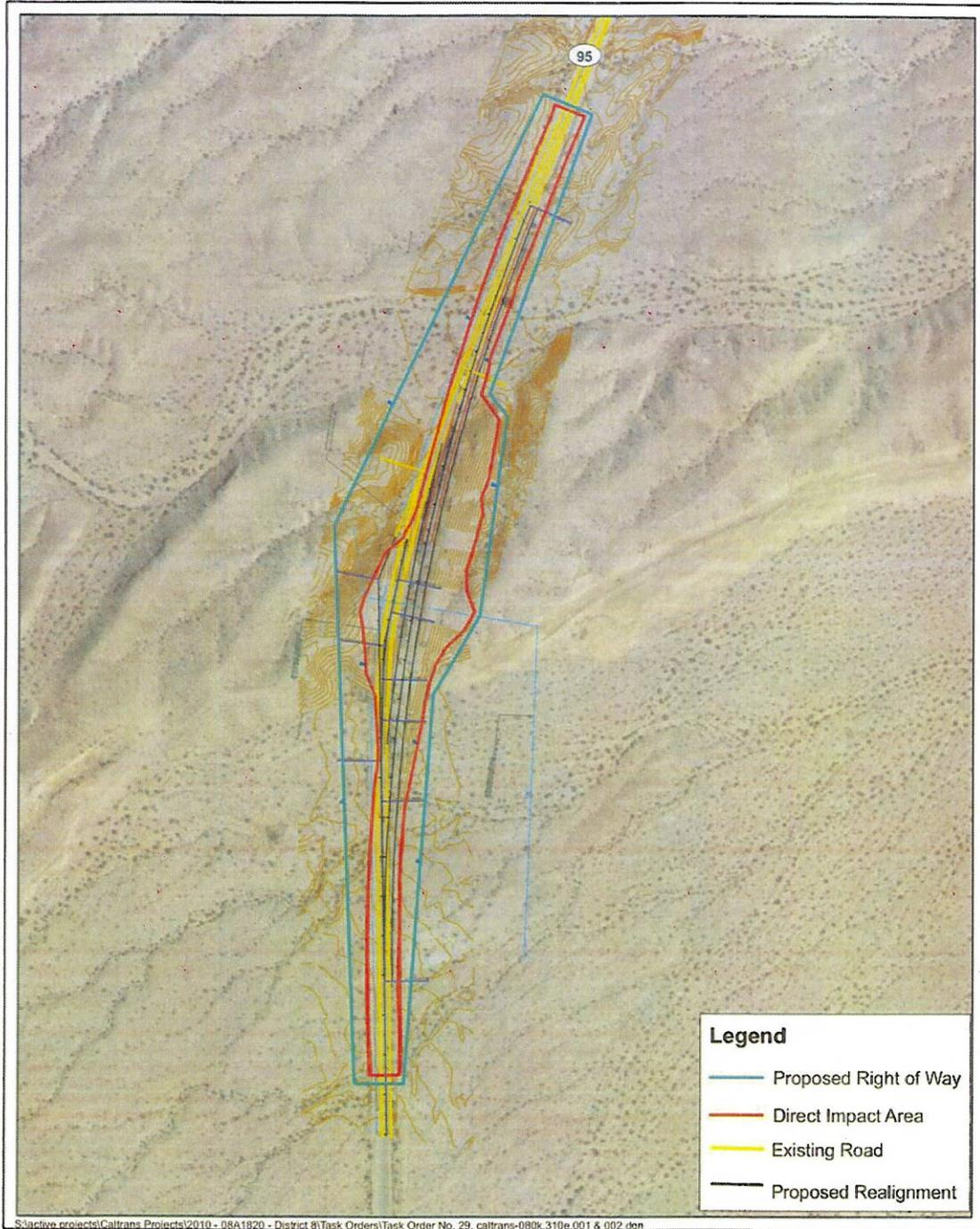
Figure 3a. US-95 Curve Realignment Project Erosion Control Diagram (Southern Area)

Figure 3b. US-95 Curve Realignment Project Erosion Control Diagram (Northern Area)



