

# Draft Interim Mitigation Strategy

As Required by SB X8 34

by

California Department of Fish and Game,

for the

Desert Renewable Energy Conservation Plan

July 2010

DRECP-1000-2010-006



California Energy  
Commission



Department of  
Fish and Game



Bureau of Land  
Management



U.S. Fish and  
Wildlife Service

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## List of Acronyms

ACEC	Area of Critical Ecological Concern
ACE-II	Areas of Conservation Emphasis, Phase II
ACOE	U. S. Army Corps of Engineers
AFC	Application for Certification
ARRA	American Recovery and Reinvestment Act
BIOS	Biological Inventory and Observation System
BLM	U. S. Bureau of Land Management
CEC	California Energy Commission
CEHC	California Essential Habitat Connectivity
CEQA	California Environmental Quality Act
CNDDDB	California Natural Diversity Data Bank
CVFTL	Coachella Valley Fringe-toed Lizard
CVMSCP	Coachella Valley Multi-species Conservation Plan
CWHR	California Wildlife Habitat Relationships
DFG	California Department of Fish and Game
DRECP	Desert Renewable Energy Conservation Plan
DWMA	Desert Wildlife Management Area
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
ERDF	Energy Resources Development Fee
FTHL	Flat-tailed Horned Lizard
HCP	Habitat Conservation Plan
IMS	Interim Mitigation Strategy
MFTL	Mojave Fringe-toed Lizard
MGS	Mojave Ground Squirrel
MOG	Mineral, Oil, Gas
MOU	Memorandum of Understanding
NCCPA	Natural Community Conservation Planning Act
NEPA	National Environmental Policy Act
NFWF	National Fish and Wildlife Foundation
OHV	Off Highway Vehicle
REAT	Renewable Energy Action Team
ROW	Right of Way
RRTF	Renewable Resource Trust Fund
SB	Senate Bill
USFWS	U. S. Fish and Wildlife Service
WRMSCP	Western Riverside Multi-species Conservation Plan

## INTRODUCTION

Senate Bill X8 34 (Padilla) (SB 34), was enacted on March 22, 2010 to facilitate project mitigation actions for certain proposed renewable energy projects in the California desert that are seeking federal American Recovery and Reinvestment Act (ARRA) funding. Among other things, the bill provides for eligible project developers to pay in-lieu fees that would then be used by the Department of Fish and Game (DFG) to acquire and restore habitat lands as mitigation for project impacts to natural resources. The bill authorizes DFG, in consultation with the California Energy Commission (CEC), U.S. Bureau of Land Management (BLM), and the U.S. Fish and Wildlife Service (USFWS) (collectively the REAT Agencies) to design and implement advanced mitigation actions, including the purchase of land and conservation easements to protect, restore and enhance the habitat of plants and wildlife.

SB 34 establishes two closely related but distinct pathways for the DFG and the CEC to assist in the implementation of specific required actions and identified permit conditions required to fully-mitigate the impacts of solar energy projects qualified to participate under SB 34.

Criteria identified in SB 34 establish “qualified” projects and include solar thermal and solar photovoltaic projects that:

1. Are within the boundary of the DRECP (Figure 1),
2. Have self-identified as seeking ARRA funding, and
3. Have filed applications that by February 1, 2010 and either:
  - a. the CEC has determined the plan application to be complete or a local government has determined the plan application to be complete, or
  - b. published a Notice of Preparation under the California Environmental Quality Act (CEQA).

Eighteen renewable energy projects currently meet these criteria (Appendix A); however as the DFG and the REAT agencies become aware of additional projects, or as project status changes, the list may change.

SB 34 Mitigation implementation options include:

1. An “advance mitigation” option in which the DFG, working with the REAT agencies identify and purchase mitigations lands that act as a land bank, available to be credited to qualified projects, to meet all or a portion of their mitigation obligations. This can be implemented through use of the \$10 million dollar revolving fund established in the

legislation, with expenditures to be reimbursed from the participating projects mitigation fee.

2. An “in-lieu” fee option, whereby the DFG working with the REAT agencies would use mitigation fees to implement the individual permit specific project mitigations to assist the project proponent in completing mitigation obligations. This option would be implemented by the DFG and the REAT, with guidance from the IMS that is required in SB 34.

Many of the projects eligible for participation in the beneficial elements of the bill are undergoing environmental review through the California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), and may be subject to review under the CEC certification process and BLM Right of Way (ROW) process. These processes may result in mitigation, including the possibility of compensatory mitigation, separate from the CESA mitigation addressed in SB 34. The DFG and the REAT agencies anticipate that most, if not all, of the land-based mitigation or restoration requirements arising from review under separate processes i.e. CESA and CEQA, could be implemented as part of the land acquisition for mitigation of impacts to listed species.

At the time of this publication, eligible projects are in various stages of review and approval creating some uncertainty regarding actual mitigation requirements. However, land acquisition, as part of a comprehensive mitigation plan that meets the CESA full mitigation requirement, is a consistent method for offsetting permanent impacts to these species and lends some predictability for purposes of implementing an advanced mitigation program.

Measures designed to avoid and minimize the take of species under CESA will be set forth in the project’s permit for certification, and implemented through typical permitting processes. The Interim Mitigation Strategy (IMS) is intended as an efficient means of *implementing* CESA compensatory mitigation and does not prescribe mitigation ratios, define project mitigation requirements, or address other required measures such as avoidance and minimization.

### **Specific Provisions of SB 34**

The following are summarized elements of SB 34 relevant to the IMS and implementing project mitigation:

- Limits eligible projects to those for which a completed application was received by February 1, 2010, and the developer or owner has applied for and qualifies for federal ARRA funding.
- Authorizes mitigation actions to be used as mitigation only when the DFG has implemented the mitigation action and determined that the action has resulted in the protection, restoration, and enhancement of

the habitat of one or more species that are proposed to be covered by the DRECP, and that are located in the planning area, and that fully mitigate impacts to species pursuant to F&G Code Section 2081(b); or the project is identified in this IMS and meets the specified criteria.

- Requires the IMS to include specified elements, including: 1) a description of the actions to be implemented within the DRECP planning area with a focus on habitat preservation while including enhancement and restoration actions that will contribute to conservation of each species for which a permit is issued, have a regional planning focus, implements mitigation actions within a reasonable time period, including where feasible, advance mitigation, and describes species benefits.
- Requires the IMS to include a cost estimate for each mitigation action, to be based on best available science, and to be reviewed by the DRECP independent science advisors. Requires DFG to seek and consider comments from the DRECP science advisors and if DFG elects not to incorporate the comments of the advisors in mitigation actions to explain the reasons in writing.
- Clarifies that nothing in the statute modifies the requirements of CESA, CEQA, or laws governing the siting and certification of power facilities by CEC, or affects the existing authority of DFG to authorize mitigation actions.
- Requires the mitigation actions implemented pursuant to the statute to be incorporated into the final DRECP to the extent the mitigation actions are consistent with the plan's conservation strategy.
- Requires DFG to monitor implementation of the mitigation actions and the progress of project construction, to report deposits and expenditures from the Energy Resources Development Fee (ERDF) and mitigation activities on its website, and that the monies be spent only for mitigation actions that are not duplicative of and are in addition to mitigation obtained through any other means.
- Prohibits DFG from allowing any new use of the IMS if DFG determines that mitigation actions are not being implemented in rough proportion to the impacts of the projects.

## **PURPOSE OF INTERIM MITIGATION STRATEGY**

The purpose of the IMS is to develop and articulate a conceptual approach to conservation investments (land acquisition, enhancements, restoration) that guides the implementation of project mitigation required of eligible projects.

The intent is to pool financial resources from eligible project mitigation and target conservation investments to maximize protection of habitat values, connectivity, and ecological processes in the California desert region.

The DFG, in consultation with the CEC, the USFWS, and the BLM, have designed actions, including the purchase of land and conservation easements that, when implemented, will protect, restore, or enhance the habitat of plants and wildlife and that can be used to fully mitigate the impacts of the take of endangered, threatened, or candidate species, for purposes of paragraph (2) of subdivision (b) of Section 2081 and Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code (PRC), resulting from solar thermal and photovoltaic powerplants in the DRECP planning area.

This IMS will accomplish the following benefits for candidate, threatened, or endangered species:

- Contribute to the conservation of each species for which a permit is issued;
- Adopt a regional planning perspective that provides a foundation for, or that will complement, any conservation strategy to be developed for the DRECP;
- Implement mitigation actions within a reasonable period of time relative to the impact to the affected candidate, threatened, or endangered species, including, where feasible, mitigation occurring before, and in anticipation of, future impacts to natural resources, and;
- Describe the species that would be benefited by each mitigation action and how it would be benefited.

## **AFFECTED PROJECTS**

Projects currently eligible for participation in the SB 34 Options are listed in Appendix A. Summaries of project descriptions and impacts were taken from certification applications and are subject to change as each project completes the environmental review process. At the time of publication of this Interim Mitigation Strategy document, the agencies already know that project descriptions have changed from what is set forth herein, and will continue to change as dialogues continue between proponents, stakeholders, and the government agencies. Full project descriptions, impact analysis, and proposed mitigation requirements are available from the relevant permitting agency. The general locations of solar projects in the DRECP planning area are shown in Figure 2.

## RELATIONSHIP WITH THE DRECP

**Interim Process Assessments.** The interim processes described in the DRECP Planning Agreement and developed in SB 34 are intended to meet the requirements of the Natural Community Conservation Planning Act (NCCPA) Section 2800 of Chapter 10 of Division 3, PRC Title 14, interim project process for project review during plan development. The NCCPA requires the DFG to evaluate each project to determine whether the project potentially conflicts with the preliminary conservation objectives as set forth in the DRECP Planning Agreement and to recommend mitigation measures or project alternatives that help achieve the preliminary conservation objectives. All SB 34 projects are currently in the environmental review process and are aggressively pursuing ARRA funding deadlines that may be as early as December 2010. Accordingly, determination of potential conflicts with the preliminary conservation objectives and recommendation of mitigation measures for SB 34 eligible projects must be completed in a timely manner to avoid delays that could compromise meeting ARRA deadlines.

The DFG evaluated the subset of SB 34 eligible projects with complete, or nearly complete, project descriptions and impact assessments to determine consistency with the DRECP Planning Agreement preliminary conservation objectives. We considered the location of the project in the context of emerging conceptual conservation areas, compensatory mitigation alternatives, and factors including habitat connectivity and climate change adaptation as part of our evaluation. We recommend the following mitigation measures, as required in the NCCPA for interim process review:

- Project design should maintain local and regional connectivity to minimize wildlife movement between and among conserved areas;
- Project design should seek to maintain natural ecological processes including water and sediment transfer;
- Implementation of specific project mitigation plans should support recovery of the target species as well as mitigating the impacts of the proposed action;

As a result of the requirement to develop a Conservation Strategy as an interim step in development of the DRECP, the REAT agencies have acknowledged the factors listed above are consistent with the Fish and Game Code section 2810(b)(8) regarding review of each eligible project.

The following SB 34 qualified projects are still in development or under review by DFG. Information is not sufficient to complete a consistency review at this time. However, to achieve consistency with the terms of the DRECP Planning Agreement, the consistency review will be completed in a later version of this Interim Mitigation Strategy. All other SB 34 qualified projects have preliminarily been deemed by DFG to be consistent with the DRECP Planning Agreement preliminary conservation objectives.

1. Desert Sunlight -- First Solar (OptiSolar), Photovoltaic
2. Gray Butte Solar – First Solar, Photovoltaic
3. Monte Vista – First Solar, Photovoltaic
4. Blythe Airport Solar 1 Project – US Solar Holdings, LLC, Photovoltaic
5. Palmdale Hybrid Power Project – City of Palmdale, Photovoltaic
6. Borrego Solar Farm – Eurus Energy, Photovoltaic
7. Tehachapi Photovoltaic Solar Project – GE
8. Boulevard Associates (San Bernardino Co.) -- Boulevard Associates, LLC, Photovoltaic
9. Calico (Solar 1) Tessera (Stirling Solar)

**Relationship to Conservation Strategy.** The Interim Guidance for Desert Renewable Energy Project Development (CEC 2009), and the Planning Agreement by and among the DFG, CEC, BLM, and USFWS for the DRECP (May 2010), support the relationship between the IMS and the DRECP. Specifically, both the Interim Guidance Document for the DRECP, and the Planning Agreement, are incorporated in their entirety by reference here to provide a common approach and direction for understanding, cross referencing and implementing this mitigation strategy.

This IMS is consistent with the Interim Guidance for Desert Renewable Energy Project Development which identifies criteria for biological resources necessary for renewable projects and requires consideration early in the site selection and evaluation process to be consistent with the Executive Order S-14-08 and Secretary's Renewable Energy Development Order (Order 3285) to expedite processing of applications. Although these criteria cover a broader range of potential project impacts than addressed by the IMS, clearly those pertaining to listed species are consistent with the IMS and the compensatory mitigation measures identified by the REAT. Determination by DFG, working with the REAT Agencies of proper adherence to these criteria by local agencies will depend on future and final review for consistency.

To the extent the IMS documents an evaluation of interim process review of projects as required by the NCCPA and directs compensatory mitigation to locations maximizing mitigation and recovery of the target species, the IMS can be viewed as an early implementation step in the creation of the Conservation Strategy. Implementing mitigation for the eligible projects at the scale contemplated in this document will effect meaningful conservation in the California desert region.

## DRECP STARTING POINT MAP

*Approach.* The DRECP Starting Point Map (Figure 3) is the REAT Agencies initial presentation of biological sensitivity within the DRECP Planning Boundary. The Starting Point Map was derived from the best available biological information from a variety of GIS-based and document data sources, and was assembled with the collective best professional judgment of the biological field staff from the REAT Agencies. The following data were used in considering biological sensitivities:

- California Natural Diversity Database (CNDDDB) occurrence data
- California Wildlife Habitat Relationships (CWHR) range data and species information
- California Department of Fish and Game species Biological Information and Observation System (BIOS) species data sets
- BLM designated special management areas i.e. Desert Wildlife Management Area (DWMA), and Areas of Critical Environmental Concern (ACEC)
- Wilderness Areas
- State and National Parks
- Public and privately held conservation lands
- U.S. Fish and Wildlife designated Critical Habitats
- Audubon Important Bird Areas
- Nature Conservancy Conservation Portfolio Areas
- California Department of Fish and Game Areas of Conservation Emphasis, Phase II (ACE-11), Priority Conservation Areas (Figure 4)
- California Essential Habitat Connectivity (CEHC) (Figure 5)
- Assessments
- Species of Special Concern data reports
- Expert contacts and species information from grey literature

Sensitivity rankings were derived and mapped for all areas of the desert within the DRECP planning boundary and a species sensitivity ranking was also developed for sensitive desert species having a majority of their known range within the DRECP planning boundary. The data sets, sensitive ranking maps, and species information were combined into the starting point maps by the REAT Agency field staff. From the available data, REAT agency collectively mapped Conservation Opportunity Areas and Renewable Energy Study Areas (Figure 3). The field staff also mapped areas of unknown biological sensitivity, where data on species and habitat quality are lacking. These areas will be targeted for further study during the development of the DRECP.

**Conservation Opportunity Areas.** The Conservation Opportunity Areas identified on the DRECP Starting Point Map were developed as areas to be further evaluated under the DRECP Planning process in designing a reserve network that would provide long-term conservation for sensitive desert species and habitats for DRECP covered species. The Conservation Opportunity Areas

capture areas of unprotected lands that may need to be acquired to ensure the protection of core population areas, critical habitat, or essential habitat connectivity for sensitive desert species. The Conservation Opportunity Areas also capture areas of public lands (primarily BLM managed DWMA's) where management actions are needed to assist with the recovery of both listed and sensitive desert species. Pending completion of the DRECP, the Conservation Opportunity Areas serve as generalized areas within which to direct the specific mitigation actions for Renewable Energy Projects that are approved prior to completion on the DRECP. Mitigation that occurs within the mapped Conservation Opportunity Areas as outlined in this IMS is consistent with the intent of the DRECP Starting Point Maps.

**Renewable Energy Study Areas.** The identified Renewable Energy Study Areas on the Starting Point Map represent areas of medium to low biological sensitivity, based on the analysis of best available biological information for each project in their respective cases. These areas cannot be considered defacto development areas, as the mapped areas contain within them some areas of unknown biological sensitivity. These unknown areas were not excluded from the mapped renewable energy study areas specifically because additional data collection and study of these areas is needed as part of the DRECP planning process. Additionally, these areas still contain listed-species and sensitive biological resources that will trigger individual environmental review and permitting for most projects that are planned in these areas prior to completion of the DRECP. These areas also need additional study as to their suitability for serving as development areas, including the analysis of technical data to evaluate renewable resource generation potential and transmission availability and constraints. Consistent with this IMS, renewable energy projects can be proposed and constructed outside of the mapped renewable energy study areas, as long as their biological effects can be fully mitigated.

