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March 21, 2008

File No. 039610-0001

DOCKET
07-AFC-1
DATE MAR 21 2008
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VIA FEDEX

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-1
1516 Ninth Street, MS-4
Sacramento, California 95814-5512

Re: Victorville 2 Hybrid Power Project: Docket No. 07-AFC-1

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, sections 1209, 1209.5, and 1210, enclosed herewith for filing please find a copy of a document entitled, "Habitat Compensation in the West Mojave Urban Interface: Surety and Equitable Precepts," with attachments.

Please note that the enclosed submittal was filed today via electronic mail to your attention and to all parties on the CEC's current electronic proof of service list.

Very truly yours,

Paul E. Kihm
Senior Paralegal

Enclosure

cc: CEC 07-AFC-1 Proof of Service List (w/encl. via e-mail)
Michael J. Carroll, Esq. (w/encl.)

Habitat Compensation in the West Mojave Urban Interface: Surety and Equitable Precepts

Thomas Egan, Senior Ecologist, AMEC Earth & Environmental, Inc.

Many habitat compensation issues relative to regulatory permitting in the Southern California urban interface have arisen to date. A project planned for undeveloped lands situated between the Mojave River, Southern California Logistics Airport (SCLA), High Desert Power Project and Victor Valley Wastewater Reclamation Authority's (VVWRA) Regional Treatment Facility in Victorville (Figure 1, Regional Map) is a case in point.

The proposed site for the **Victorville 2 Hybrid Power Project (VV2 Project)** is located in these urban interface lands. Residential neighborhoods of the rapidly growing city of Adelanto are located to the west and northwest, and the area contains roads, evidence of off-highway vehicle use and a fair degree of surface disturbance. Construction of an inter-modal hub for rail service and other transportation modes is planned for adjacent lands to support existing industrial infrastructure. The VV2 Project site is located in a quickly-developing portion of the West Mojave Desert.

At issue are the predictability, equity and rationale for compensation required to mitigate incidental take of species covered by the California Endangered Species Act (CESA) and the federal Endangered Species Act (ESA). Habitat compensation also is often mandated to offset project impacts on other natural resources. However, problematic issues arise if compensation ratios are imposed that can be seen as arbitrary or additive, resulting in cases of unsupportable or double compensation. These circumstances can occur when incidental take compensation overlaps compensation or mitigation requirements for other resources, such as California streambeds, federal waters of the United States, or species protected under laws other than the ESA or CESA.

Desert Tortoise (*Gopherus agassizii*) Compensation

To address declining populations of Desert Tortoise, a keystone California and federally listed-threatened species, the U.S. Bureau of Land Management (BLM) and the California Department of Fish and Game (CDFG) in 1992 developed the ***California Statewide Desert Tortoise Management Policy*** (Policy). An outcome of a 1986 multi-interest workgroup, this policy identified definitive action recommendations for improved protection of Desert Tortoise populations and habitat. In this wide-ranging policy document, procedures to secure adequate compensation habitat and ensure compatible public land uses in varying habitat quality category areas were identified. The goals, objectives and management actions set forth in the Policy constituted policy for public land administration, as well as for management of the Desert Tortoise and its habitat on non-federal lands by the CDFG.

Although the BLM habitat categorization adopted in the Policy (Figure 2, Habitat Categories) applied only to public lands managed by BLM, CDFG concurrently developed a map of Desert Tortoise Crucial Habitat considered essential to the long term survival of the species.

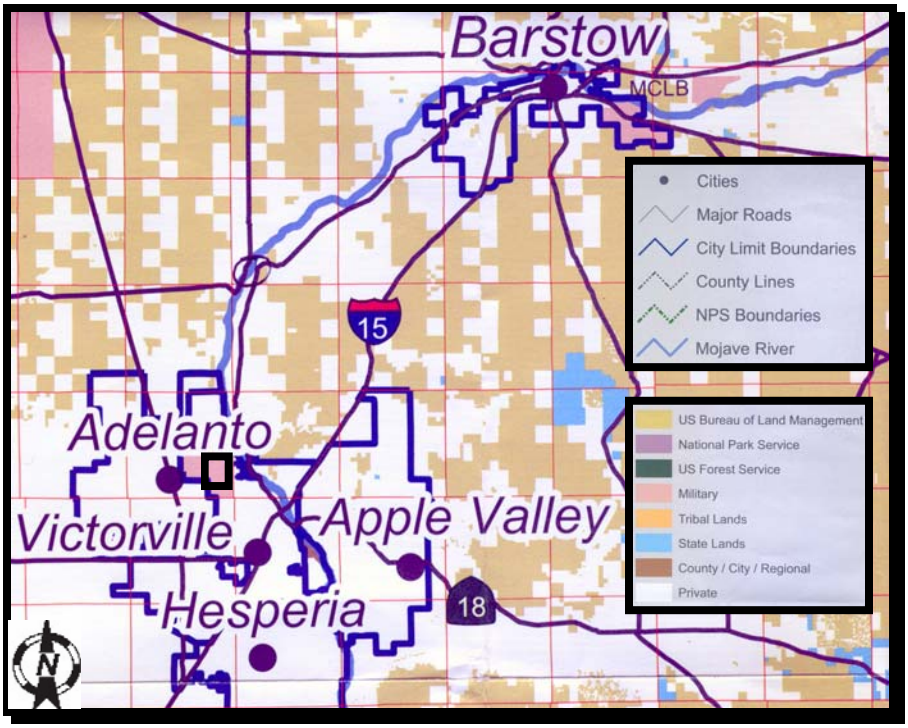

Figure 1. Regional map of the West Mojave Desert (BLM 2006). The former George Air Force Base in Adelanto, which is no longer in military ownership, is located in the vicinity of the area under discussion .