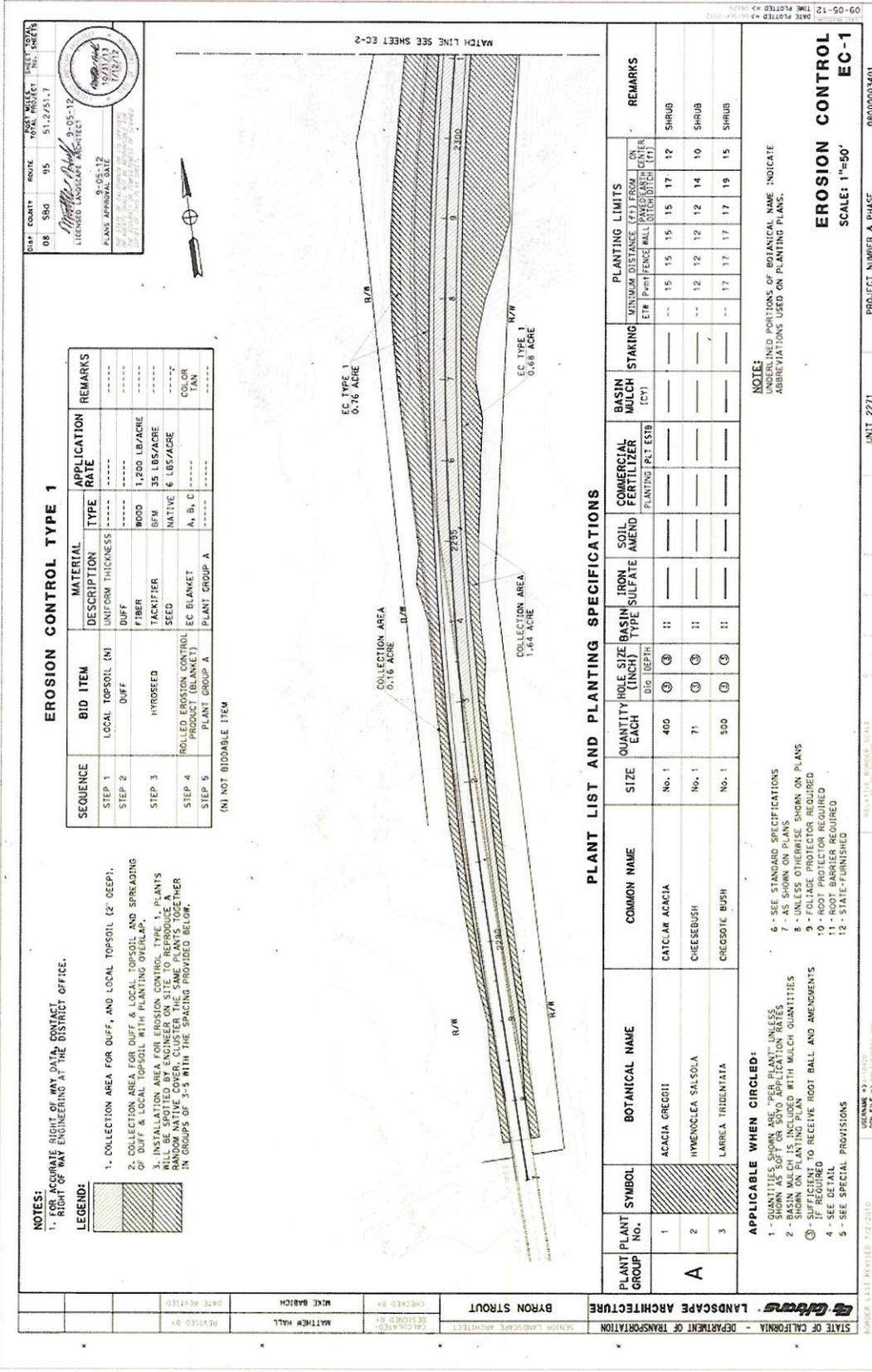
US-95 Curve Realignment
Vicinity Map

FIGURE
1



Project Design
US-95 Curve Realignment
California Department of Transportation

FIGURE
2



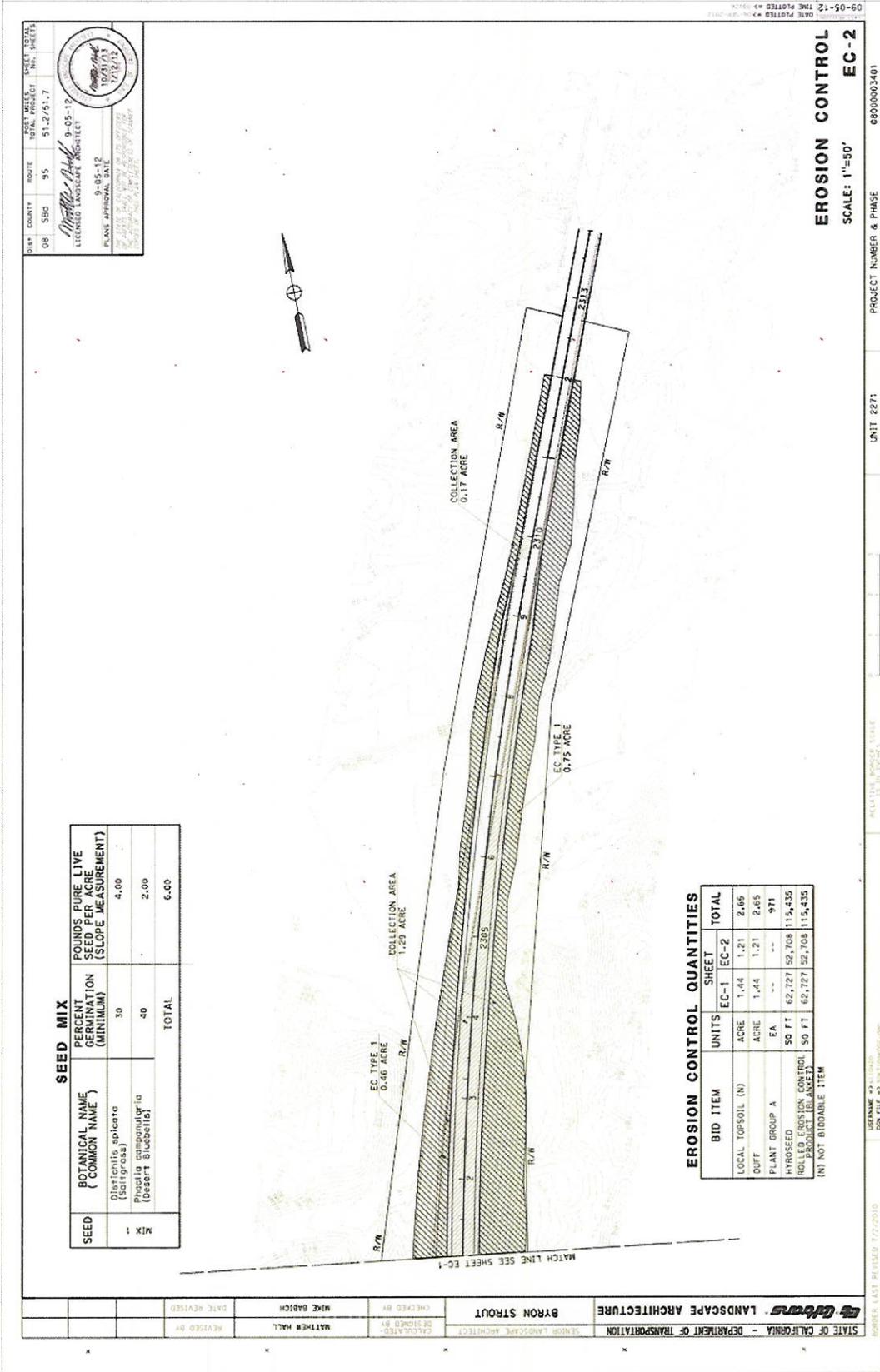


Figure 3b. Erosion Control Diagram for US-95 Curve Realignment Project (Northern Area).

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

**FOR CALIFORNIA DEPARTMENT OF
TRANSPORTATION**



Scott Quinnell
Office Chief, Biological Studies and Permits, District
8

1-30-13

Date

FOR DEPARTMENT OF FISH AND WILDLIFE



Leslie MacNair
Environmental Program Manager

2/15/13

Date

Prepared by: Charley Land
Environmental Scientist