## **INTERIM CONSERVATION STRATEGY**

The IMS has been crafted to address mitigation based on environmental assessments completed to date by DFG, working with the REAT. Projects developed in the interim or if projects change to the extent of potentially conflicting with the preliminary conservation objectives of the DRECP, the DFG, working with the REAT will recommend additional mitigation measures that will aid or contribute to habitat connectivity and recovery of listed species and will help achieve the preliminary conservation objectives of the DRECP. Projects inconsistent with the IMS include 1) projects that change location or have substantially increased potential impacts and that are not adequately mitigated, 2) projects that potentially conflict with connectivity or essential corridors, 3) projects that substantially conflict with conceptual conservation areas identified by the DFG working with the REAT.

## **Approach to Mitigation**

The approach to mitigation outlined in the IMS addresses impacts to listed species where project applicants have agreed as a condition of permit approval to fund acquisition of land in fee title or conservation easement and land enhancement or restoration for the benefit of listed species. Most of the eligible projects are regulated by more than one of the REAT agencies and these agencies have differing statutory, regulatory and policy requirements. The approach to mitigation must be flexible enough to accommodate these differences while meeting the legal requirements of CESA, ESA, and other applicable statutes. The REAT agencies have agreed that compensatory mitigation should consist of land acquisition, enhancement, restoration, and other actions in combination to most effectively address mitigation and recovery. Compensatory mitigation for a given project may include one or more of these mitigation actions in various combinations depending on the circumstances, as determined by DFG and other applicable state and federal agencies.

A majority of the Sonoran, Colorado and Mojave deserts are comprised of public lands and they are key to the recovery of declining and vulnerable desert species. For example, the Desert Tortoise Recovery Plan identifies several actions including fencing along major roads and highways, retiring grazing leases and related actions as critical to recovering desert tortoise populations. Nearly 75% of the range of the known MGS population is on public land. As a result, private land acquisition alone will not fully realize meaningful target species population recovery.

As previously stated, most of the eligible projects are under current environmental review at various stages of the process. Most projects have not progressed to the point of clearly defining project mitigation making estimation of project mitigation costs difficult. Despite this limitation, we could not complete the assessment required under SB 34 without estimating the mitigation for eligible projects and, based on experience, also providing preliminary cost estimates of the costs associated with the compensatory mitigation measures on a per acre basis contemplated in the IMS.

SB 34 fees go into a fund to complete specific mitigation actions that nevertheless embrace a regional planning perspective. The actions are intended to be collective in their impact and specifically identified to assure that each project's impacts are addressed. The fees are to be paid on a per acre basis, which can include a mitigation ratio, but nothing in SB 34 reflects any legislative intent to have separate fee structures for each project. Accordingly, the IMS addresses the collective specific impacts of the projects and identifies specific actions that collectively will mitigate those impacts.

We have enough information for several projects to estimate project acreage, and can roughly estimate the rough amount of acreage impacted by projects still earlier in the process. We have also set forth below the types of mitigation

that would be used to mitigate each type of impact. For purposes of these estimates, we assumed acquisition to be some combination of actual land acquisition and other actions such as enhancement and restoration on public lands. As a result of calculating the types of mitigation actions and their costs, we estimate the sum total cost per acre for the IMS to be between \$5,533 and \$8,015 per acre, with a more precise calculation to be provided in the final document prior to certification. The cost per acre does not address how many acres a project affects or the multiplier (mitigation ratio) for those acres that would be applied to the individual project.

## **Estimated Compensatory Mitigation Actions**

The intent of the IMS is to provide options to mitigate project impacts that require acquisition, enhancement, or restoration of habitat for primarily listed species, although there will be indirect benefits to all species that may require mitigation pursuant to CEQA. SB 34 requires total cost accounting to be used when determining the amount of fees to be paid by developers. Total cost accounting includes acquisition or conservation easement costs, or costs associated with the purchase transaction, appraisal, escrow, and title insurance including mineral, oil, and gas rights (MOG); initial enhancement that includes signs, fencing, and boundary/property line surveys; or restoration actions such as removal of exotic species, roads, decommissioning unneeded infrastructure; management for ongoing activities such as public access and enforcement; and monitoring the implementation, effectiveness, and compliance of conservation measures with the goals and objectives of the IMS; and administration of contracts, easements, staff, budgets, and reporting. Estimates consist of preliminary calculations by agencies preparing project environmental analysis at the time the IMS was prepared by the lead agencies and do not represent the total mitigation requirements for any one project. Additional measures have been identified and will be required to fulfill mitigation obligations identified through the environmental review i.e. CEQA process.

The estimated number of acres of compensatory mitigation required for eligible projects is described in the CEC Staff Assessments, BLM EIS, or local agency EIR/EIS as of the effective date of the IMS. The mitigation requirements and associated costs set forth in the final permit or certification will overrule the preliminary estimates included in this IMS. The final permit or certificate issued by the agency having jurisdiction will determine the final mitigation requirements.

Two recent southern California NCCP/HCP's provide some guidance for estimating the per acre fee for costs identified above.

- The Western Riverside Multi-Species Habitat Conservation Plan (WRMSCP) was completed in 2004 and identified approximately 153,000 acres of acquisition, management, monitoring, and

administration needed to meet its conservation targets. The per acre costs for these actions was estimated to be \$5,533.00 which does not include an estimated 3.0% annual adjustment for inflation.

- The Coachella Valley Multi-species Habitat Conservation Plan (CVMSCP) was completed in 2006 and identified approximately 90,000 acres of acquisition, improvement, management, monitoring, and administration needed to meet its conservation targets. The per acre costs for these actions was estimated to be \$10,784.00 which does not include an estimated 3.0% annual adjustment for inflation.

**Table 1. Mitigation costs from existing conservation plans.**

Mitigation Action	Mitigation Cost Estimate (per acre)		
	WRMSCP	CVMSCP	AVERAGE
Acquisition/CE (Escrow, appraisals, other fees)	\$4,790	\$5,852	\$7,716
Enhancement/Restoration (Fence, sign, remove roads, trash, weeds)		\$100	\$50
Management/Adaptive Management	\$725	\$265	\$858
Monitoring	\$10	\$2,825	\$1,422
Administration	\$8	\$1,455	\$735
	\$5,533	\$10,497	\$8,015

Due to uncertainty in the State's economy and the real estate market in general, and the concomitant effect of rising property values resulting from large scale acquisitions for conservation, a conservative approach to setting the per acre fee/costs estimates is justified. For this reason, the IMS anticipates the actual fees will be somewhere near the average of those costs identified by the WRMSCP and the CVMSCP, but may be higher or lower depending on specific location, condition, comparable sales, MOG rights, etc. The DFG will move quickly to secure purchase options in advance of project certifications to provide developers greater certainty in the future regarding fee estimates.

**Habitat Enhancements:** Enhancement can occur in and between areas of suitable habitats for listed species. Enhancements proposals should be prepared by incorporating project-specific closure/decommissioning or abandonment plans, as appropriate, and that meet permitting agency approval. Proposals can focus, for example, on the following enhancement activities:

- Minimizing natural vegetation removal and considering cutting or mowing vegetation rather than total removal, whenever possible.
- Salvage and relocation of cactus and yucca plants that cannot be avoided from construction sites and replanting them in appropriate areas.
- Removal of invasive weeds or non-native plant species.

- d. Remove non-native species including cattle, burros, horses, and sheep.
- e. Reclaiming areas of temporarily disturbed soil using certified weed free native vegetation and topsoil salvaged from excavations and construction activities.
- f. Restoration and reclamation of temporarily disturbed areas, including pipelines, transmission lines, staging areas, and temporary construction-related roads as soon as possible after completion of construction activities. The actions are recommended to reduce the amount of habitat converted at any one time and promote recovery to natural habitats.
- g. Removing barriers and obstacles that interfere with or prohibit wildlife movement.
- h. Construct barrier fencing to prevent the mortality of individuals.

**Restoration.** Examples of project specific restoration and revegetation that may meet the approval of permitting agencies and could be carried out during all project phases include the following restoration activities:

- a. Removal of unauthorized roads and access points.
- b. If a site has been terraced or otherwise substantially altered from its natural contour, recontouring back to natural condition.
- c. Restore soil profiles so that topsoils will establish and maintain preconstruction native plant communities as much as possible.
- d. Restoring wildlife habitat and promoting the re-establishment of native plant and wildlife species.
- e. Restoring vegetation cover, composition, and diversity to values commensurate with the natural ecological setting. It is recommended that use of local seed sources where possible.

## **Conceptual Conservation Areas**

Consistent with the REAT agencies focus for conceptual conservation areas, the IMS recommends acquisition and other actions that begin to build a reserve system designed to address the factors identified in this strategy and the goals and objectives of the DRECP Planning Agreement. The specific goals of establishing the Reserve System are to:

- a. Represent native ecosystem types or natural communities across their natural range of variation in a system of conserved areas.

- b. Maintain or restore self-sustaining populations or meta-populations of the species included in the strategy to ensure permanent conservation so that take authorization obtained for currently listed species (animal species) and non-listed species can be covered in case they are listed in the future.
- c. Sustain ecological and evolutionary processes necessary to maintain the functionality of the natural communities and habitats for the species included in the strategy.
- d. Maximize connectivity among populations and avoid habitat fragmentation within conservation areas to conserve biological diversity, ecological balance, and connected populations of covered species.

Design and location of the recommended conceptual conservation areas considered a number of current land uses and designations including proximity and connectivity to existing public lands, BLM Solar PEIS renewable energy development study areas, “starting point” concepts developed by the REAT (Figure 3), RETI transmission and development node designations, the DFG’s ACE-II (Figure 4) and CEHC assessments, and specific species recovery areas designated by the USFWS.

The reserve system has been designed to support viable populations of covered species or, in the case of species that may not have viable populations in the strategy area, to conserve the best habitat available for species in the strategy area and support connectivity with populations outside the strategy area.

Absent the strategy, future development in the strategy area would be expected to fragment high quality habitat, disrupt the essential ecological processes that sustain the habitat, and create significant edge effect problems. The IMS may also focus development away from areas of quality habitat, typically where habitat fragmentation and edge effects are already negatively influencing habitat quality.

**Goals and Objectives.** The goals for land acquisition as described in the IMS are to further the conservation objectives and recovery actions for species and habitats within the DRECP boundaries. Focus mitigation target areas for acquisition are identified in Figure 4 together with ACE-II areas of high biological value, and mitigation target area are identified together with CEHC (Figure 5). Acquisition in these areas would conserve recovery lands and facilitate improved movement between isolated populations of desert tortoise, bighorn sheep, CVFTL, MGS, and several plants, plus many non-listed special status species such as the golden eagle, MFTL, FTHL, burrowing owl, and numerous other species of reptiles, birds, mammals, and plants, and provide improved connectivity between habitats benefiting these species. Benefits to

desert species will result from acquisition in any of the areas identified as Mitigation Target Areas that also have high biological value and contribute to conservation and connectivity of essential corridors.

**Land Acquisition.** Advance land acquisition using the revolving fund established through SB 34 is a key feature of creating an effective reserve design. The DFG and the REAT agencies have identified mitigation target areas that exceed the total acreage of lands potentially affected by project implementation. Advanced acquisition through use of the \$10 million dollar revolving fund will allow conservation of mitigation lands that will be available as a bank, to be credited towards qualified projects to meet all or a portion of their mitigation obligations. Acquired lands will be permanently protected through conservation easements or deed restrictions in-perpetuity.

The DRECP Planning Agreement addresses how land acquisition for project mitigation could contribute to the goals and objectives of the DRECP. Pending a determination of consistency with these goals and objectives, the DFG working with the REAT may credit natural resource protection, in accordance with their biological value, toward the habitat protection, enhancement, and restoration requirements of the DRECP, as appropriate, provided these resources support listed species and natural communities, are appropriately conserved, restored or enhanced; and contribute to the DRECP conservation strategy.

**Primary Acquisition Conceptual Areas.** There are four primary clusters of mitigation target areas for acquisition and five areas of high movement permeability representing corridors (Figure 5).

- a) Northwestern San Bernardino County. This cluster is made up of primarily county lands interspersed with private unincorporated parcels. The area has been designated as critical habitat for desert tortoise and is therefore a high priority target for mitigating impacts to this species. Further priority of acquisition/restoration/enhancement areas for desert tortoise will be refined by the release of the USFWS's desert tortoise spatial decision support system. Based on ACE-II and CEHC models, there appears to be a west to east high-permeable corridor and an area of high biological value transecting the Kern-San Bernardino County line. A north-south and west-east Mojave ground squirrel corridor passes through the northern extent of the cluster making this area a high priority for mitigating impacts to this species. Acquisitions that contribute to connectivity between known populations of desert tortoise and MGS and that connect areas of high biological value in this area are considered high priority.
- b) Central San Bernardino County. This cluster is southeast of Barstow and south of Interstate 40 and consists primarily of BLM lands interspersed with some military and private unincorporated lands. Two major corridors pass through this cluster, one northwest-

southeast corridor connecting MSG critical habitat areas; and the other west-east corridor connecting desert tortoise populations across the Mojave National Preserve. This cluster has substantial areas of low biological value based on ACE-II while the corridors indicate high permeability based on the CEHC model. The low biological values may be due to limited data for native species in this area. Acquisitions that contribute to connectivity between known populations of desert tortoise and MGS and connect areas of high biological value are considered high priority. Further priority of acquisition/restoration/enhancement areas for desert tortoise will be refined by the release of the USFWS's desert tortoise spatial decision support system.

- c) Eastern San Bernardino County. This cluster is adjacent to the California-Nevada state line and within the Mojave National Preserve. The area has been designated as critical habitat for MGS and based on CEHC is the eastern terminus for the corridors originating in the central part of the county. The corridors pass through land that is primarily county jurisdiction on the west and National Preserve on the east and provide passage for desert tortoise. Further priority of acquisition/restoration/enhancement areas for desert tortoise will be refined by the release of the USFWS's desert tortoise spatial decision support system. A large swath of land showing high biological value based on ACE-II connects the cluster to the corridors. Acquisitions that contribute to connectivity between known populations of desert tortoise and MGS and connect areas of high biological value are considered high priority.
- d) East-Central Riverside County. Based on the CEHC model this cluster is in the middle of a large northwest-southeast corridor that connects desert tortoise critical habitat in Imperial County and MGS critical habitat in Riverside and San Bernardino Counties. It centers north of the Salton Sea and the Coachella Valley and extends through the eastern parts of Joshua Tree National Park. Based on ACE-II there are some areas of high biological value interspersed amongst areas with low biological value, likely due to limited data used for analysis. Acquisitions that contribute to connectivity between known populations of desert tortoise and connect areas of high biological value are considered high priority.

**Enhancement and Restoration.** Enhancement and restoration may occur in any areas identified for acquisition in the IMS. Enhancement and restoration must meet the intent of enhancement and restoration activities included in the IMS

The purpose of enhancement is to improve marginal or degraded habitat or habitats that are not functioning to the highest capacity for dependent species. Restoration is intended to recreate habitats that are either no longer functioning as habitat for native species, or habitats that provide no survival benefits to native species. Enhancement and restoration activities should strive to remove or minimize stressors to species and habitats and build capacity for species resiliency by making improvements to the structure, composition, and function of habitats and more broadly to ecosystems.

It is the intent of the IMS that enhancement and restoration investments, especially on public lands, are maintained in-perpetuity to provide the on-going habitat quality benefits relied upon for permit and certification findings. Moreover, where enhancement and restoration consists of re-vegetation of a site, maintenance beyond an initial establishment period should be minimal, and long-term management should consist of limiting habitat degradation.

***Consistency with DRECP Goals and Objectives.*** DRECP Conservation Action identifies habitat restoration, enhancement, creation, as well as adaptive management, monitoring, population and presence detection surveys, and research as covered activities. The IMS is consistent with these objectives as well as those described in the Specific Actions to Recover Desert Tortoise, and the recovery plans for California condor, flat-tailed lizard, and fringe-toed lizard.

***Primary Enhancement and Restoration Conceptual Areas.***

Enhancement and restoration should be targeted to achieve the maximum benefit to target species. Mitigation target areas have the greatest opportunities to benefit target species while providing ancillary habitat improvement benefits for the entire suite of wildlife and plant resources. Priority should be given to locating enhancement and restoration projects in areas identified for acquisition, or in areas that are identified as critical habitat for recovering listed species or stabilizing populations of declining or vulnerable species, and that may be adjacent to already preserved lands thereby reducing fragmented, isolated habitat and promoting species movement between disjunct habitat patches.