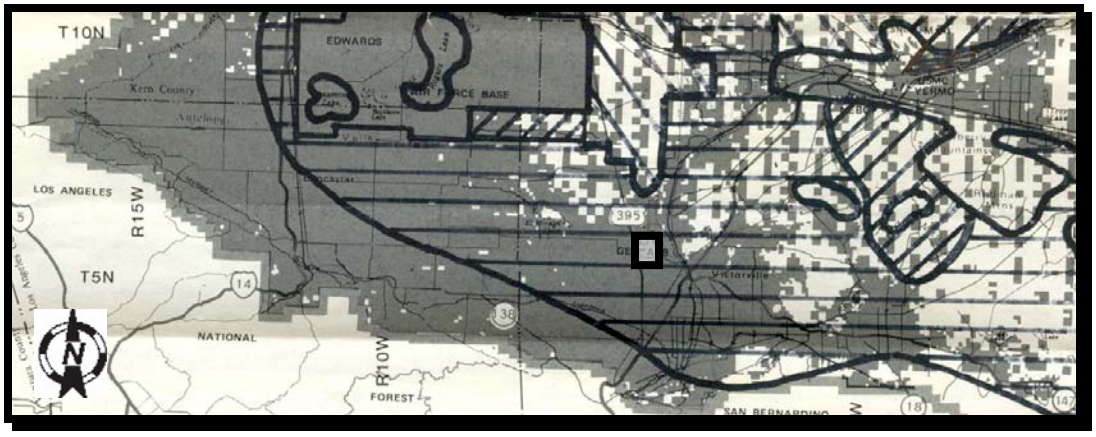

Figure 2. Categorized Desert Tortoise (*Gopherus agassizii*) Habitat (BLM 1988) in the vicinity of the proposed Victorville 2 Hybrid Power Project . Private ownership and military base areas (shaded) and public lands (non-shaded) are depicted. The horizontally hatched area indicates a Category III Desert Tortoise Habitat.

The boundaries of the CDFG-defined crucial habitat closely coincided with BLM's Category I and Category II Desert Tortoise Habitat Areas, but did not include Category III or non-habitat areas in its scope. The CDFG's designation did, however, address all private, state and federal lands in the region. Over time, the CDFG Crucial Habitat reference was replaced in everyday regulatory proceedings with the habitat category system developed by BLM as part of the Policy.

Recognizing that previous agency coordination was far from consistent, the Policy prescribed an increased emphasis on both cooperation and agreement on compensation policies, regardless of property ownership. Guideline 29 of the Policy outlined a standard process for determining habitat compensation requirements that could assist project proponents in fully mitigating impacts to Desert Tortoise habitat. Neither the ability to pay nor the cost of the project was to be a primary consideration in compensation ratio calculations, and the process was envisioned to allow for population/habitat enhancement actions or habitat consolidation to facilitate habitat management. Land acquisition, however, became the primary means of compensation in most permitting actions. All lands acquired per this policy were to be directed into BLM, CDFG or appropriate conservation organization ownership. These lands were then to be specifically managed for Desert Tortoise and other special status species conservation purposes. Where compensation was required to mitigate impacts to more than one species, additive and/or double compensation was to be avoided.

The Policy's goals, objectives and management actions were arranged around a central precept that Desert Tortoise conservation was best served by focusing protection on high quality habitat and the core of higher density populations (Figure 3). These core areas became known as Category I and II habitats and were situated primarily on public lands located away from expanding urban areas. Compensation ratios ranging from 2:1 to 5.5:1 were specified for regulatory permitting in these habitat areas, to facilitate a strong protection emphasis, whereas a ratio of 1:1 was to be applied in the Category III habitats of the urban interface.

The purpose for requiring all impacts to Category III habitat to be mitigated at a compensation ratio of 1:1, regardless of other factors, was to encourage development closer to the urban interface. These generally lower quality habitats are subject to multiple threats, where private lands predominate and future impacts are likely.

In contrast, determining equitable compensation ratios in Category I and Category II areas was based on the "***CAGED***" formula originated by BLM and applied by CDFG, which analyzed the following five factors to determine the compensation ratio: Category of habitat, "***C***" (ratio value: 2-3); Adjacent lands receiving impacts, "***A***" (ratio value: 0-0.5); Growth inducement, "***G***" ratio value: 0-0.5); Existing disturbance, "***E***" (ratio value: 0-1); and Duration of effect, "***D***" (ratio value: 0-1).

During 1992-2006, a considerable number of private land development projects impacting Desert Tortoise habitat were authorized under CESA and ESA. Most, if not all, utilized the compensation formula and direction specified in the interagency Policy. The compensation framework of the Policy also formed the basis for proposed Desert Tortoise habitat management in the ***West Mojave Plan, a Habitat Conservation Plan and California Desert Conservation Area Plan Amendment.*** This 15-year planning effort involved considerable stakeholder and agency participation.

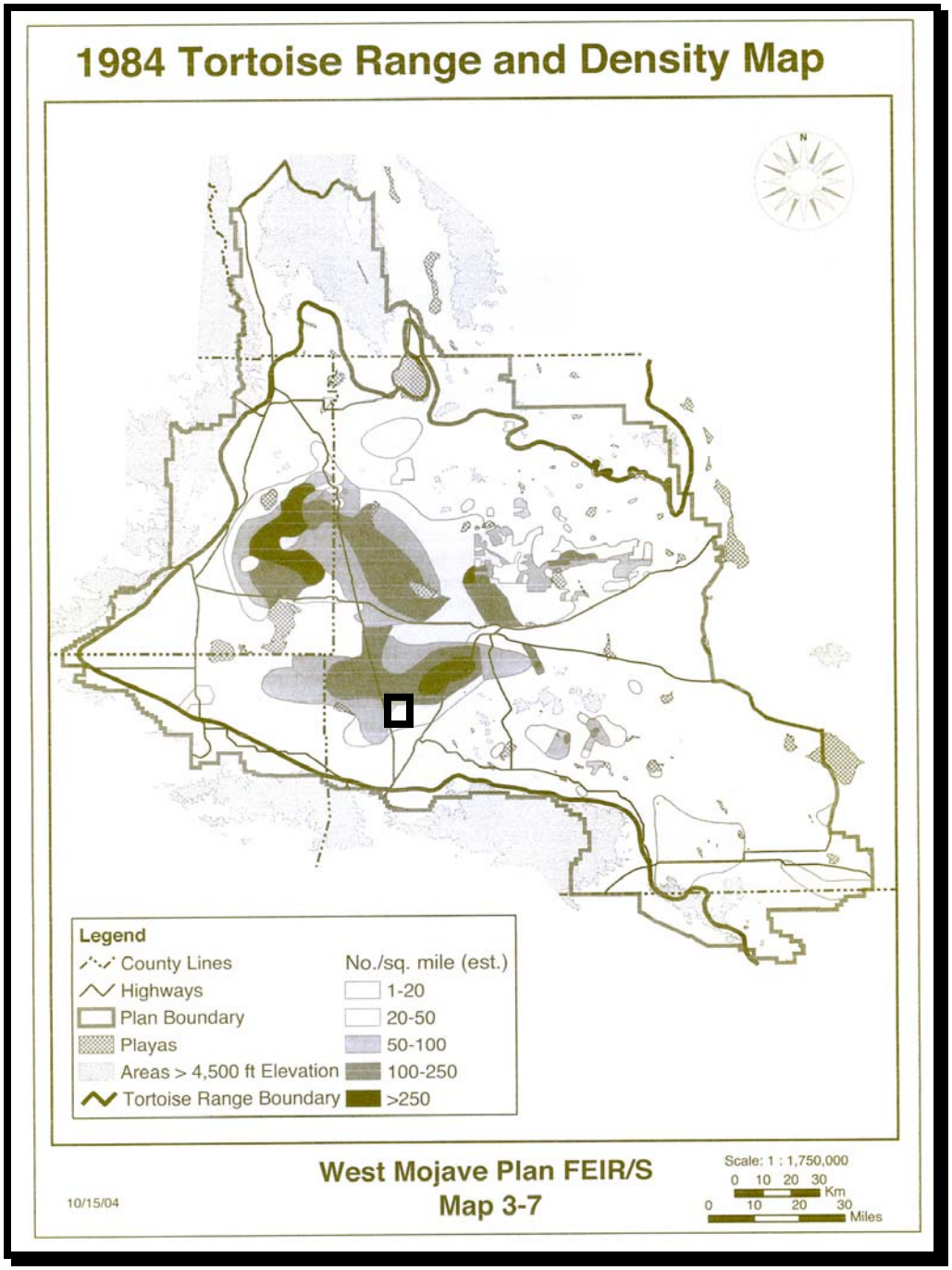

Figure 3. A map of the Desert Tortoise (*Gopherus agassizii*) density in the West Mojave Desert, from the *West Mojave Plan, a Habitat Conservation Plan and California Desert Conservation Area Plan Amendment* (BLM 2006). The proposed Victorville 2 Hybrid Power Project general vicinity is indicated by □.

Figure 4. A map of the West Mojave Planning Area (BLM 2006).

Its purpose was to further promote the recovery of Desert Tortoise and other at-risk wildlife species, while streamlining permitting of private land projects in the urban interface. BLM, with lead local agencies San Bernardino County Land Use Department and Barstow Community Development Department, released the West Mojave Plan in early 2006 (Figure 4).

While a stepwise impact fee structure was included in the West Mojave Plan adopted by BLM to simplify ESA incidental take permitting, the connection to the compensation precepts long applied in the region was unaltered and the basic direction of the 1992 Policy remained the basis for developing the West Mojave Plan. Although the California Environmental Quality Act (CEQA) portion of the West Mojave Plan has yet to be completed, CDFG was involved in the 15-year effort that resulted in the final Plan and has concurred with the incorporated approach for habitat compensation.

The method of calculating compensation ratios, as set forth in the Policy, is designed to result in consistency, equity and fairness in applying compensation ratios for impacts to Desert Tortoise habitat on private lands. Yet CDFG has proposed adoption of a site-specific approach to compensation ratio calculation for the proposed VV2 Project, which is located in Category III Desert Tortoise habitat, which departs from the Policy. This departure may lead to arbitrary and unjustified results.