Within the areas identified as critical habitat for desert tortoise, the Draft Revised Recovery Plan identifies principles to enhance or recover degraded habitats. These principles together with those identified for the CVFTL and MFTL provide insight into potential enhancement activities that benefit the target species as well and multiple other species. These are:

1. Control and manage activities that degrade active desert sand fields. In particular, control and manage the primary threats to the sand community, including OHVs and factors that contribute to the loss or stabilization of active fields.

2. Identify actions to reduce impacts from, and control where feasible, invasive species if it is determined from monitoring results that there are impacts to the active desert sand field community.
3. Implement monitoring to track, and ultimately distinguish between, changes due to human or natural causes. Significant variables may include sand compaction, native ant numbers, live perennial shrub abundance, and invasive exotic plant abundance

The fringe-toed lizard recovery plan (USFWS 1985) and the flat-tailed horned lizard rangewide management strategy (Foreman 1997) identified measures that would benefit recovery of these species. They are:

1. Remove and/or eliminate Russian thistle and other exotic species.
2. Remove windbreaks in areas to be restored.
3. Rehabilitate abandoned agricultural areas as appropriate.
4. Implement other rehabilitation procedures as appropriate. Evaluate success of restored habitats and modify
5. Rip and scarify compacted surfaces to alleviate soil compaction and improve water infiltration along abandoned roads.

**Recovery Actions.** DRECP and the IMS are consistent and compatible with the recovery actions identified in the species specific recovery plans for listed desert species such as desert tortoise, MFTL, and CVFTL. This is achieved through referencing and incorporating into the IMS, recovery actions that have been identified as necessary to recover the species. Specifically, habitat loss and degradation have been identified as the greatest threat to desert species. Recovery actions that can be addressed through land acquisition, habitat enhancement and restoration, have been identified as high priorities in the IMS.

**Consistency with Recovery Plans.** The recovery actions for desert species covered by the DRECP and the IMS as summarized in Appendix B of the IMS, will benefit from the primary actions of the IMS (Table 2).

**Table 2. Listed Desert Species benefiting from IMS Tasks based on recovery plan actions.**

IMS Tasks	Listed Desert Species					
	BUOW	MGS	Desert Tortoise	Ca. Condor	FTL	FTHL
Land Acquisition	X	X	X	X	X	X
Habitat Enhancement	X	X	X	X		
Habitat Restoration	X	X	X	X	X	
Land Management	X	X	X	X		X

**Primary Recovery Action Conceptual Areas.** The primary recovery action conceptual areas should occur where the greatest benefit to listed species can occur. The Mitigation target areas have the greatest opportunities to benefit target listed species while providing ancillary habitat improvement benefits for the entire suite of wildlife and plant resources. Priority should be given to locating recovery actions in areas identified for acquisition, or in areas that are identified as critical habitat for listed species.

**IMS Implementation.** Fish and Game Code Section 2069 and 2099 describe the process for implementation of the IMS. The IMS options i.e. advanced mitigation and in-lieu fee, for mitigating impacts from desert renewable energy projects within the boundaries of the DRECP, apply to those projects that meet the criteria stipulated in SB 34. The statute establishes the Renewable Resource Trust Fund (RRTF) and directs the DFG to use the RRTF pursuant to paragraph (1) of subdivision (c) of Section 2069, to purchase mitigation lands or conservation easements, and to cover related restoration, monitoring, and transaction costs incurred in advance of the receipt of fees.

**Approach.** Project applicants have the option of participating in the advance mitigation option or funding DFG's implementation of mitigation through payment of in-lieu fees (Figure 7). In addition, applicants may be required to:

- Submit survey protocols to USFWS, DFG and appropriate lead agencies for review, comment, and approval. Surveys and inventories of special status species should follow protocols recognized by DFG and appropriate lead agencies. Also, to ensure the quality of the protocol surveys, the names and qualifications of the surveyors should be provided to USFWS, DFG and the lead agencies for review two weeks prior to initiating surveys.
- Complete all wetlands delineations for waters of the state and US and provide verification in the Application for Certification that the wetlands delineations are acceptable to the appropriate state (DFG) and federal (Army Corps of Engineers) regulatory agencies.
- Provide copies of the completed and, when applicable, DFG approved application(s) for an Incidental Take Permit and Streambed Alteration Agreement, if DFG has indicated one or both will be required.
- Include a draft common raven (*Corvus corax*) management plan for the project site in applications to appropriate lead agencies, provide verification that agency consultation occurred during development of the draft raven management plan, and acknowledge concurrence with it for
- Consult with USFWS and DFG to determine the need for and/or feasibility of conducting desert tortoise translocation to lessen or mitigate project impacts, if desert tortoises are observed within the

proposed project area. Development and implementation of a translocation plan may require, but not be limited to: additional surveys of potential recipient sites; disease testing and health assessments of translocated and resident tortoises; monitoring protocols; and consideration of climatic conditions at the time of translocation. Because of the potential magnitude of the impacts to desert tortoises from proposed renewable energy projects, USFWS and DFG must evaluate translocation efforts on a project by project basis in the context of cumulative effects.

- Provide a draft habitat compensation plan, when deemed appropriate by the fish and wildlife agencies, which describes the acquisition schedule relative to expected project groundbreaking, endowment funding strategy and amount so that adequate funds will be available to fund the management of the compensation lands in perpetuity. Identify the location and suggested amount of compensation habitat and the rationale for the suggested habitat compensation location(s).

The Department has been working to fully develop the mechanisms available to eligible project applicants to utilize SB 34 for implementing mitigation. As of the date of publication of this IMS, all eligible projects are working through the environmental review and permitting phase of the process and are not prepared to take advantage of the SB 34 provisions. Concurrent with development of the IMS, the Department has taken the following actions to ensure SB 34 provisions will be operational:

- 1) Established, through the National Fish and Wildlife Foundation (NFWF) MOU, processes to accept and manage mitigation funds received under the in-lieu fee program and that DFG can authorize money to be disbursed from the trust account into NFWF's REAT account under DFG's authority to contract with 3<sup>rd</sup> parties to implement the mitigation actions.
- 2) Created a network of third-party land acquisition, management, and land conservation organizations (e.g., land trusts, conservancies, etc.) and linked these parties with the NFWF to act as agents in acquiring and managing lands purchased through the in-lieu fee provisions of SB 34
- 3) Identified and documented approximately 43,500 acres of land currently available or available in the near future that could be acquired under the revolving fund provision of SB 34 for advance mitigation purposes. Current revolving funds could purchase up to half of these lands as an advance mitigation action.
- 4) Established processes internally to provide for efficient granting of the revolving fund dollars to third-party partners to effect these acquisitions. We estimate having advance mitigation land purchase

options or purchases moving to escrow within 60 days of the final IMS

To ensure flexibility in the use of the provisions of SB 34 by eligible project applicants, the REAT have developed language that will be included in the final environmental documents for these projects expressing the SB 34 available pathways. This standard interim language is as follows:

*“This project is qualified pursuant to the criteria established by SB34. As a voluntary option, the applicant may elect to use one or a combination of the mitigation fee options established by SB 34 to fully or partially ensure the implementation of the specific mitigation measures specified in this permit (or certification). SB 34 establishes that the CEC, and the Department of Fish and Game (DFG), in consultation with the Federal REAT agencies, shall implement all or a portion of the permit specific mitigation measures for a qualified project, using mitigation fees provided by the applicant.*

*SB 34 provides two primary mitigation fee options:*

*Option 1) advance mitigation option: Under this option, the permitting REAT Agencies will determine species and acreages for the project that can be mitigated by crediting the project habitat land acquisition obligations against a land bank purchased and held in advance by DFG or a DFG approved third-party. The fees from the permittee required to fully reimburse the cost of the amount of the credited habitat land acquisition shall be deposited with DFG. The fees for the remaining mitigation obligations for the project (management actions, long-term land management funds, administrative and realty transaction fees), as specified in this permit, shall be deposited with the National Fish and Wildlife Federation (NFWF).*

*Option 2) mitigation fee option: Under this option, all of the fees required to implement all specified mitigation measures (habitat land purchase, management actions, long-term management funds, administrative and realty transaction fees), as specified in this permit, shall be deposited with NFWF. In addition, to the calculated fees and pursuant to SB34, the permittee shall post a financial security, in a form acceptable to the permitting REAT Agencies, in an amount equal to 5% of the total estimated mitigation obligation for the project. At the completion of the project mitigations by the REAT Agencies, the security will be released back to the permittee.*

*If SB34 mitigation options are applied to this project, upon issuance of this permit, the project applicant shall remit to the National Fish and Wildlife Foundation (NFWF), or to the Department of Fish and Game (for advanced mitigation acquisition) fees in the amount determined by the Permitting REAT agencies pursuant to SB34. Fees will be within the range estimates provided in the preceding analysis, plus the appropriate administrative fees required by the agencies to implement the mitigation actions on behalf of the permittee. The*

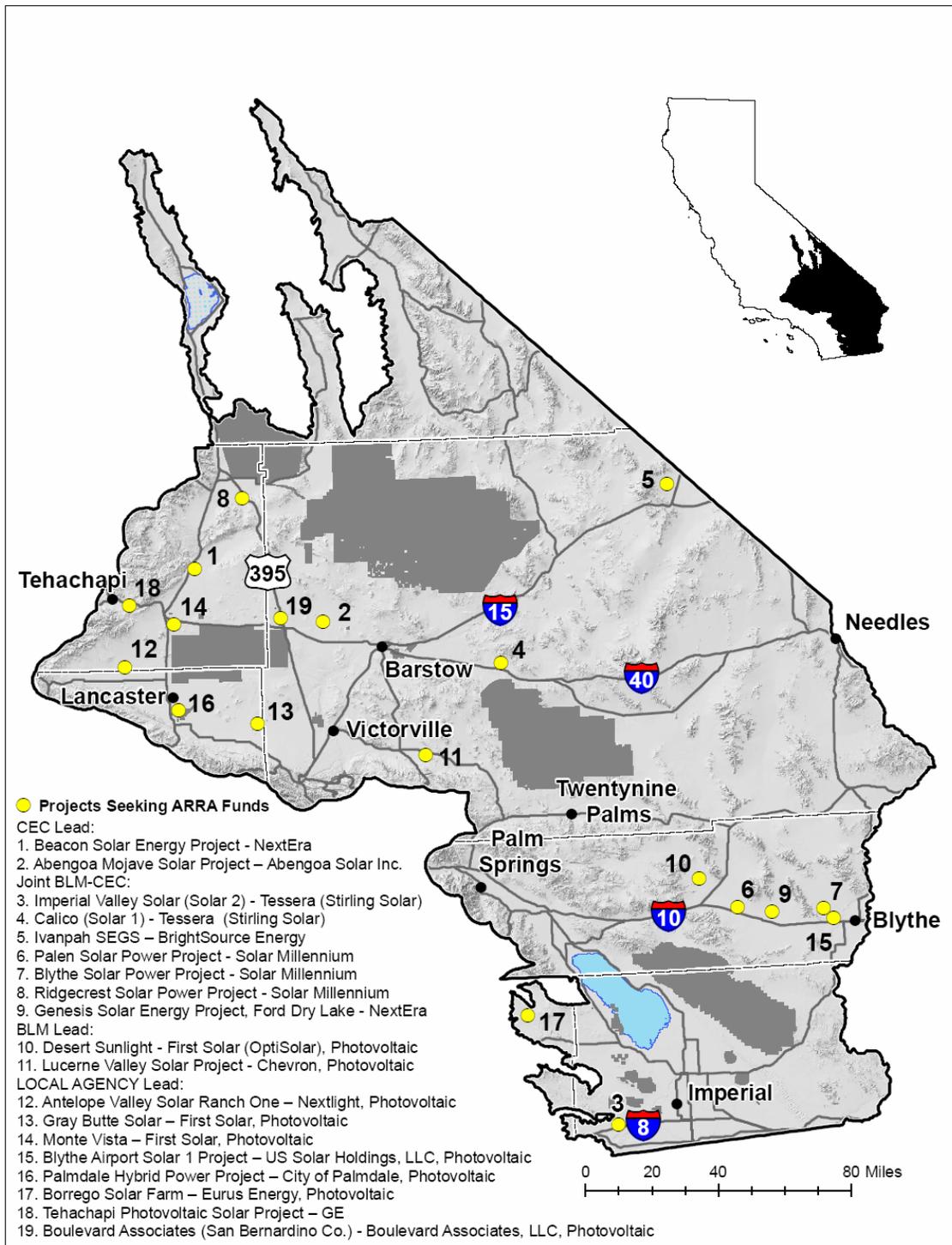
*fee amounts shall be finalized at the time the REAT agencies issue a fee determination for this specific project, either prior to or at the time of the final permit decision. Required fees shall be deposited with NFWS within 60 days of the issuance of this permit (or certification) or prior to initiation of project construction, whichever is sooner.*

*Pursuant to SB 34, for projects that are mitigated through the advance mitigation option or the mitigation fee option, (or a combination of the two options) the payment of fees, as specified in this permit, to fund the implementation of the permit specified mitigation measures shall complete the permittees' obligations for CESA biological mitigation for the project."*