For at least three similar projects recently permitted by CDFG in Category III Desert Tortoise habitat, CDFG applied a 1:1 compensation ratio, which is consistent with the established Policy. Those projects were the High Desert Power Project, permitted in 2001 and located in the same West Victorville region as the proposed VV2 Project; the Hyundai Automotive Test Track Project, permitted in 2004 and located near California City; and the Victor Valley Regional Wastewater Treatment Facility Expansion Project, permitted in 2005 and located adjacent to the VV2 Project.

In sharp contrast, CDFG is proposing a 1.5:1 compensation ratio for impacts to Category III Desert Tortoise habitat for the Victorville 2 Hybrid Power Project. A compensation ratio of 2:1 is being proposed to mitigate Category III Desert Tortoise habitat impacted by a proposed Victorville rail service and SCLA Specific Plan amendment. CDFG's proposed application of these higher compensation ratios to Category III Desert Tortoise habitat is not justified in light of the Policy, the West Mojave Plan, and CDFG's prior permitting decisions for other projects located in similar habitat with similar impacts.

Mohave Ground Squirrel (*Spermophilus mohavensis*) Compensation

CDFG requires an incidental take permit under CESA Section 2081, and compensation to mitigate impacts to the state-listed threatened Mohave Ground Squirrel (MGS), if the species is present or assumed to be present on private lands planned for a project within the known range of the species (Figure 5). Because MGS is not protected under the ESA, no federal incidental take permit or mitigation is required for impacts to that species. However, because MGS uses the same type of habitat as Desert Tortoise, MGS impacts often are addressed indirectly in both state and federal permitting for Desert Tortoise, which are protected under both CESA and ESA.

To determine if the incidental take of MGS is likely to occur, project proponents must first determine if the species is present in a locality. To do this, costly small mammal trapping is necessary. Three-session trapping surveys in the appropriate season are mandated by CDFG to confirm absence of the species at a site. Suitable trapping parameters are often difficult to meet, due to a limited window for trapping in late spring and early summer months. To complicate matters further, only a small number of CDFG-approved biologists are available for trapping efforts.

Results of these required trappings are only considered valid by CDFG for a period of up to one year. Consequently, a re-initiation of costly trapping is required if the stated year-length validity is exceeded during lengthy permitting actions. Project proponents can alternatively assume MGS presence at a locality, forego initial, secondary or tertiary trapping efforts and complete CESA Section 2081 incidental take permitting, which includes habitat compensation and takings mitigation components. Based on trapping completed in July 2006, no MGS are present on the VV2 Project site. However, because construction of the project will not be completed within one year, trapping will have to be done again in 2007 if MGS can continue to be assumed to be absent under CDFG policy.

CESA Section 2081 permits issued for MGS incidental take over the period 1992-2006 generally have applied a 1:1 compensation ratio for habitat acreage impacts. Only where MGS habitat impacts occurred in one of several core population areas for the species has CDFG required higher compensation ratios. Such areas are located far northwest of the Mojave River, many miles from Victorville (BLM 2006) and the VV2 Project site. Yet CDFG is proposing that a 3:1 compensation ratio be applied to the project, if MGS is assumed to be present on the site.

Urban development, off-highway vehicle use, sheep grazing, agricultural development and climate change have all contributed to the species demise in the southeastern portion of its historic range (Aardahl and Roush 1985). Most of the urban interface localities within the Victor Valley are located away from such core population areas (Figure 5). In fact, recent trapping records and reliable observations in the southern portion of the species' range, between Palmdale and Lucerne Valley inclusive of northwestern Victorville, are few and far between. CDFG has even called into question the continued persistence of MGS in this highly developed area (Gustafson 1993).

Consequently, compensation ratios exceeding a 1:1 ratio have been the exception rather than the rule for most surface disturbance actions permitted in the vicinity of the VV2 Project site. The VVWRA Regional Wastewater Treatment Facility Expansion Project, permitted in 2005, applied a 1:1 compensation ratio for impacts to both Desert Tortoises and MGS. Completed CESA permitting for several residential housing projects in the same west Victorville and Adelanto region, located where a MGS population has actually been documented, also have been mitigated using a 1:1 compensation ratio. In contrast, the SCLA Specific Plan amendment project, currently being permitted, reportedly is being required to compensate MGS impacts using a 2:1 ratio, notwithstanding that, like the VV2 Project, no MGS have been trapped or observed at the project site.

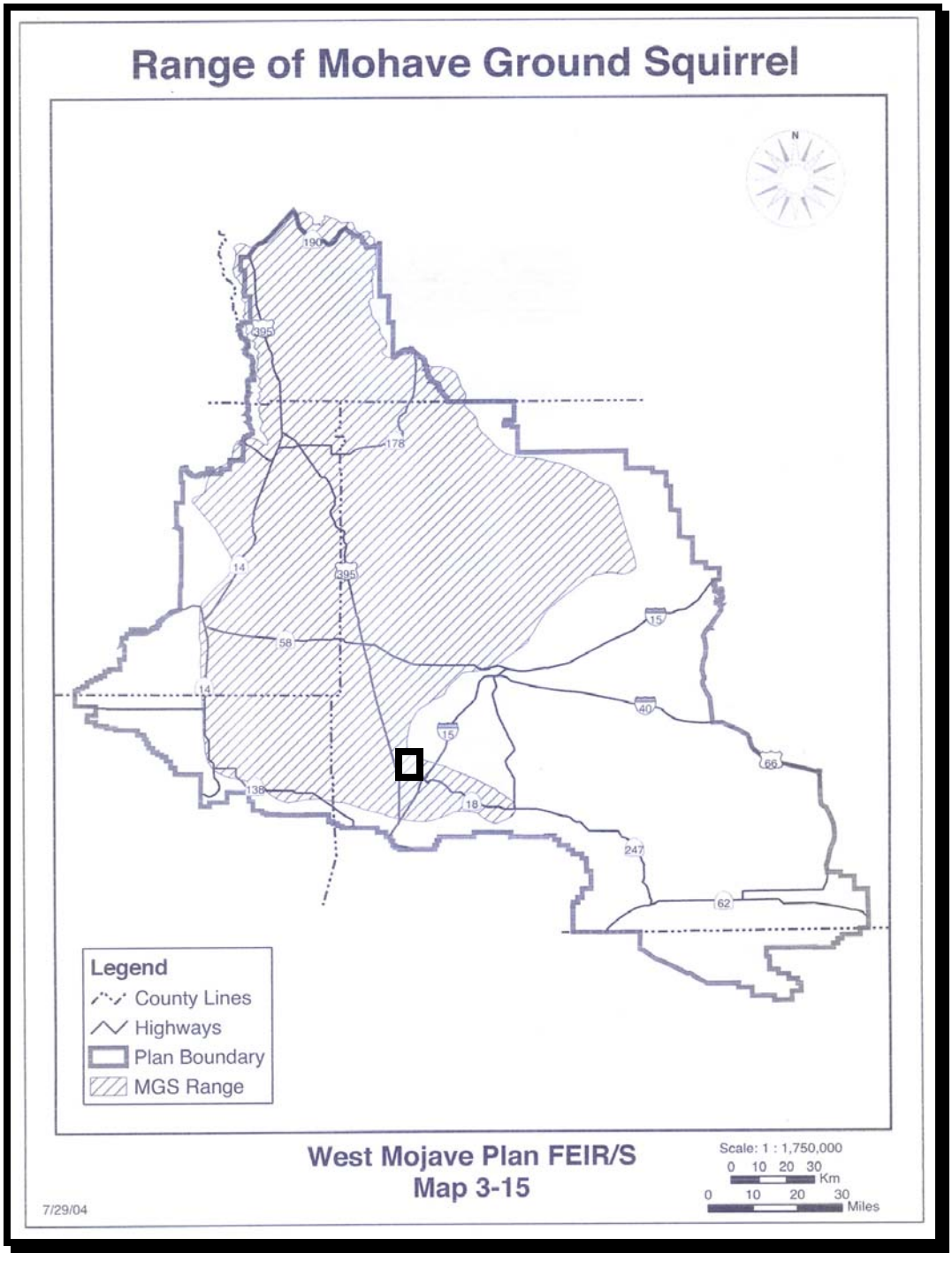

Figure 5. A map of the Mohave Ground Squirrel Range (BLM 2006). The proposed Victorville 2 Hybrid Power Project is indicated by ☐.

The 3:1 compensation ratio for MGS being proposed by CDFG for the VV2 Project is not supported by listed species resource values determined to be present and conflicts with similar projects, affecting similar habitat values and resources, located adjacent to or in close proximity to the power project site. Furthermore, these sites are all located on the edge of the species' historic range, where a questionable reported vocalization of a MGS juvenile now forms the basis of perceived impact for each of these projects. No core populations or connectivity would be affected by the VV2 Project proposal.

In short, the proposed 3:1 compensation ratio for MGS at the VV2 Project site represents a third, different compensation ratio applied to the same immediate area of the urban interface in northwest Victorville. From the standpoint of the VV2 Project, the proposed 3:1 ratio, which is higher than the ratios applied to three other projects in the same immediate vicinity, appears to be excessive, somewhat arbitrary and not justifiable.

Burrowing Owl (*Athene cunicularia*) Compensation

CDFG issued a directive in 1995 regarding habitat compensation for private development actions affecting the Burrowing Owl, a state-protected raptor (CDFG 1995). A staff report prepared in support of this directive outlines a preferred habitat compensation calculation method. Alternative project-specific measures will however, also be considered by the agency. No formal requirements have been issued by the state legislature or Fish and Game Commission regarding habitat compensation for this species.

Informal recommendations following from the above Burrowing Owl directive have been issued by the CDFG's Bishop Field Office (2005). This direction specifies:

"*As compensation for the direct loss of Burrowing Owl nesting and foraging habitat, the project proponent shall mitigate by acquiring and permanently protecting known Burrowing Owl nesting and foraging habitat at the following ratio:*

a) *Replacement of occupied habitat with occupied habitat at 1.5 times 6.5 acres per pair or single bird;*

b) *Replacement of occupied habitat with habitat contiguous with occupied habitat at 2 times 6.5 acres per pair or single bird; and/or*

c) *Replacement of occupied habitat with suitable unoccupied habitat at 3 times 6.5 acres per pair or single bird.*

The project proponent shall establish a non-wasting endowment account for the long-term management of the preservation site for Burrowing Owls. The site shall be managed for the benefit of Burrowing Owls. The preservation site, site management, and endowment shall be approved by the Department.