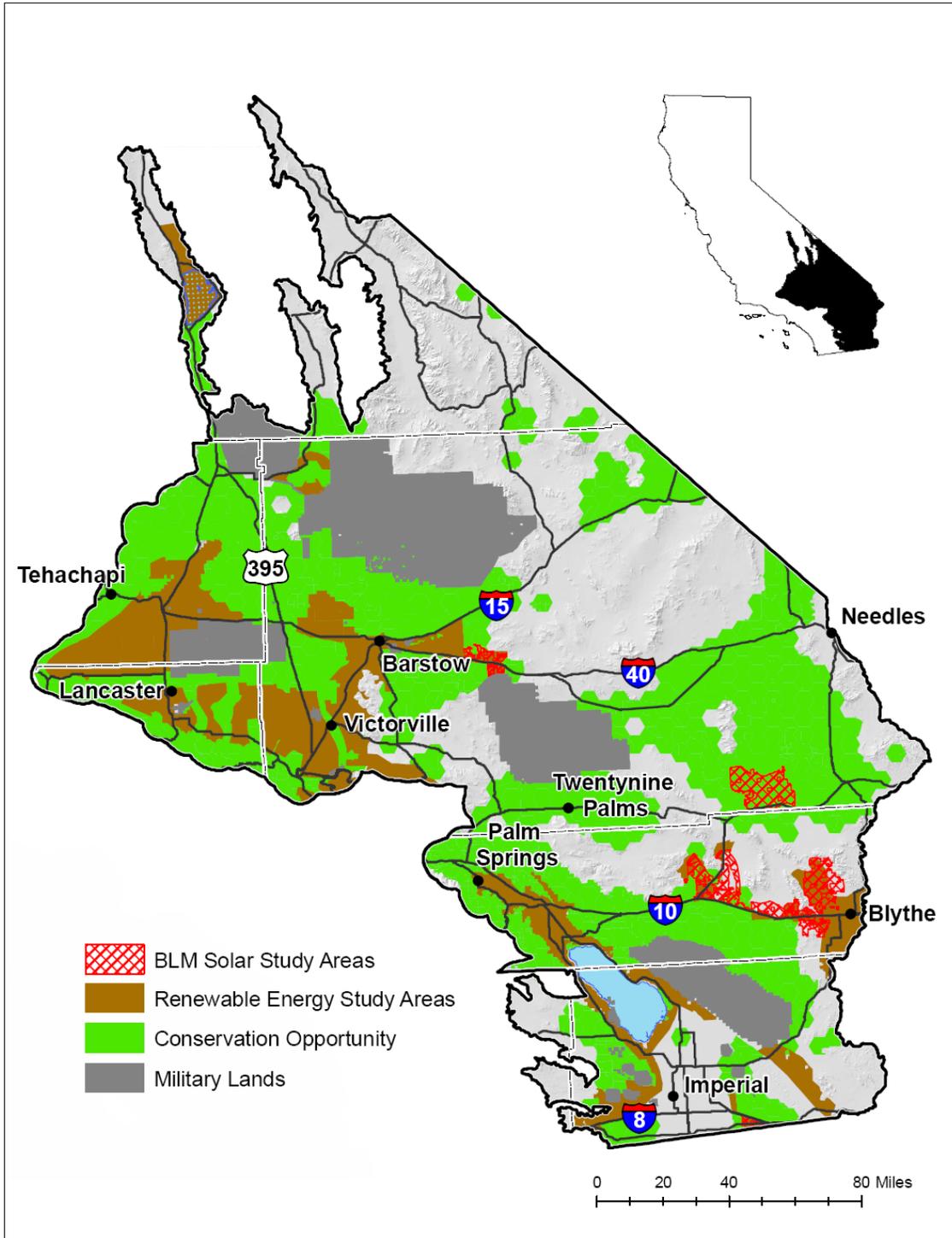
# FIGURES



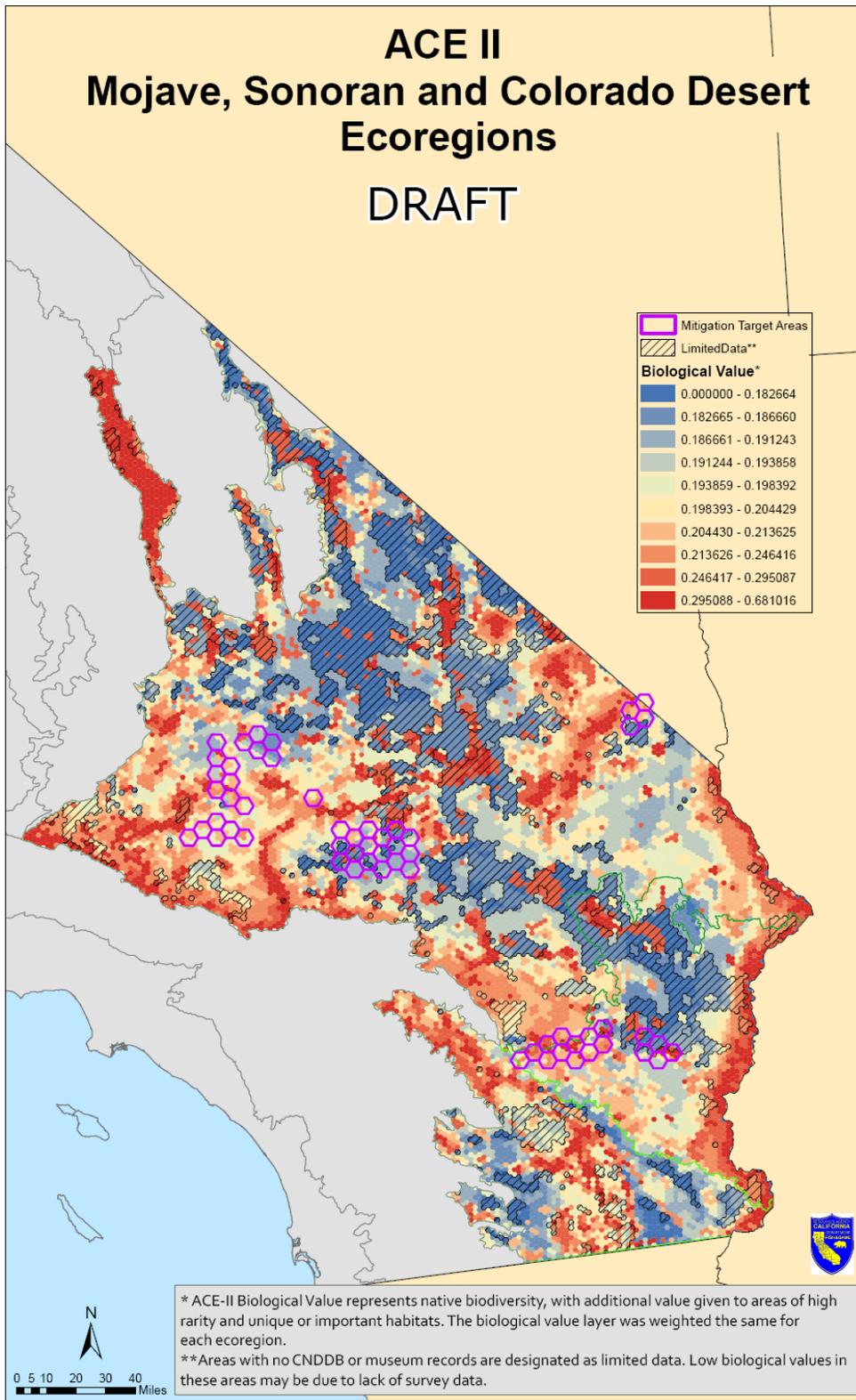
**Figure 1. Desert Renewable Energy Conservation Plan (DRECP) boundaries.**



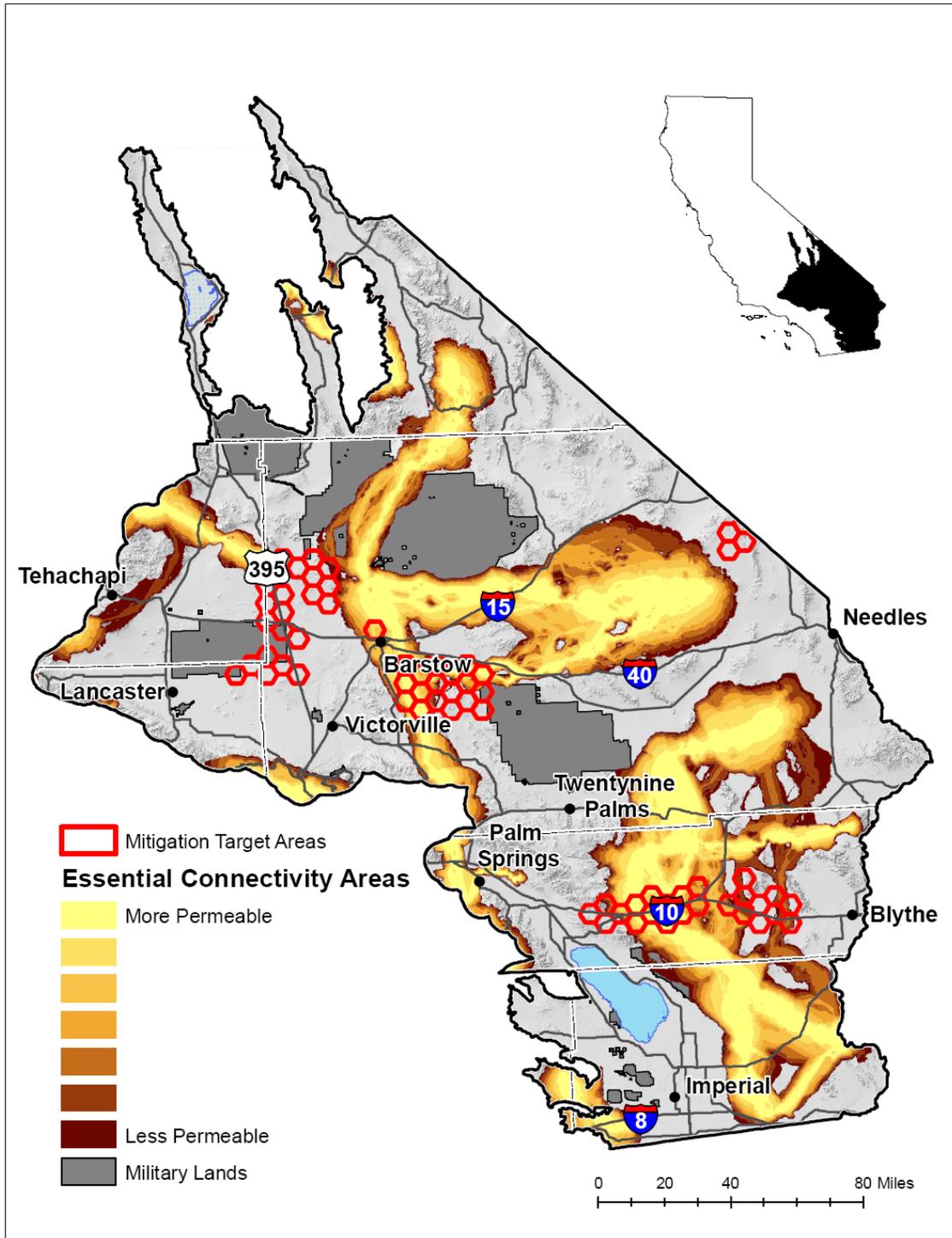
**Figure 2. Projects seeking ARRA funding within the boundaries of the DRECP.**



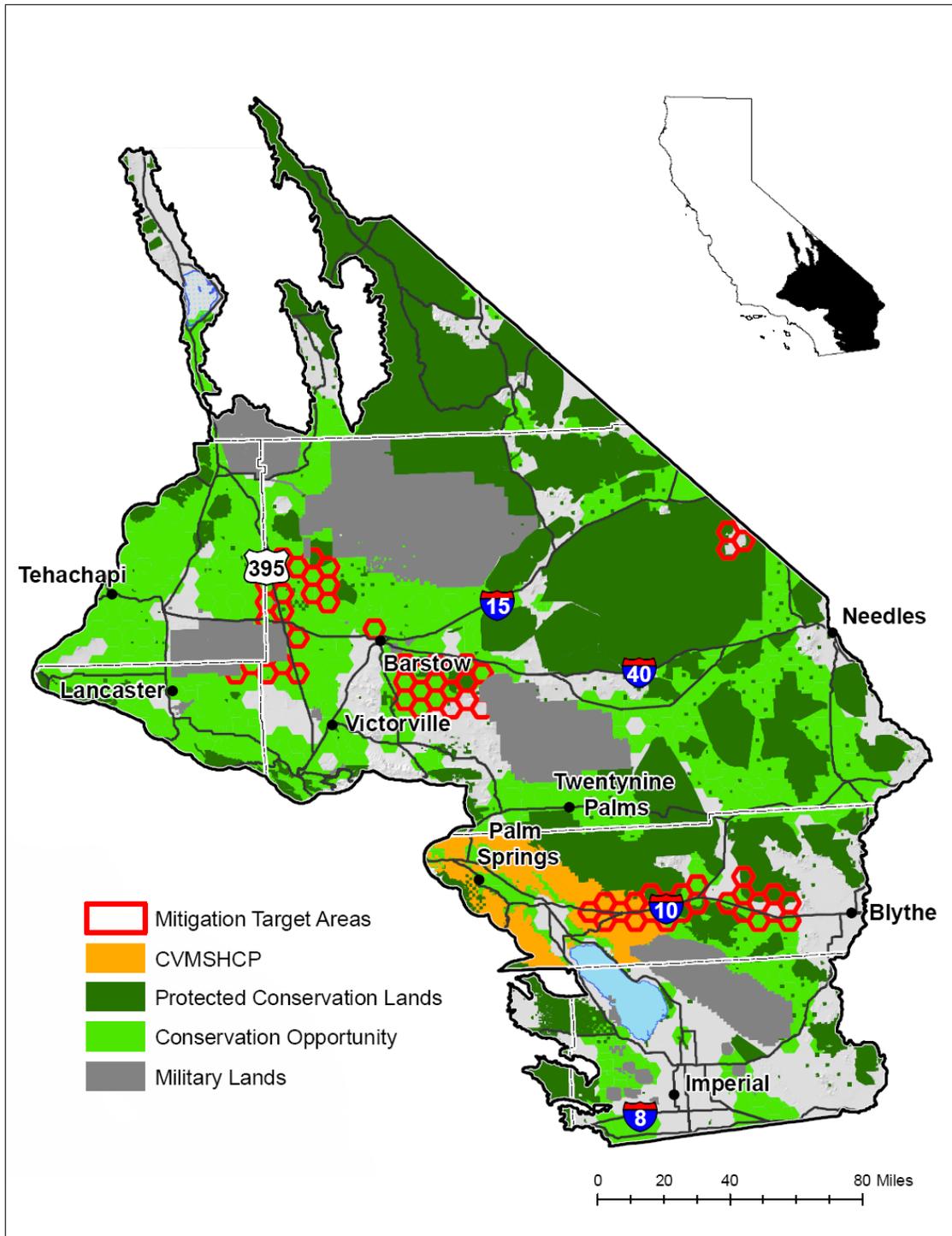
**Figure 3. Renewable Energy Action Team Starting Point Map.**



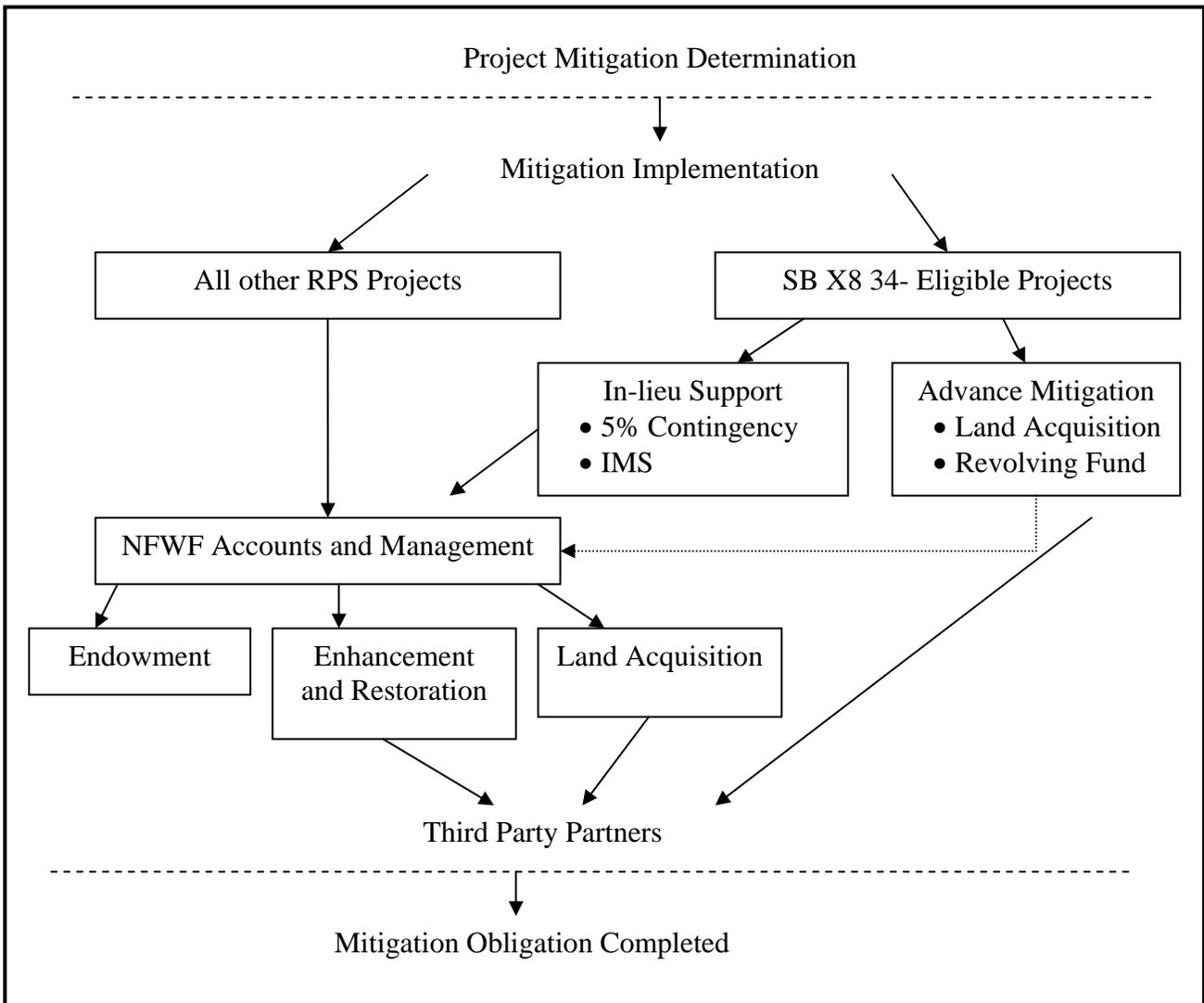
**Figure 4. Areas of Conservation Emphasis II - conservation priority model output for Sonoran, Colorado and Mojave Desert Ecoregions. Red is high biological value, blue is low.**



**Figure 5. California Essential Habitat Connectivity corridors with Mitigation Target Areas.**



**Figure 6. DRECP Mitigation Target Areas relative to other already Protected Lands**



**Figure 7. Renewable Energy Mitigation Implementation. Flow chart of options under Senate Bill X8 34 and the National Fish and Wildlife Foundation Memorandum of Agreement.**

## Literature Cited

- Foreman, L. D. (ed). (1997) Flat-tailed horned lizard rangewide management plan. Report of interagency working group. 61 pp.
- Shihadeh, K. and N. Thorngate. 2007. Presence and movements of California condors near proposed wind turbines. Final Report prepared for HT Harvey and Associates. Unpublished report, 21 pp.
- U.S. Fish and Wildlife Service. 2008. Draft revised recovery plan for the Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, California and Nevada Region, Sacramento, California. 209 pp.
- U.S. Fish and Wildlife Service. 1996. California Condor Recovery Plan, Third Revision, Portland, Oregon, 62 pp.
- U.S. Fish and Wildlife Service. 1985. Coachella Valley fringe-toed lizard recovery plan. U. S. Fish and Wildlife Service, Portland, Or, USA. 60 pp.