In general, most available lands capable of serving as compensation for Desert Tortoise or MGS habitat impacts also are suitable Burrowing Owl habitat. Accordingly, any habitat acquired by the VV2 Project to compensate for impacts to Desert Tortoise and/or MGS also likely would fulfill the requirements for Burrowing Owl mitigation.

State Streambeds/Federal Waters Compensation

When state streambeds are found to occur in a proposed project area, streambed habitat compensation is also often required as part of the Streambed Alteration Agreement permitting administered by the CDFG under California Fish and Game Code Section 1600. Included in the state streambed definition are desert washes with only ephemeral water flows, as commonly occur within Desert Tortoise and MGS habitat. A compensation ratio of 3:1 generally has been applied in state streambed permits involving desert washes.

Streambeds found to have a hydrological connection to navigable waters; significant water bodies or wetlands, may also be considered "federal waters" under the federal Clean Water Act (CWA). The U.S. Army Corps of Engineers administers Section 404 of the CWA, which applies to "dredge and fill" impacts to waters of the United States and permitting specifically. Habitat compensation for impacted federal waters is required in Section 404 permits, with a compensation ratio of 3:1 generally considered appropriate.

Habitat compensation requirements for impacts to state streambeds and federal waters may be additive to compensation requirements for impacts to listed species if the compensation acreage characteristics do not fully mitigate impacts to each of these resources. However, because Desert Tortoise, MGS and desert washes generally occur in the same types of habitat, any acreage acquired to compensate one of these resources is likely to include necessary characteristics to compensate impacts to the other resources. Accordingly, acquisition of separate acreage to compensate for streambed and federal waters impacts should rarely be required where acreage already is being acquired to compensate for impacts to Desert Tortoise and/or MGS.

Compensation Land Endowment Requirements

Seemingly arbitrary and excessive habitat replacement ratio calculations and excessive MGS trapping costs are not the only compensation issues. CDFG currently requires management endowments for compensation lands for all CESA permits.

Where endowments are required by a federal agency, they are specifically tied to use on compensation lands acquired for the subject ESA purpose. This is not the case, however, for CESA permits. CDFG currently requires management endowments of $1,300.00/acre of compensation land acquired, but these monies are not tied to the actual compensation lands acquired.

Further, when a third party conservation entity purchases and manages compensation lands over the long term, these state endowment costs are additive to those required by this third party to manage this land.

Because the CDFG endowment fees are not tied to the actual compensation lands acquired, the benefit of the CDFG endowment fee to the specific resource impacted is questionable.

Conclusion

Predictability, equity and consistent rationale supporting agency-calculated habitat compensation requirements are precepts that should govern all private land regulatory permitting actions in the West Mojave urban interface, as well as elsewhere. Habitat replacement for projects impacting habitat for listed species and important natural resources is a reasonable permitting measure for private land development in this rapidly growing region. However, it is a mitigation measure which needs to be applied equitably, in a non-arbitrary manner in order to allow for efficient, long-term planning and provide for maximal conservation benefit.

Habitat and natural resource compensation as a part of regulatory permitting has a long history in the West Mojave Desert, with these efforts not always consistent across agency lines or equitable for all involved parties. In 1997, BLM, CDFG, San Bernardino County and the planning departments of several West Mojave Desert cities structured a planning process for surrounding public lands to develop a conservation strategy that would meet the needs of all participants. This process formed the basis for the West Mojave Plan (BLM 2006), which was intended to be a regional habitat conservation plan serving affected communities in a consistent manner.

The effort began with participating entities signing onto a mission statement and set of principles, as outlined below:

1. The ultimate goal of the [West Mojave] Plan will be based on specified measures to enable project proponents to comply with the requirements of CESA and [F]ESA.

2. The [West Mojave] Plan will be equitable, predictable, and compatible with local, state and federal agency permitting procedures so as to be easily administered.

3. The mitigation strategy will be responsive to the needs and unique characteristics of the many diverse industries and activities in the program area on both public and private land while allowing compatible growth.

4. Project proponents shall have a choice of utilizing the conservation program or working directly with the CDFG or USFWS to address Endangered Species Act compliance.

5. The [West Mojave] Plan will incorporate realistic fiscal considerations, with identified sources, i.e., federal, state, local, public and private.

6. The [West Mojave] Plan will ensure that no one group of desert users will be singled out or disproportionately bears the burden of the [West Mojave] Plan implementation.

7. The [West Mojave] Plan will have the flexibility to respond to future legislative, regulatory and judicial requirements.

These basic precepts, agreed to by all of the West Mojave Desert region's regulatory agencies almost a decade ago, are expressly relevant to long-term planning and habitat compensation issues today. The proposed VV2 Project will implement state/federal direction for increasing alternate energy generation sources and would be located on the urban interface, rather than in higher value conservation lands set aside for the Desert Tortoise and MGS (Figure 6).

The VV2 Project is located on the periphery of the MGS range and as noted above, the species has not actually been trapped in the immediate vicinity of the proposed project. Assuming presence of MGS would minimize costs for the project proponent, as a secondary/tertiary MGS trapping effort during the lengthy (sometimes 2+ years) California Energy Commission licensing time period could be avoided.

This is true, however, only if the MGS habitat compensation ratio requirement applied by CDFG reflects the historic 1:1 rate predominantly used for this region to date. When agency-required compensation ratios unjustifiably exceed this rate, unproductive secondary/tertiary MGS trapping efforts unfortunately become a less costly alternative. This is particularly troubling where the fulfillment of compensation requirements for another species known to occur on the subject lands (i.e., Desert Tortoise) would also benefit the MGS. Such site-specific permitting, without regard to the surrounding area, wastes project funding that could be put to better environmental protection uses, does not provide predictability and is not equitable to the parties involved.

Even if a secondary/tertiary trapping effort confirms MGS absence at the proposed VV2 Project site, the project is located in Category III Desert Tortoise Habitat. This is an area where a 1:1 ratio commonly has been applied by regulatory agencies for both Desert Tortoise and MGS impacts. The same 1:1 compensation ratio logically would be expected and rationally should be applied to the VV2 Project.

To exceed a 1:1 compensation ratio for anticipated Desert Tortoise impact in this urban interface area not only sets a poor precedent for agency-private interest working relations, it violates equitable precepts previously agreed to by all regulatory agencies in the region.

Such a habitat compensation requirement also is counter to the central tenets of the 15-year West Mojave Plan effort, which encouraged project development in the urban interface, such as the VV2 Project site, rather than in higher quality conservation lands.

The validity of the compensation process for regulatory permitting purposes comes into question when associated requirements for development projects lack sound rationale, are additive in an unsupported manner for several species/resources or are arbitrary in any manner. Predictability and equity is a necessity when this type of compensation is required to mitigate a project's impacts to listed species or natural resources.

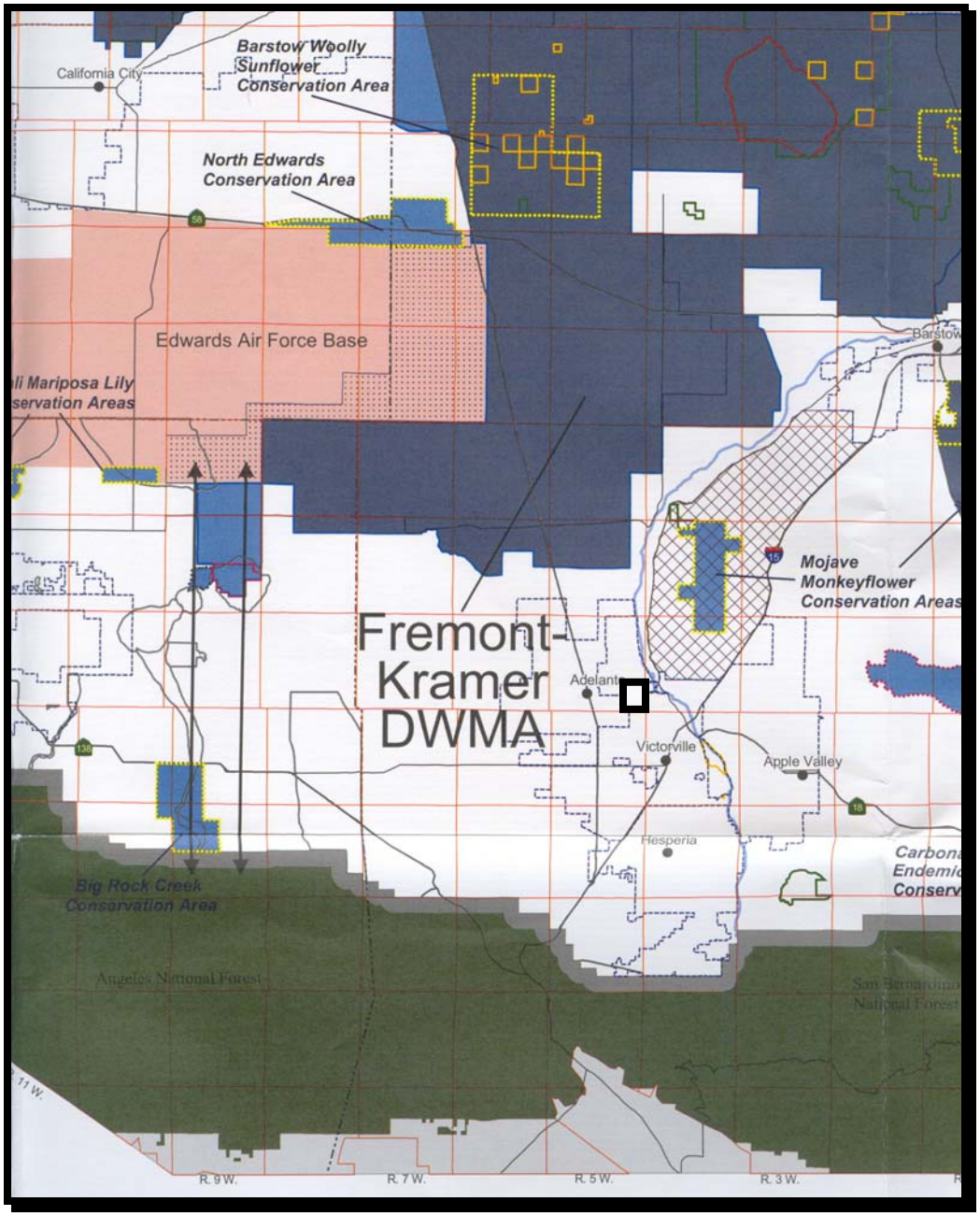

Figure 6. A map of conservation zones and the Desert Wildlife Management Area (DWMA) planned for at-risk wildlife species in the *West Mojave Plan, a Habitat Conservation Plan and California Desert Conservation Area Plan Amendment* (BLM 2006). Located considerably south of these areas is the proposed Victorville 2 Hybrid Power Project .