## APPENDIX A

### SB X8 34 Qualified Solar Thermal and Solar Photovoltaic Projects

#### (Located within DRECP Planning Area, Seeking ARRA Funds)

The following plan descriptions are summaries derived from the CEC Staff Reports as of May 15, 2010. The DFG is aware there may be additional projects that have since qualified pursuant to SB 34, or are being processed by CEC. Future revision of the IMS will incorporate these additional project descriptions.

**1. Beacon Solar Energy Project – NextEra**

Beacon Solar proposes to develop and operate a 250-megawatt thermal trough solar energy facility called Beacon Solar Energy Project in Kern County east of State Route 14. The project would use reclaimed wastewater for wet cooling. The project site is previously disturbed from past agricultural activities, which ceased in the early 1980s. The site is relatively flat, with elevations ranging from approximately 2,220 feet above mean sea level in the southwest to 2,025 feet in the northeast. Pine Tree Creek, a desert wash trends south-southwest to north-northeast through the center of the site. The site is situated in the Fremont Valley, just east of the southernmost portion of the Sierra Nevada, in the northwestern Mojave Desert. The project includes the plant site (solar array, power generating equipment, support facilities, evaporation ponds, and access roads) and the project's linear facilities (transmission line and switchyard). The power block and solar arrays would occupy approximately 1,266 acres of the 2,012-acre plant site. The total area that would be fenced and subject to disturbance is 2,012 acres and includes an engineered channel, evaporation ponds, access road, administration buildings and other support facilities, and bioremediation areas.

The Beacon project is anticipated to result in the following impacts to species and habitats that qualify for mitigation implementation pursuant to SB 34:

- a) Permanent loss of breeding and foraging habitat for resident burrowing owls; potential loss of eggs and young; degradation

- and fragmentation of remaining adjacent habitat from edge effects; disturbance of nesting and foraging activities.
- b) Potential take of Mojave ground squirrel (MGS) during construction and operation and construction; increased risk of predation from ravens and other predators; increased road kill hazard from construction and operations traffic.

**2. Abengoa Mojave Solar Project—Abengoa Solar Inc.**

The proposed Abengoa Mojave Solar project consists of two 125 MW solar thermal troughpower plants that would use ground water for cooling and would occupy approximately 1,765 acres in the West Mojave Desert adjacent to the western margin of Harper Dry Lake in unincorporated San Bernardino County. The proposed project footprint and size were iteratively modified by the Applicant to avoid continuous stands of undisturbed native vegetation, conservation areas, and high quality wildlife habitat. As a result approximately 90% of the habitat within the project area is developed, disturbed, fallow or active agricultural lands. Overall, the proposed project area is composed of degraded habitat, which is of marginal suitability for special-status species and does not support a diverse assemblage of native plants and wildlife. However, the proposed project area is adjacent to the Harper Dry Lake Area of Critical Environmental Concern and otherwise surrounded by known populations of listed species (e.g., desert tortoise, MGS, desert cymopterus), desert tortoise critical habitat, Desert Wildlife Management Area, and MGS Conservation Area. Therefore, transient individuals of special-status species may be occasionally present onsite as they move between areas of suitable habitat adjacent to the proposed project and potentially within areas of suitable habitat presently re-establishing at the edges of the proposed project area.

The Abengoa project is anticipated to result in the following impacts to species and habitats that qualify for mitigation pursuant to SB 34:

- a) Potential loss of breeding and foraging habitat for resident burrowing owls; potential loss of eggs and young; degradation and fragmentation of remaining adjacent habitat from edge effects; disturbance of nesting and foraging activities.
- b) Potential loss and fragmentation of desert tortoise habitat, disruption of movement corridors, potential take of individuals during operation and construction; increased risk of predation from ravens and other predators; increased road kill hazard from construction and operations traffic.

**3. Imperial Valley Solar (Solar 2) -- Tessera (Stirling Solar)**

The proposed Solar Two Project would be a nominal 750-megawatt Solar Stirling Engine project, with development proposed in two phases: 350 MW and 400 MW. The 6,500-acre project site is located on

approximately 6,140 acres of public land managed by the BLM and approximately 360 acres of privately owned land.

Within the project boundary, the SunCatchers in Phase I require approximately 2,600 acres and those in Phase II require approximately 3,500 acres. The total area required for both phases, including the area for the operation and administration building, the maintenance building, and the substation building, is approximately 6,500 acres. The 230-kV transmission line required for Phase I would parallel SDG&E's existing Southwest Powerlink transmission line adjacent to the designated ROW.

The Imperial Valley project is anticipated to result in the following impacts to species and habitats that qualify for mitigation pursuant to SB 34:

- a) Potential take of flat-tailed horned lizard individuals; permanent loss of flat-tailed horned lizard habitat (Sonoran creosote bush scrub; increased risk of predation; increased road kill hazard from construction and operations traffic.
- b) Potential loss of hydrological, geomorphic, and biological functions and values to ephemeral desert washes, resulting in permanent impacts to jurisdictional state waters and to Waters of the U.S.
- c) Loss of foraging habitat for big horn sheep.

**4. Calico (Solar 1) -- Tessera (Stirling Solar)**

The proposed Calico (Solar 1) Project would be a nominal 850-megawatt Solar Stirling Engine project. The project is proposed for development in two phases. Phase I includes 11,000 SunCatchers located on approximately 2,320 acres (3.6 square miles) to produce 275 MW. Phase II would include an additional 23,000 SunCatchers on an additional approximately 5,910 acres (9.2 square miles) to produce an additional 575 MW for the total 850 MW planned production. The total area required for both phases, including the area for the operation and administration building, the maintenance building, and the substation building, is approximately 8,230 acres.

The primary equipment for the generating facility would include approximately 34,000 SunCatchers, their associated equipment and systems, and their support infrastructure. The project site covers 8,230-acres (13 square miles) and is located on public land managed by the BLM. No private lands are located within the 8,230 acres under BLM application.

The Calico (Solar 1) project is anticipated to result in the following impacts to species and habitats that qualify for mitigation pursuant to SB 34:

- a) Potential loss and fragmentation of desert tortoise habitat, disruption of movement corridors, potential take of individuals during operation and construction; increased risk of predation from ravens and other predators; increased road kill hazard from construction and operations traffic.
- b) Potential mortality and disturbance to Mojave fringe-toed lizard, loss of habitat, and habitat fragmentation, disruption of movement corridors.
- c) Potential loss of hydrological, geomorphic, and biological functions and values to ephemeral desert washes, resulting in permanent impacts to jurisdictional state waters.
- d) Rare plants

**5. Ivanpah Solar Electric Generating System – Bright Source**

The applicant proposes to develop the ISEGS project as three thermal solar tower power plants in separate and sequential phases that are designed to generate a total of 400 megawatts of electricity. The project would use dry cooling. Since filing the Application for Certification and ROW Application, the applicant’s proposed project plans have been updated for design optimization and for two revisions associated with storm water management approaches. The applicant has proposed to locate the 3,583 acre ISEGS project in the Mojave Desert, near the Nevada border in San Bernardino County, California, on land administered by the BLM. The proposed project site is located 4.5 miles southwest of Primm, Nevada, and 0.5 mile northwest of the Primm Valley Golf Club, which is located just west of the Ivanpah Dry Lake.

The Ivanpah project is anticipated to result in the following impacts to species and habitats that qualify for mitigation pursuant to SB 34:

- a) Potential loss and fragmentation of desert tortoise habitat, disruption of movement corridors, potential take of individuals during construction and operation; increased risk of predation from ravens and other predators; increased road kill hazard from construction and operations traffic.
- b) Potential loss of hydrological, geomorphic, and biological functions and values to ephemeral desert washes, resulting in permanent impacts to jurisdictional state waters.

**6. Palen Solar Power Project -- Solar Millennium**

PSPP would consist of two adjacent, independent, and identical solar thermal trough units of 250 megawatt nominal capacity each for a total nominal capacity of 500 megawatts. The power plant would be dry cooled. The applicants are seeking a ROW grant for approximately 5,200 acres of land administered by the BLM Palm Springs-South Coast Field Office. Construction and operation of the project would disturb a total of about 2,970 acres. The project site is

located approximately 0.5 mile north of U.S. Interstate-10 (I-10) and approximately 10 miles east of Desert Center, in an unincorporated area of eastern Riverside County.

The Palen project is anticipated to result in the following impacts to species and habitats that qualify for mitigation pursuant to SB 34:

- a) Potential loss of breeding and foraging habitat for resident burrowing owls; potential loss of eggs and young; degradation and fragmentation of remaining adjacent habitat from edge effects; disturbance of nesting and foraging activities.
- b) Potential mortality and disturbance to Mojave fringe-toed lizard loss of habitat, and habitat fragmentation, disruption of movement corridors.
- c) Habitat loss and fragmentation to desert tortoise, disruption of movement corridors, potential take of individuals during construction and operation; increased risk of predation from ravens and other predators; increased road kill hazard from construction and operations traffic.
- d) Potential loss and fragmentation of rare plant habitat, potential loss of individuals or populations.
- e) Potential loss of hydrological, geomorphic, and biological functions and values to ephemeral desert washes, resulting in permanent impacts to jurisdictional state waters.

**7. Blythe Solar Power Project -- Solar Millennium**

BSPP would consist of four adjacent, independent, and identical solar thermal trough units of 250 megawatt nominal capacity each for a total nominal capacity of 1,000 megawatts. The project is proposed to be located in the

southern California inland desert, approximately eight miles west of the city of Blythe and two miles north of the Interstate-10 freeway in Riverside County. The applicants are seeking a right-of-way grant for approximately 9,400 acres of lands administered by the BLM Palm Springs-South Coast Field Office. Construction and operation of the project would disturb a total of about 7,030 acres.

The Blythe project is anticipated to result in the following impacts to species and habitats that qualify for mitigation pursuant to SB 34:

- a) Potential loss of breeding and foraging habitat for resident burrowing owls; potential loss of eggs and young; degradation and fragmentation of remaining adjacent habitat from edge effects; disturbance of nesting and foraging activities.
- b) Potential mortality and disturbance to Mojave fringe-toed lizard loss of habitat, and habitat fragmentation, disruption of movement corridors.

- c) Habitat loss and fragmentation to desert tortoise, disruption of movement corridors, potential take of individuals during operation and construction; increased risk of predation from ravens and other predators; increased road kill hazard from construction and operations traffic.
- d) Potential loss of hydrological, geomorphic, and biological functions and values to ephemeral desert washes, resulting in permanent impacts to jurisdictional state waters

**8. Genesis Solar Energy Project, Ford Dry Lake – NextEra\***

The Genesis Solar Energy Project at the Ford Dry Lake site is proposed for development in the Sonoran Desert approximately 25 miles west of Blythe. The project is proposed to be two 125 MW solar thermal trough power plants that is proposed to be wet cooled with ground water. The total area in the BLM ROW application is 4,640 acres. The actual proposed facility would be located on approximately 1,800 acres. Surrounding land uses include the McCoy Mountains to the east, the Palen Mountains (including the Palen Mountains Wilderness Area) to the north, and the Blythe Airport about 15 miles to the east. Interstate 10 is located about 2 miles south of the southernmost border of the proposed ROW area.

The Genesis project is anticipated to result in the following impacts to species and habitats that qualify for mitigation pursuant to SB 34:

- a) Habitat loss and fragmentation to desert tortoise, disruption of movement corridors, potential take of individuals during operation and construction; increased risk of predation from ravens and other predators; increased road kill hazard from construction and operations traffic.
- b) Potential loss of hydrological, geomorphic, and biological functions and values to ephemeral desert washes, resulting in permanent impacts to jurisdictional state waters.;

**9. Desert Sunlight -- First Solar (OptiSolar), Photovoltaic.**

The First Solar project is currently under review by the BLM. Project impacts and proposed mitigation measures will be disclosed in the Draft Environmental Impact Statement.

**10. Lucerne Valley Solar Project-Chevron, Photovoltaic.**

Chevron Energy Solutions, the applicant, has submitted an application to BLM for a right-of- way to develop a 45-megawatt solar photovoltaic plant and associated facilities on 516 acres of federal land managed by the BLM. The site of CES's Proposed Action is located on unincorporated land in the Mojave Desert, approximately eight miles east of Lucerne Valley. Also included in the proposal is an

interconnection to an existing Southern California Edison distribution line located north of the site. The project would also reroute a portion of Zircon Road to allow its continued public use. The proposed project would be built in two phases. Phase I would be 20 MW, with construction beginning in late 2010. It would interconnect to the existing Southern California Edison 33-kilovolt (kV) transmission line located immediately north of the site across Foothill Road and could be built without upgrading the existing line. Phase II would be contingent upon available transmission capacity and future power sales.

This project is still undergoing environmental review and a final EIS has not been issued. Preliminarily the Lucerne project is anticipated to result in the following impacts to species and habitats that qualify for mitigation pursuant to SB 34:

- a) Potential loss of breeding and foraging habitat for resident burrowing owls; potential loss of eggs and young; degradation and fragmentation of remaining adjacent habitat from edge effects; disturbance of nesting and foraging activities.
- b) Habitat loss and fragmentation to desert tortoise, disruption of movement corridors, potential take of individuals during operation and construction; increased risk of predation from ravens and other predators; increased road kill hazard from construction and operations traffic.

**12. Antelope Valley Solar Ranch One – Nextlight, Photovoltaic.**

The proposed Antelope Valley Solar Ranch One project site is located in northeastern Los Angeles County, approximately 23 miles east of Palmdale and adjacent to the General Atomics Gray Butte Flight Operations Facility. The project consists of approximately 5,400 acres and is located approximately 1 mile to the west of the Los Angeles County – San Bernardino County jurisdictional boundary.

The Project site is currently in agricultural production or fallow. The area surrounding the Project site is similar to the site itself and generally consists of agricultural or undeveloped land with occasional residential or farm-related structures. Most of the land surrounding the Project site is privately owned.

The proposed Project generation-tie line is approximately 10 miles long and generally extends from the southeast corner of the Project site to an interconnection point along Palmdale Road. A small part of the generation-tie line ROW would be constructed within public lands managed by the BLM. These properties are located approximately 3 miles and 8 miles from the Project site along the proposed generation-tie line route.

The site may be suitable habitat for sensitive species such as the desert tortoise, Mojave ground squirrel, and burrowing owl, as well as a number of sensitive plants.

The Antelope Valley project is currently under review by the local CEQA lead agency. Project impacts and proposed mitigation measures will be disclosed in the Draft Environmental Impact Report/Statement.

- 13. Gray Butte Solar – First Solar, Photovoltaic.** The proposed Gray Butte Solar Array site consists of a nominal 150 megawatt, alternating current solar photovoltaic facility on approximately 1,100 acres in rural northeastern Los Angeles County, approximately 23 miles east of Palmdale and adjacent to the General Atomics Gray Butte Flight Operations Facility. The Project site is located approximately 1 mile to the west of the Los Angeles County – San Bernardino County jurisdictional boundary.

The Project site is currently in agricultural production or fallow. The southern parcel of the Project site and portions of the access road and connecting generation-tie line are located within the Desert-Montane Transect Significant Ecological Area #55, and the central and northern parcels of the Project site are located immediately north of and adjacent to SEA #55. Most of the land surrounding the Project site is privately owned. The nearest public land area consists of scattered parcels to the southwest of the site, which is managed by the BLM.

There are some areas of natural habitat within the disturbed land. May be habitat for sensitive or rare species, including desert tortoise, burrowing owl, and Mohave ground squirrel. Surrounding area includes potential habitat for Clokey's cryptantha (a special status plant species) as well as other rare plant species.

The Gray Butte project is currently under review by the local CEQA lead agency. Project impacts and proposed mitigation measures will be disclosed in the Draft Environmental Impact Report/Statement.

- 14. Monte Vista – First Solar, Photovoltaic.** The Monte Vista Solar Array site is located southeast of the unincorporated community of Mojave, within the western portion of the Mojave Desert within the jurisdiction of the Mojave Specific Plan. Specifically, the project site is located approximately 1.5 miles southeast of the junction of State Route Business 58 and SR 14, near the intersection of Purdy Avenue and United Street, north of the Burlington Northern Santa Fee Railroad tracks in unincorporated Kern County. The approximate 1,040-acre project site consists primarily of vacant and disturbed desert land located in the Mojave Desert, in the northern portion of the Antelope Valley that shows signs of past residential and agricultural use, as well as illegal trash dumping activity. Vegetation on-site varies, but primarily consists of

chenopod scrub (*Atriplex spp.*) similar to much of the vegetation in the surrounding area.

The project's impact to sensitive plant communities will be further evaluated in the EIR. In addition, project-related access roads and transmission lines may cross streams and washes that require evaluation for riparian habitat and may also require streambed alteration permits from DFG. Wetlands, as defined by Section 404 of the Clean Water Act, may be present on the project site; therefore, the project's impacts on potential wetlands will be evaluated in the EIR. The project site and surrounding area may be used for migration or dispersal by some avian species. Project construction and operation would also remove foraging habitat. This impact is potentially significant and will be evaluated in the EIR.

The Monte Vista project is currently under review by the local CEQA lead agency. Project impacts and proposed mitigation measures will be disclosed in the Draft Environmental Impact Report/Statement.

- 15. Blythe Airport Solar 1 Project – US Solar Holdings, LLC, Photovoltaic.** This is a proposal to construct and operate a 100 megawatt solar photovoltaic renewable energy facility (to be built in 20 megawatt phases) on 640 acres within an 829-acre area on the grounds of Blythe Airport. The project site is located on the grounds of Blythe Airport, 750 feet easterly of the centerline of Runway 17-35 and 750 feet northerly of the centerline of Runway 8-26, in portions of Sections 20 and 29 of Township 6 South, Range 22 East. Blythe Airport is located northerly of Interstate 10 and Hobsonway and easterly of Mesa Drive, in unincorporated Riverside County.

The Blythe Airport project is currently under review by the local CEQA lead agency. Project impacts and proposed mitigation measures will be disclosed in the Draft Environmental Impact Report/Statement.

- 16. Palmdale Hybrid Power Project – City of Palmdale, Photovoltaic.** The proposed site for the PHPP project is located approximately 60 miles north of downtown Los Angeles and in the northernmost portion of the city of Palmdale. The proposed PHPP would require permanent use of 333 acres at the power plant site, located immediately north and west of the combined facilities of Los Angeles/Palmdale Regional Airport and Air Force Plant 42. The PHPP will be developed on a vacant and undeveloped site in an industrial area of the city of Palmdale. The site is currently zoned industrial. The site is relatively flat with the main population base of the community of Palmdale approximately 4 miles to the south.

Development of the power block and linear facilities would result in the

permanent loss of 416.11 acres of native and non-native plant communities. Joshua Tree Woodland, Mojave Juniper Scrub, and Mojave Desert Wash Scrub are considered sensitive and would require compensation to reduce impacts to less than significant levels.

The Palmdale project is anticipated to result in the following impacts to species and habitats that qualify for mitigation implementation pursuant to SB 34:

- a. Potential take of Mojave ground squirrel (MGS) during construction and operation; increased risk of predation from ravens and other predators; and increased road kill hazard from construction and operations traffic.

17. **Borrego Solar Farm – Eurus Energy, Photovoltaic.** The San Diego Community College District has approved a 20-year agreement with Borrego Solar to construct and maintain a photovoltaic system that will provide about 2.4 megawatts of green energy across the district. This project is one of the largest of its kind for a college or university system in the nation. The photovoltaic program calls for the solar panels to be installed on building rooftops, parking structures and atop new solar panel shade structures on parking lots throughout the District.

The Borrego project is currently under review by the local CEQA lead agency. Project impacts and proposed mitigation measures will be disclosed in the Draft Environmental Impact Report/Statement.

18. **Tehachapi Photovoltaic Solar Project – GE.** Information on the status of this project was unavailable at the time the interim strategy was being developed.

The Tehachapi project is currently under review by the local CEQA lead agency. Project impacts and proposed mitigation measures will be disclosed in the Draft Environmental Impact Report/Statement.

19. **Boulevard Associates (San Bernardino Co.) -- Boulevard Associates, LLC, Photovoltaic.** Boulevard Associates proposes to construct and operate a 20 Megawatt photovoltaic solar energy facility on the west side of U.S. Highway 395; approximately 2.5 miles North of Highway 58, adjacent to the existing NextEra Energy Resources, LLC's Solar Energy Generating Systems III-VII solar energy generation facility near Kramer Junction, in unincorporated San Bernardino County.

The proposed Kramer Junction Solar Energy Center shall be constructed on a 191-acre portion of a 313.8-acre parcel and is designed to produce approximately 60,000 megawatt-hours of renewable energy annually. The project site is situated within the Mojave Desert and is essentially flat with approximately one percent gradient overall.

An abandoned railroad berm crosses the proposed project site in a generally north-south direction. The tracks have been removed but the berm remains and is elevated approximately two feet above the surrounding grade. The abandoned railroad property would be acquired and the raised berm graded flat to allow for the installation of the facility.

The Boulevard Associates project is currently under review by the local CEQA lead agency. Project impacts and proposed mitigation measures will be disclosed in the Draft Environmental Impact Report/Statement.

## APPENDIX B

### Recovery Actions.

The IMS and DRECP will directly benefit the recovery of covered species (listed and non-listed) and contribute to the conservation of sensitive species by reducing threats and building capacity for resiliency in species populations and habitats. The IMS has focused on the recovery actions for the following specific species that are subject to mitigation pursuant to SB 34. It is anticipated impacts to other species of birds, mammals, invertebrates, reptiles, and plants will also benefit from implementation of the IMS.

**California Condor:** The California condor recovery plan identified specific criteria related to wind turbines, recognizing the inherent risk of these structures to condor survival. Monitoring of condor activity near wind turbines near Pinnacles National Monument concluded wind turbines pose a risk to condors that exhibited many features that may cause wind turbine-related mortality including: (1) high wing loading; (2) social foraging; (3) curiosity for novel objects; (4) k-selected reproductive strategy; and (5) foraging preference for sloped grassland sites (Shihadeh and Thorngate. 2007).

The California condor is fully protected by the State and cannot be taken. Take cannot be authorized at any risk level. Projects that have the potential to take condors cannot be approved by DFG.

Actions listed in the Recovery Plan for California Condors (USFWS 1996) to achieve recovery include, besides those measures for captive breeding, and reintroduction of the species to the wild:

Recovery actions include:

- Reestablish extirpated native ungulate populations on historical foraging habitats.
- Preserve key foraging areas near nests and roosts.
- Encourage land managers and owners to leave dead livestock on rangelands in appropriate circumstances.
- Minimize Mortality Factors in the Natural Environment.
- Determine effects of various poisons and contaminants, especially lead and copper on surrogate species.
- Implement management measures to eliminate or reduce the effects of environmental contaminants on California condor.

**Desert Tortoise:** Recovery actions for Desert Tortoise in the IMS are consistent with the Draft Revised Recovery Plan for the Mojave Population of the Desert Tortoise; the goals of the recovery plan are

recovery and delisting of the desert tortoise. The recovery criteria represent the best assessment of the conditions that would most likely result in a determination that delisting of the desert tortoise is warranted. Recovery criteria should ideally include the management or elimination of threats, addressing the five statutory (de-)listing factors. However, even though a wide range of threats affect desert tortoises and their habitat, very little is known about their demographic impacts on tortoise populations or the relative contributions each threat makes to tortoise mortality. Therefore, specific and meaningful threats based recovery criteria cannot be identified at this time. In the meantime, we assume that threat mitigation will have been successful if the current recovery criteria have been met (taking into consideration any head-starting or translocation efforts). Specific recovery actions, including research, must be implemented to identify sets of threats that contribute to a greater number of mortality mechanisms or affect size structure or fecundity. As quantitative information on threats and tortoise mortality is obtained, more specific threats-based recovery criteria may be defined during future recovery plan review and revision (USFWS 2008) (Figure B1, B2).

Recovery Actions include:

- Protect existing populations.
- Protect intact desert tortoise habitat.
- Secure additional habitat lands for conservation.
- Secure additional habitat lands to connect functional habitat.
- Protect intact desert tortoise habitat.
- Identify and reduce factors contributing to disease (particularly upper respiratory tract disease).
- Restrict, designate, close, and fence roads.
- Restore degraded desert tortoise habitat.
- Install and maintain urban or other barriers.
- Fence and sign boundaries of sensitive or impacted areas.
- Reduce excessive predation on tortoises.
- Minimize impacts from horses and burros.
- Minimize livestock grazing.
- Identify sites at which to implement population augmentation efforts.
- Implement translocations in target areas to augment populations using a scientifically rigorous, research-based approach.
- Monitor Progress toward Recovery and population growth.

**Fringe toed Lizard.** Recovery action identified in the Coachella Valley fringe-toed lizard Recovery Plan (USFWS 1985).

Recover actions include:

- Secure habitat for preservation of the CVFTL.
- Study the biological requirements of the CVFTL

- Monitor CVFTL populations throughout the Coachella Valley to determine trends in numbers and areas inhabited.
- Study the effects of habitat modifications on CVFTL.
- Study the feasibility of restoration of CVFTL habitat through rehabilitation..

**Flat-tailed Horned Lizard.** As detailed in the Flat-tailed Horned Lizard Rangelwide Management Strategy (Foreman 1997), recommended recovery actions include:

- Conserve sufficient habitat to maintain viable populations of flat-tailed horned lizards in five management areas.
- Maintain a "long-term stable" or increasing population trend in all management areas. A population that is stable over the long term exhibits no downward trend in numbers or densities of animals after the effects of natural demographic and environmental stochasticity are removed.
- Encourage the protection through strong conservation management of one additional management area in the Coachella Valley.
- Outside of management areas, limit the loss of habitat and effects on populations of flat-tailed horned lizards through the application of effective mitigation and compensation.
- Establish a research area of no less than 60,000 acres in which research related to the flat-tailed horned lizard will be conducted and encourage other research anywhere that promotes conservation of the species.
- Encourage adoption of a flat-tailed horned lizard conservation program in Mexico.

**Mojave Ground Squirrel.** The Mojave ground squirrel is listed as threatened in California and is a candidate species for listing by the UFSWS. A recovery plan has not been written for this species but Leitner (2008) has made management recommendations.

These measures include:

- Protect habitat and core areas from modification or development
- Conduct predator control in areas of high MGS concentrations.
- Remove livestock from public lands where MGS exist.
- Conduct research on MGS abundance and status.

**Burrowing Owl.** The burrowing owl is not formally listed under CESA or ESA. The Coachella Valley Multi Species Habitat Conservation Plan includes conservation measures for this species.

These measures are:

- Ensure species persistence throughout its current range in the Plan Area by conserving burrowing owl habitat.
- Ensure conservation of burrowing owl by maintaining the long-term persistence of self-sustaining populations or metapopulations.
- Control and manage activities that degrade burrowing owl Habitat,
- Identify actions to reduce impacts from, and control where feasible, invasive species.
- Encourage the presence of burrowing owls in agricultural areas by allowing them to remain at burrows established in levees and dikes,
- Evaluate the need and potential for, and impacts of, establishment of artificial burrows in Conservation Areas.
- Consider whether a restriction on human access to occupied habitat during the breeding season is appropriate.

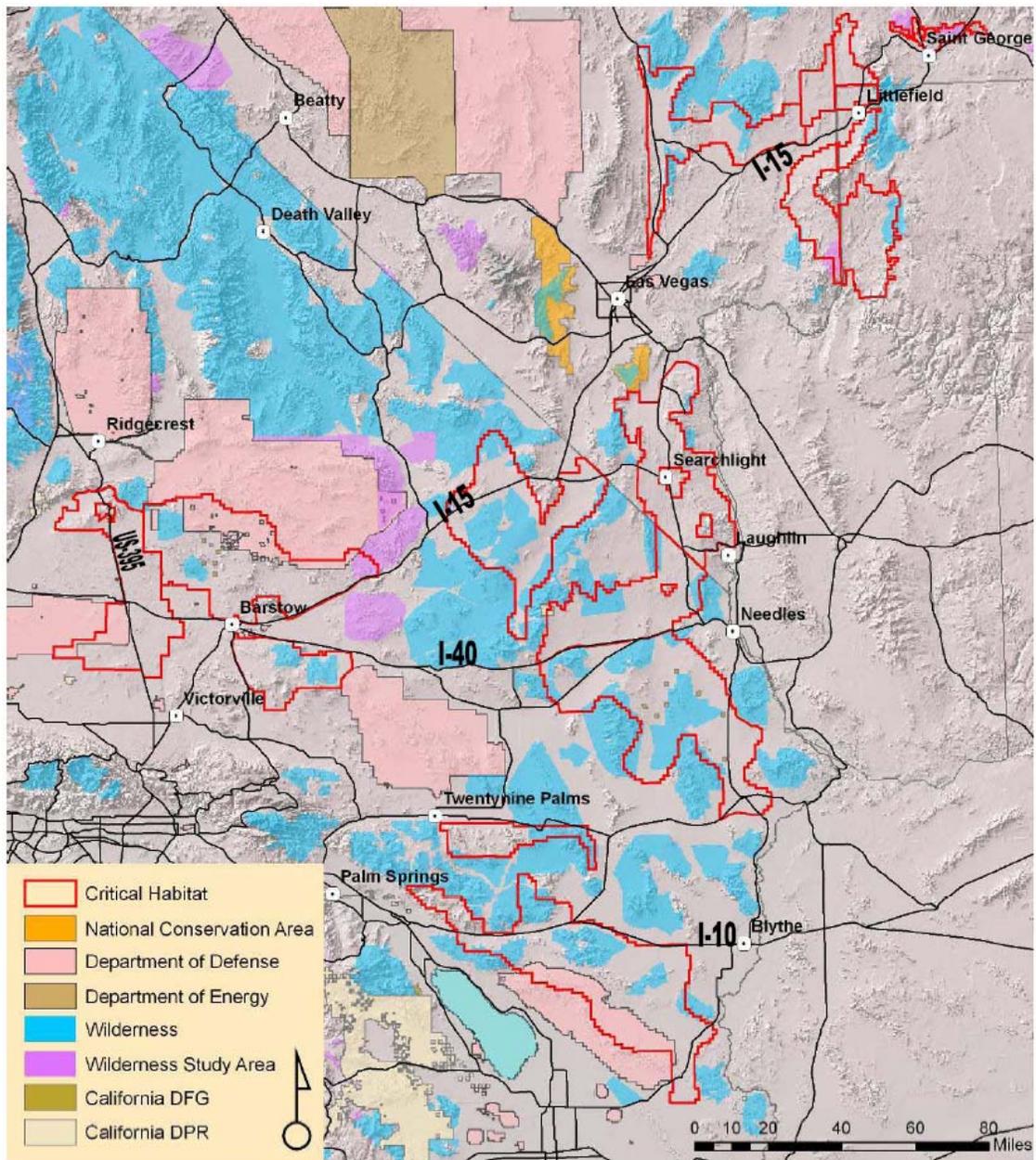


Figure B1. Desert tortoise conservation areas (see Box 2) = Desert Wildlife Management Area: ACEC = Area of Critical Environmental Concern; DTCC = Desert Tortoise Conservation Center

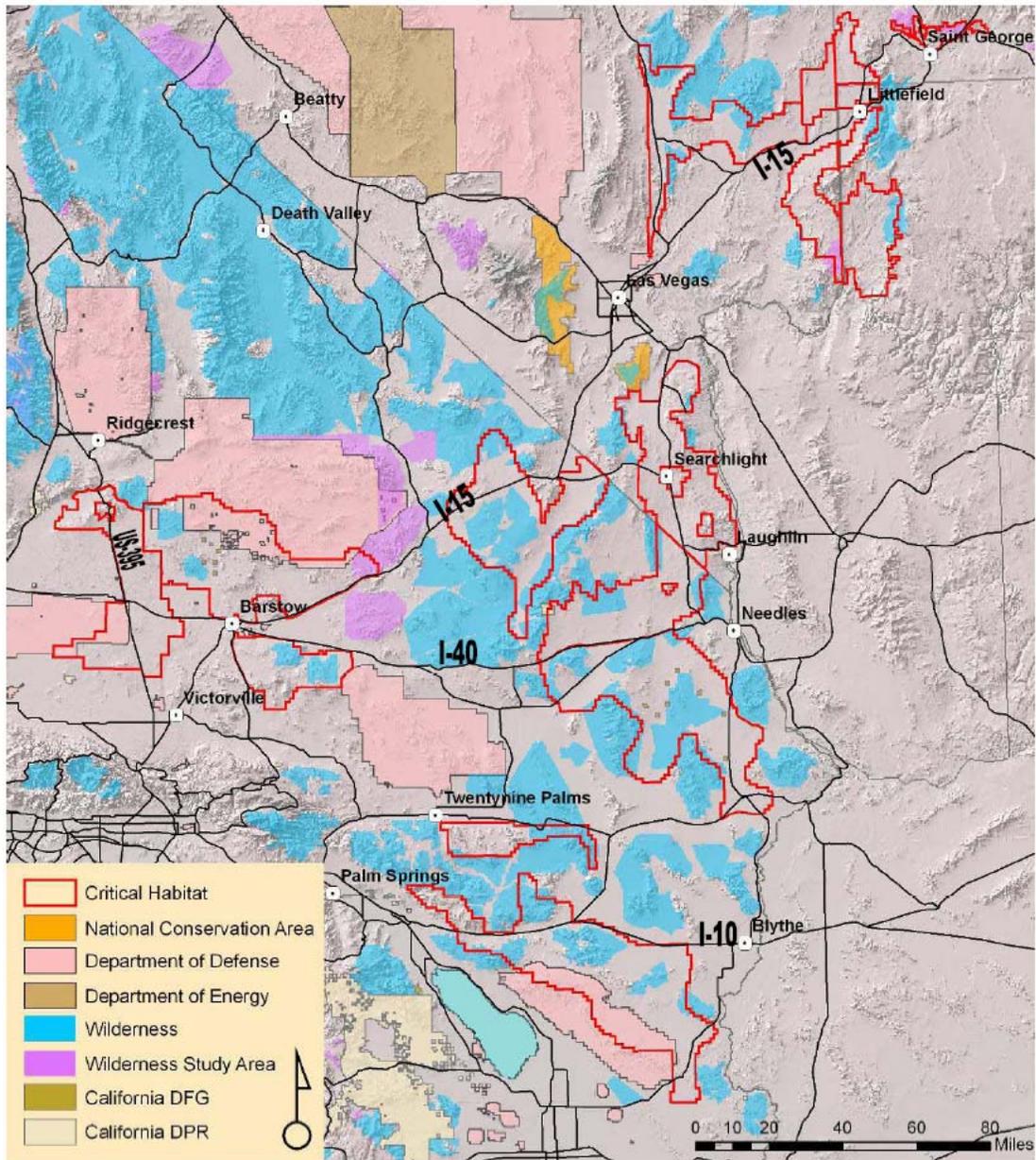


Figure B2. Additional land designations providing conservation benefits to the desert tortoise in relation to critical habitat and major highways. Conservation areas for other species not shown (e.g. Mohave ground squirrel, Mojave monkeyflower) may provide benefits to the desert tortoise. DFG = Department of Fish and Game; DPR = Department of Parks and Recreation.

## **APPENDIX C**

**The Renewable Energy Action Team Mitigation Account  
Memorandum of Agreement  
Between the Renewable Energy Action Team Agencies  
and the  
National Fish and Wildlife Foundation**

April 2010

**The Renewable Energy Action Team Mitigation Account  
Memorandum of Agreement  
between the Renewable Energy Action Team Agencies and the  
National Fish and Wildlife Foundation**

**PREAMBLE**

This Renewable Energy Action Team (“REAT”) Mitigation Account Memorandum of Agreement (this “Agreement”) is entered into by the State and Federal agencies comprising the REAT, namely the California Department of Fish and Game (the “DFG”), the California Energy Commission (the “CEC”), the United States Bureau of Land Management (the “BLM”), and the United States Fish and Wildlife Service (the “USFWS”) (collectively referred to as “REAT” or “REAT Agencies” and individually as a “REAT Agency”), and the National Fish and Wildlife Foundation (the “Foundation”) (together, the “Parties,” and individually, a “Party”), as of the date of the signature of the last Party to sign (such date, the “Effective Date”).

**I. PURPOSE**

The REAT’s primary mission is to streamline and expedite the permitting processes for renewable energy projects in the Mojave and Colorado Desert regions within the State of California, while enhancing and maximizing environmental protection. To that end, the purpose of this Agreement is to establish a financial account, comprised of Sub-Accounts, to be held, managed, and administered by the Foundation (the “REAT Account”) to receive monies paid in connection with impacts associated with renewable energy projects subject to the jurisdiction of one or more of the REAT Agencies. These monies will be used to accomplish specified conservation, protection, enhancement, restoration, or related purposes as specifically identified in BLM right-of-way grants, associated biological opinions, avian protection plans, raven mitigation plans; the CEC certification; DFG’s permits, consistency determinations, and Lake and Streambed Alteration agreements; and other approval documents (collectively referred to as “Decision Documents”). The Parties contemplate that the types of activities for which the REAT Account will be used include, but are not limited to, studies, monitoring, conservation, land acquisition, enhancement, restoration, preservation, clean-up, data sampling and analysis, and adaptive management designed to mitigate the impacts of renewable energy projects on the health of fish, wildlife, plant, and habitat resources in the Mojave and Colorado Desert regions within the State of California. Use of the REAT Account will be limited by the amount of money available in the REAT Account at any given time, and by the stated purposes as described in the Deposit Document (see Section IV. below). Funds in the REAT Account will be disbursed in accordance with the Deposit Document.

This Agreement does not establish a mitigation strategy or an in-lieu mitigation fee program. The REAT Agencies are cooperatively developing a comprehensive mitigation strategy which will include an in-lieu fee mitigation component for renewable energy projects in the Mojave and Colorado Desert regions within the State of California. The mitigation strategy will guide the REAT Agencies' utilization of the REAT Account.

## II. AUTHORITY

A. The REAT is the Renewable Energy Action Team, consisting of the DFG, CEC, BLM, and USFWS, which was identified to include these four agencies in the Memorandum of Understanding between the State of California and the Department of the Interior on Renewable Energy, signed by the Governor of California and the Secretary of the U. S. Department of the Interior in October 2009. Its mission is to streamline and expedite the permitting processes for renewable energy projects, while enhancing and maximizing environmental protection. The State and Federal agencies comprising the REAT are guided by the California Governor's Executive Order S-14-08, the October 2009 Memorandum of Understanding referenced above, and associated Memoranda of Understanding among several State and Federal agencies, with Federal participation in the REAT supported by the Secretary of Interior's Secretarial Order 3285 (March 2009) which directs all Department of the Interior agencies and departments, including BLM and USFWS, to encourage timely and responsible development of renewable energy, while protecting and enhancing the nation's water, wildlife, and other natural resources.

B. The Foundation is a charitable non-profit corporation established in 1984 by the National Fish and Wildlife Foundation Establishment Act, 16 U.S.C. § 3701 *et seq.*, as amended (the "Establishment Act"), and is recognized as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. The established purpose of the Foundation is to accept and administer private gifts of property in connection with activities and services of the USFWS in order to further the conservation and management of fish, wildlife, plants and other natural resources. In addition, the established purpose of the Foundation is to undertake and conduct other activities that will further the conservation and management of fish, wildlife, and plant resources of the United States for present and future generations of Americans and is authorized to accept funds from any legal source to further its mission.

C. The agencies comprising the REAT are authorized to enter into this Agreement pursuant to Federal and State laws including, but not limited to, the following authorities:

1. BLM: Section 307(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. §1737(b));
2. USFWS: The Endangered Species Act of 1973 (16 U.S.C. §§ 1531-1544), the Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668c), Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), and the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661- 666c);
3. CEC: Public Resources Code §§ 25218(d) and (e), 25219, and 25500 *et seq.*; and

4. DFG: Fish and Game Code §§ 1600, *et seq.*, 1802, and 2050, *et seq.*, (CESA), Fish and Game Code §§ 2800 *et seq.*, Code of California Regulations, Title 14, Fish and Game Commission Policies.

### III. DEFINITIONS

- A. “Administrative Costs” shall mean those fees or costs associated with the Foundation’s administration of the REAT Account, or Sub-Accounts, associated with each proposed project. Such costs include standard fees for each project such as Annual Fees, a Per Deposit Fee, and any bank charges; and project-specific fees like an RFP fee or necessary discretionary fees such as land appraisals, title research, or special studies. All Administrative Costs will be determined by the REAT in consultation with the Foundation, and will be based on a project-by-project assessment and described in the Deposit Document. Administrative Costs will be paid by the project proponent.
- B. “Agreement” shall have the meaning assigned to such term in the Preamble to this Agreement.
- C. “Annual Fee” is addressed within Section III.A. and VII.C.
- D. “Decision Document” shall have the meaning assigned to such term in the Purpose section of this Agreement.
- E. “Deposit Document” shall have the meaning assigned to such term in Section IV. of this Agreement.
- F. “Effective Date” shall have the meaning assigned to such term in the Preamble to this Agreement.
- G. “Establishment Act” shall have the meaning assigned to such term in Section II.B. of this Agreement.
- H. “Fiscal Year” shall mean the fiscal year of the Foundation which, as of the date of this Agreement, commences on October 1<sup>st</sup> of each calendar year and runs through September 30<sup>th</sup> of the immediately following calendar year.
- I. “Foundation” shall have the meaning assigned to such term in the Preamble to and Section II.B. of this Agreement.
- J. “Foundation Representative” shall mean the designated staff person for the Foundation (or his or her alternate, acting in the place of the primary Foundation Representative) responsible for primary communications and administration related to this Agreement.
- K. “Party” shall have the meaning assigned to such term in the Preamble to this Agreement.

- L. "Per Deposit Fee" is addressed within Section III.A. and VII.B.
- M. "REAT" shall have the meaning assigned to such term in the Preamble to and Section II.A. of this Agreement.
- N. "REAT Account" shall have the meaning assigned to such term in Section I. of this Agreement.
- O. "REAT Agencies" and "REAT Agency" shall have the meanings assigned to such terms in the Preamble to and Section II.A. of this Agreement.
- P. "REAT Representatives" shall mean the designated staff persons for each of the four REAT Agencies (or their respective alternates, acting in the place of the primary REAT Representatives) responsible for primary communications and administration related to this Agreement. If and to the extent a REAT Agency elects to designate a representative other than its REAT Representative for a particular Sub-Account under this Agreement (such person, a "Sub-Account Representative"), the REAT Agency shall so notify the Foundation and the other REAT Representatives in writing of such election and, thereafter, the Sub-Account Representative shall function as the "REAT Representative" for that REAT Agency hereunder for purposes of the relevant Sub-Account.
- Q. "Recipient" shall mean any entity that receives monies from the REAT Account for the performance of a project as set forth in a Recipient Agreement.
- R. "Recipient Agreement" shall mean a contract, grant agreement or other written agreement between the Foundation and a Recipient for the performance of a project to be funded through a Sub-Account within the REAT Account, as approved by the REAT in accordance with the applicable Deposit Document(s).
- S. "RFP" shall have the meaning assigned to such term in Section V.D.3. of this Agreement.
- T. "Sub-Account" shall mean each individual project account within the REAT Account. Each Sub-Account will be tracked and accounted for by the Foundation in a manner that allows the funds on deposit in, and the account activity related to, each Sub-Account to be distinguishable within the overall REAT Account. Within each Sub-Account all monies deposited by the State, a project proponent, or, if applicable, the federal government, and all interest earned on the Sub-Account, will be maintained in a manner that allows all transactions (e.g. deposits, withdrawals, adjustments) to be tracked by each mitigation measure specified in the Deposit Document.

#### IV. DEPOSIT DOCUMENT

A. The Deposit Document shall be a standard form created by REAT Agencies that contains, at a minimum, the following information:

1. project name;
2. project location;
3. land ownership of the project site;
4. project proponent and parent company;
5. for each specific mitigation and minimization measure contained in a

Decision Document and other measures agreed to by the project proponent in the project description (for the purposes of this agreement only, collectively referred to herein as "mitigation measures") that are to be funded from the monies deposited into the Sub-Account for the project:

- a. a citation (e.g., page, section, condition number) to the applicable Decision Document(s);
- b. an implementation schedule;
- c. which of the REAT Agencies has the authority over implementation of each specific mitigation measure, and will serve as the point of contact for such measure;
- d. the amount of money being deposited into the Sub-Account to cover specified measures and any other applicable Administrative Costs; and the amount of money being deposited into the Sub-Account designated for the costs of long-term management of land acquired as a mitigation measure, which amount shall be managed as a long-term investment intended to (1) exist indefinitely and (2) fund necessary land management activities, to the extent practicable, from investment earnings on the amount rather than from the initial amount itself.

B. A copy of each agency Decision Document containing the specified mitigation measures for the project will be submitted to the Foundation with the Deposit Document.

#### V. REAT RESPONSIBILITIES

A. Each REAT Agency shall appoint its respective REAT Representative and an alternate, who shall represent the REAT Agency on the REAT in carrying out the REAT's obligations under this Agreement. The four REAT Representatives and alternates shall be the only persons authorized to approve deposits into or disbursements from the REAT Account. The REAT Agencies agree that their primary objective under this Agreement will be to insure that the mitigation measures identified in the Deposit Document are fully completed using the monies deposited with submission of the Deposit Document. Actions of the REAT in carrying out the REAT's obligations under this Agreement shall require unanimity among the REAT Representatives, unless the Deposit Document provides otherwise. All directions from the REAT or a REAT Representative and all actions undertaken by the REAT or a REAT Representative with respect to funds from a Sub-Account shall be in accordance with the applicable Deposit Document.

B. The appropriate REAT Agency will transmit to the Foundation the completed

Deposit Document and supporting documents. The funds to complete the mitigation measures identified in the Deposit Document will be sent directly from the project proponent, the State, or if applicable, the Federal government, to the Foundation by electronic funds transfer or such other means as is agreed upon.

C. The REAT Representatives shall direct the Foundation by way of the Deposit Document to enter into Recipient Agreements for the performance of mitigation measures to be funded, in whole or in part, with monies in Sub-Accounts within the REAT Account in accordance with the applicable Deposit Document(s). The REAT Representatives may review and approve (1) Recipient Agreements, including any amendments thereto, prior to their execution and (2) requests from Recipients for disbursements of funds from the REAT Account, prior to such disbursements being made.

D. Prior to directing the Foundation to enter into Recipient Agreements, the REAT Agency(ies) may determine the need for a call for proposals and may choose to utilize one or more of the following processes:

1. The REAT or a REAT Agency, as appropriate, may issue a call for proposals and select from the submissions.

2. The REAT or a REAT Agency, as appropriate, may select projects submitted in response to one of the Foundation's regularly scheduled general calls for proposals.

3. The REAT or a REAT Agency, as appropriate, may retain the Foundation to conduct one or more specific requests or calls for proposals (each, an "RFP") for projects to be funded by the relevant Sub-Account(s), and select one or more projects submitted in response to any such RFP. The REAT or a REAT Agency, as appropriate, and the Foundation shall enter into separate agreements governing the performance of any such RFPs. After consultation with the Foundation, the REAT shall identify in the Deposit Document the RFP fee ranging generally between \$15,000 and \$30,000, to be determined based on RFP-specific factors.

E. The REAT may elect to use money from the REAT Account for projects to be carried out by a REAT Agency rather than by a third-party Recipient. The applicable REAT Agency would enter into a written agreement with the Foundation to utilize this process. In such instances, the REAT Representatives will transmit to the Foundation Representative a project budget and associated payment procedures for transfer of money from the REAT Account to the applicable REAT Agency as payment for performance of the relevant project. However, as set forth in Section VII.I. below, in no event shall the REAT direct the payment of money from the REAT Account, including any Sub-Account, for any purpose other than the implementation of the project to be funded in accordance with the applicable Deposit Document.

F. The REAT shall participate with the Foundation in annual technical reviews to

evaluate the progress and results of projects funded by the REAT Account. If the REAT determines that termination or cancellation of a particular project is warranted, the REAT Representatives will so inform the Foundation Representative in writing.

G. The REAT agencies agree that the Foundation may join funds in multiple Sub-Accounts to complete mitigation measures that result in a cost savings or increased conservation benefit provided that each specific mitigation measure is completed, and the mitigation measures and the funds can be independently accounted for. In certain circumstances the REAT may direct the Foundation, in writing, to apply this approach.

H. If any funds remain in a project Sub-Account after the REAT Agencies have determined that all project-specific mitigation measures associated with such Sub-Account are completed, the REAT Agencies may direct the Foundation to transfer the remaining funds to the project's long-term management purposes. In the event there is no long-term management purpose established for the applicable project, the REAT Agencies may direct the Foundation to transfer the remaining funds to a separate Sub-Account which will be expended at the direction of the REAT Agencies for the purpose of enhancing and maximizing environmental protection in the Mohave and Colorado desert regions.

I. Upon notification by the Foundation that additional funds are needed to fully complete the mitigation measures identified in the Deposit Document, the REAT Agencies may require a project proponent to ensure that additional funds are deposited into the project Sub-Account to cover the short-fall, in accordance with applicable law.

## **VI. FOUNDATION RESPONSIBILITIES**

A. The Foundation shall appoint the Foundation Representative and an alternate, who shall represent the Foundation in carrying out its obligations under this Agreement. Such appointments shall require the concurrence of the REAT Agencies.

B. The Foundation understands and agrees that all monies deposited in the REAT Account, including all Sub-Accounts, shall be maintained in an interest bearing or investment account at one or more financial institution(s) that is a member of the Federal Deposit Insurance Corporation. In consultation with third parties and/or the Foundation, the REAT will determine the appropriate investment strategy to apply to each Sub-Account within the REAT Account. For accounting purposes, the REAT Account shall be distinguishable from all other accounts maintained by the Foundation. The Foundation shall also ensure that all Sub-Accounts within the REAT Account are distinguishable from each other, and finally, that funds deposited in each Sub-Account are tracked by each mitigation measure specified in the Deposit Document.

C. The Foundation shall invest and reinvest the principal and income of the REAT Account consistent with Section VI.B. of the Agreement and applicable State and Federal laws and in accordance with investment guidance determined by the REAT Representatives and communicated to the Foundation in writing for implementation by

one or more financial institutions retained by the Foundation. In addition, if requested by the REAT, the Foundation shall invest the principal and income of any Sub-Account within the REAT Account in a distinct investment pool to reflect a specified purpose and tenure of the relevant funds as identified by the REAT in the applicable Deposit Document. Day-to-day investment decisions, consistent with the REAT's investment guidance, will be made by the professional investment advisor or bank with which the Foundation has established or will establish an investment advisory relationship. The Foundation may rely on the advice of any such adviser, and may delegate investment decision-making authority, consistent with applicable State and Federal law and REAT guidance, to such adviser with respect to management of the REAT Account or any Sub-Account. Investment income accruing to the REAT Account shall be apportioned *pro rata* to each Sub-Account (and credited thereto) based on the respective balances on deposit in each Sub-Account, and shall be used to carry out the purposes of the various Sub-Accounts as set forth in the Deposit Document.

D. For investment purposes only, the Foundation is authorized to commingle any or all of the assets existing in the REAT Account with other funds held or managed by the Foundation that are subject to identical investment restrictions. The intent of this authorization is to allow the Foundation to pool funds subject to identical investment restrictions for collective management, such that all participating funds may benefit from efficiencies of scale. Any funds from the REAT Account commingled in this manner shall at all times remain subject to the investment guidance specified by the REAT for such funds. In addition, notwithstanding this authorization, and in accordance with Section VI.B. above, funds in the REAT Account and the Sub-Accounts shall at all times be distinguishable and uniquely identifiable within the Foundation's internal account system from all other funds maintained or managed by the Foundation.

E. The Foundation shall administer the REAT Account consistent with Section VII., below.

F. If requested by the REAT, under separate agreements with the REAT and in accordance with Section V.D.3. above, the Foundation shall prepare one or more RFPs for projects to be selected by the REAT and funded, in whole or in part, with monies in the REAT Account. This process may also be utilized if after full implementation of the Deposit Document, the Sub-Account has remaining funds.

G. The Foundation shall pay Recipients' requests for disbursements as approved by the REAT or a REAT Agency, as appropriate, in writing and in accordance with the procedures set forth in the respective Recipient Agreements.

H. The Foundation shall participate with the REAT in annual technical reviews to evaluate the progress and results of projects funded by the REAT Account. The Foundation will take appropriate steps to terminate or cancel a project if directed to do so by the REAT.

I. If requested by the REAT, the Foundation shall retain one or more land acquisition consultants for selected projects and programs at the direction of the REAT Representatives. Services to be procured by the Foundation in this respect may include review of acquisition plans, appraisal reviews, site visits, land negotiations, and other related services as the REAT shall deem necessary.

## VII. ACCOUNT ADMINISTRATION

A. Within forty five (45) days after the Effective Date, the Foundation shall establish the REAT Account. Sub-Account(s) shall be created and funded within the REAT Account as and when Sub-Account funds are received by the Foundation. In connection with their creation and funding, each Sub-Account shall be given unique identifying information by the Foundation. If and to the extent that, prior to the Foundation's establishment of the REAT Account, the Foundation has received funds for deposit into any Sub-Account, the Foundation shall deposit such funds into a Foundation general account (account "NA5000") as an interim measure. If funds are so deposited, then promptly after establishment of the REAT Account the Foundation shall transfer from account NA5000 into the REAT Account the relevant funds for crediting to the appropriate Sub-Account(s).

B. Upon receipt of each new deposit of funds into the REAT Account or any Sub-Account, the Foundation shall assess and collect the Per Deposit Fee against the appropriate Sub-Account as provided within the Deposit Document as described within Section III.L.

C. As described in Section III.C., the Foundation shall assess and collect the Annual Fee either quarterly or annually (based on the Foundation's Fiscal Year), at the Foundation's election, during each Fiscal Year in which the REAT Account is in existence. The annual fee will be assessed and collected against the appropriate Sub-Account as provided within the Deposit Document.

D. Bank charges assessed by any financial institution will be assessed and collected against the appropriate Sub-Account as provided within the Deposit Document.

E. Unless directed otherwise by the REAT in writing, the Foundation shall submit REAT Account activity reports to the REAT Representatives semi-annually by June 15 and December 15 of each year the REAT Account is in existence. The Foundation shall report on deposits, disbursements, fees, and investment income during each semi-annual period, with a reconciliation of the remaining unobligated balance in each Sub-Account. The reports will also include the current status of all active Recipient Agreements. At the REAT's written request, the Foundation shall provide to the REAT Representative copies of its audited financial statements.

F. If requested by the REAT, the Foundation shall participate in an annual audit of its management of the REAT Account, all Sub-Accounts and any other accounts holding REAT monies. The audit will be conducted by an auditor selected by the REAT. The

Foundation will fully cooperate with such audit process. The cost for the annual audit shall be collected as an administrative fee assessed against each project proponent.

G. The Parties agree and acknowledge that, at their mutual election, they may enter into further agreements regarding the establishment, maintenance, and/or operation of additional Sub-Accounts created within the REAT Account. If and to the extent that any such further agreements contain terms or conditions different from those set forth in this Agreement, the terms of such further agreements shall be deemed to supersede the provisions of this Agreement.

H. No funds disbursed from the REAT Account may be used by any Recipient to pay for lobbying activities, litigation, or any illegal activities.

I. No funds disbursed from the REAT Account may be used by any Recipient (including but not limited to the REAT Agencies) to unlawfully augment any REAT Agency's federal appropriations, whether in violation of the United States Constitution, Title 31, U.S.C. § 1301(a) (the "Purpose Statute"), Title 31, U.S.C. § 1341 (the "Anti-Deficiency Act"), Title 31, U.S.C. § 3302(b) (the "Miscellaneous Receipts Act"), or other applicable law.

#### **VIII. TERMINATION OF AGREEMENT**

A. This Agreement shall terminate when all monies in the REAT Account have been disbursed and/or the Parties agree to termination of this Agreement in writing. If this Agreement is terminated pursuant to this Section, the REAT may request a full and complete accounting of all REAT Account activity, including deposits, disbursements, fees, and investment income, with a reconciliation of the remaining balance, if any, in the REAT Account, and the Foundation shall provide such accounting within ninety (90) days after receipt of such request. In conjunction with such accounting, the Foundation shall submit to the REAT for approval any final payment requests from Recipients.

B. In the event of termination of this Agreement prior to all monies in the REAT Account having been expended, the Foundation shall immediately (unless otherwise directed by the REAT in writing) undertake all reasonable steps to wind down the REAT Account cooperatively with the REAT, which steps shall include but not be limited to the following:

1. Direct Recipients to stop any unfunded work;
2. Direct Recipients to place no further work orders or enter into any further contracts for materials, services, or facilities, except as necessary to complete work as specified in the REAT's notice;
3. Enter into no further contracts with Recipients and terminate all pending contracts (to the extent such contracts allow) for project work that has not yet commenced;

4. Promptly take all other reasonable steps to minimize the additional obligation of REAT Account funds;
5. Deliver or make available to the REAT all data, drawings, specifications, reports, summaries, and such other information and material as may have been developed under this Agreement or any project documents, whether completed or in progress; and
6. Disburse remaining funds in the REAT Account according to the REAT's written direction and in accordance with applicable law, withholding an amount sufficient to pay outstanding obligations that remain after steps (1) through (5) above have been completed.

**IX. CONTACT INFORMATION/COMMUNICATIONS**

A. No obligations may be incurred, and no funds disbursed, except in accordance with the applicable Deposit Document(s). All approvals, notices and reports required or permitted under this Agreement shall be in writing and delivered by first-class mail, overnight mail, facsimile or electronic pdf format. Each Party agrees to notify the other promptly after any change in named representative, address, telephone, or other contact information.

B. All deposits made to the REAT Account by check shall be delivered to the Foundation's headquarters office at 1133 15<sup>th</sup> Street, NW, Suite 1100, Washington, D.C. 20005, to the attention of the Chief Financial Officer. All deposits made to the REAT Account by electronic funds transfer shall be made in accordance with wire instructions provided by Foundation in writing to the depositor.

C. The individuals named below shall be the REAT Representatives and the Foundation Representative for purposes of this Agreement. Contact information for the REAT Representatives and Foundation Representative, respectively, is as follows (it being agreed and acknowledged that contact information for deposits to the REAT Account shall be as set forth in Section IX.B. above):

If to the REAT:

DFG:  
 Scott Flint  
 Renewable Energy Program Manager  
 California Department of Fish and Game  
 1416 Ninth Street  
 Sacramento, CA 95814  
 Phone: 916-653-9719  
 Facsimile: 916-653-2588  
 Email: sflint@dfg.ca.gov

If to the Foundation:

Liz Epstein  
 Senior Manager, IDEA  
 National Fish and Wildlife Foundation  
 90 New Montgomery Street  
 Suite 720  
 San Francisco, CA 94105  
 Phone: 415-243-3102  
 Facsimile: 415-778-0998  
 Email: liz.epstein@nfwf.org

DFG Alternate:

Bronwyn Hogan  
Renewable Energy Science Coordinator  
California Department of Fish and Game  
1416 Ninth Street  
Sacramento, CA 95814  
Phone: 916-445-0726  
Facsimile: 916-445-1768  
Email: bhogan@dfg.ca.gov

Foundation Alternate:

Jay Wright  
Manager, IDEA  
National Fish and Wildlife Foundation  
1133 15<sup>th</sup> Street, NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-595-2468  
Facsimile: 202-857-0162  
Email: jay.wright@nfwf.org

CEC:

Terry O'Brien  
Deputy Director  
1516 Ninth Street  
Sacramento, CA 95814  
Phone: 916-654-4421  
Facsimile: 916-654-4421  
Email: Tobrien@energy.state.ca.us

CEC Alternate:

Roger Johnson  
Program Manager  
1516 Ninth Street  
Sacramento, CA 95814  
Phone: 916-654-5100  
Facsimile: 916-654-4421  
Email: Rjohnson@energy.state.ca.us

BLM:

Tom Pogacnik  
Deputy State Director  
2800 Cottage Way, Room W-1623  
Sacramento, CA 95825  
Phone: 916-978-4637  
Facsimile: 916-978-4657  
Email: Tom\_Pogacnik@blm.gov

BLM Alternate:

Vicki L. Campbell  
Wildlife Biologist  
2800 Cottage Way, Room W-1623  
Sacramento, CA 95825  
Phone: 916-978-4320  
Facsimile: 916-978-4657  
Email: Vicki\_L\_Campbell@blm.gov

USFWS:

Mike Fris  
Assistant Regional Director-Endangered Species  
2800 Cottage Way, Room W-2606  
Sacramento, CA 95825  
Phone: 916-414-6475  
Facsimile: 916-414-6462  
Email: Michael\_Fris@fws.gov

USFWS Alternate:

Darrin Thome  
Deputy Assistant Regional Director-Endangered Species  
2800 Cottage Way, Room W-2606  
Sacramento, CA 95825  
Phone: 916-414-6533  
Facsimile: 916-414-6462  
Email: Darrin\_Thome@fws.gov

**X. MISCELLANEOUS PROVISIONS**

A. No Assignment. No Party may assign this Agreement, in whole or in part, to any individual or other legal entity without the prior written approval of the other Parties.

B. Amendments. This Agreement may be amended only in writing agreed to and signed by all Parties.

C. No Additional Support. In establishing the REAT Account, the REAT assumes no obligation to provide further funding or support to the Foundation beyond the terms stated in this Agreement.

D. Compliance with Laws; Insurance.

1. The Foundation agrees to contractually require that all Recipients comply with all applicable Federal, State, and local laws, regulations, and ordinances and secure all appropriate and necessary public or private permits and consents in carrying out projects financed by the REAT Account.

2. The Foundation agrees to contractually require Recipients to obtain and maintain all appropriate insurance, with the Foundation and the REAT named as additional insureds to the extent practicable, against liability for injury to persons or property from any and all activities undertaken by such Recipients in carrying out projects financed by the REAT Account.

E. Publicity. At the REAT's request, the Foundation agrees to require Recipients to include the REAT or REAT Agency's names or logos in all press releases, publications,

annual reports, video credits, dedications, and other public communications regarding any of the projects financed with funds from the REAT Account.

F. Severability. If any provision of this Agreement is held to be unlawful or invalid by any court of law with duly established jurisdiction over this Agreement, the Parties intend that the remainder of this Agreement shall remain in full force and effect notwithstanding the severance of the unlawful or invalid provision(s).

G. Responsibility for Conduct. Each Party shall be responsible for the consequences of its own actions or inaction, willful misconduct, gross negligence, and/or breach of obligations in connection with this Agreement, and in connection with any work undertaken in accordance with this Agreement.

H. Dispute Resolution. The Parties will cooperate in good faith to achieve the objectives of this Agreement and to avoid disputes. The Parties will use good faith efforts to resolve disputes at the lowest organizational level and, if a dispute cannot be so resolved, the Parties will then elevate the dispute to the appropriate officials within their respective organizations.

I. Disclaimers. Unless otherwise directed by the REAT, the Foundation shall ensure that all information submitted for publication or other public releases of information regarding this Agreement or any project funded by the REAT Account shall carry the following disclaimer:

The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the official policies or opinions of the State of California or U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the State of California or U.S. Government.

J. Appropriations Not Obligated. Nothing in this Agreement may be construed to obligate the United States or any REAT Agency to any current or future expenditure of money in advance of the availability of appropriations for such purposes from the U.S. Congress or other appropriating authority.

K. No Limitation on REAT Responsibilities. Nothing contained in this Agreement is intended to limit the authority of the REAT or any REAT Agency to fulfill its statutory or regulatory responsibilities or to otherwise limit the powers afforded to the REAT and each REAT Agency by applicable law.

L. No Third-Party Rights. This Agreement shall not be the basis of any claims, rights, causes of action, challenges or appeals by any person or entity not a Party to this Agreement. Nothing in this Agreement shall be construed to create privity of contract between the REAT and any third parties, including Recipients whose projects are financed by the REAT Account.

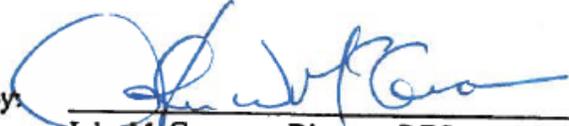
M. **Withdrawal from Agreement.** Any Party may withdraw from the Agreement upon sixty (60) days written notice to the other Parties without terminating the Agreement.

N. **Members of Congress Not to Benefit.** No member of Congress shall benefit from the provisions of this Agreement.

O. **Duplicate Originals.** This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

The Parties have executed this Agreement as of the last date signed below.

**RENEWABLE ENERGY ACTION TEAM**

By:   
\_\_\_\_\_  
John McCamman, Director, DFG

Date: 4/12/16

By: \_\_\_\_\_  
Karen Douglas, Chairman, CEC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jim Wesley Abbott, State Director, Acting, BLM

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Ren Lohofener, Regional Director  
Pacific Southwest Region, USFWS

Date: \_\_\_\_\_

**NATIONAL FISH AND WILDLIFE FOUNDATION**

By: \_\_\_\_\_  
Jeff Trandahl, Executive Director

Date: \_\_\_\_\_