With regard to using habitat compensation for regulatory streamlining and as an impact minimization tool, adherence to the equitable precepts mentioned herein benefits project proponents and the state's wildlife resources. Deviation from these precepts precipitates a multitude of issues and could ultimately jeopardize the continued acceptability of using habitat compensation for project impact mitigation.

References

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Bureau of Land Management (BLM). 2006. West Mojave Plan, a habitat conservation plan and California Desert Conservation Area plan amendment. U.S. Department of the Interior Bureau of Land Management, California Desert Conservation Area District Office, Riverside, California.

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Gustafson, J.R. 1993. A status review of the Mohave ground squirrel (*Spermophilus mohavensis*). Nongame Bird and Mammal Report 93-9. California Department of Fish and Game, Wildlife Management Division Office, Sacramento, California.

West Mojave Plan

Final Environmental Impact Statement

(Bureau of Land Management 2005)

Section 2.2.2 Compensation Framework

2.2.2 Compensation Framework

2.2.2.1 Administrative Structure

(HCA-28) The agencies participating in the West Mojave Plan would establish an Implementing Authority to oversee the implementation of the habitat conservation plan. This authority would be established through an interagency agreement (such as a memorandum of agreement or MOA) or a Joint Powers Agreement as determined by the agencies participating in the plan. This agreement would define the composition of the governing board for the authority.

It is expected that the governing board would be composed of elected officials representing the cities and counties as well as representatives of the BLM, Caltrans, and other public entities signatory to the agreement. USFWS and CDFG would participate on the governing board as ex officio, non-voting members. Staff reporting to the governing board would conduct day-to-day oversight for implementation.

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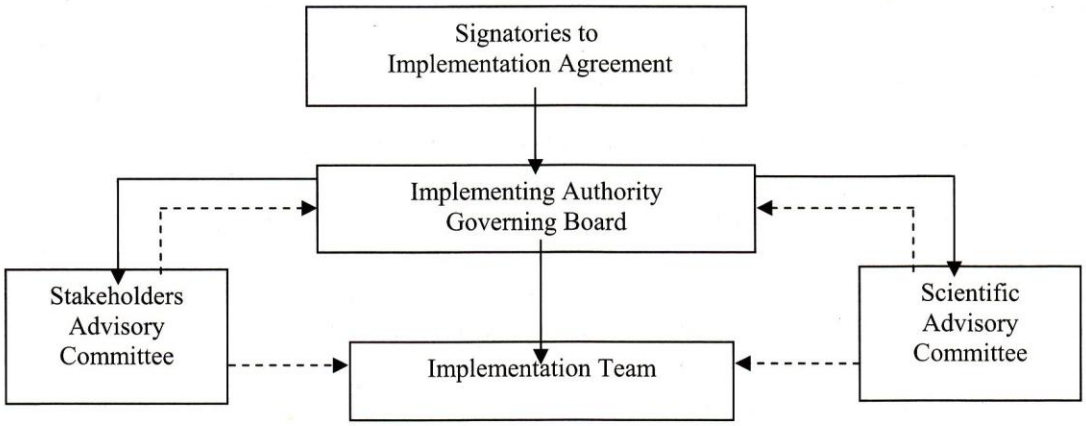
1 AGD acreage figures are approximate. Final AGD would be calculated prior to issuance of Biological Opinion and Section 10(a) permits.

The Implementation Team would be physically located in an office in the West Mojave planning area to facilitate communication and to provide a single location for public contact on plan issues. USFWS and CDFG may consider co-locating their staff with the Implementation Team to further facilitate communication and streamlining of the permit process.

In addition, two advisory committees would be established. A Stakeholders Advisory Committee would advise staff and the Governing Board on issues affecting the various interest groups and general public. A Scientific Advisory Committee would provide professional, scientific review and advice to the Implementation Team and Governing Board. The composition and duties of the Governing Board, Implementation Team, and advisory committees are detailed in Figure 2-1.

Figure 2-1
Implementation Structure



2.2.2.2 Mitigation Fee

(HCA-29) To replace the existing array of complex and time-consuming mitigation formulas, enhancement and endowment fees (including the current CDFG endowment fee), and survey requirements, a single mitigation fee would be established as compensation for habitat disturbance within the West Mojave planning area. The fee would apply to new ground-disturbing activities located on public and private lands under the jurisdiction agencies participating in the HCP including the BLM, Caltrans, cities, counties and special districts. This mitigation fee would be based on the average value of an acre of the private lands to be acquired for the implementation of this plan. The average value would be determined prior to finalization of the Implementation Agreement.

There would be three levels of compensation. Within the Habitat Conservation Area the fee would be based on a compensation ratio of 5:1 (five times the average value of an acre of land within the HCA). Outside of the HCA on lands delineated as disturbed habitat, the mitigation fee would be based on a compensation ratio of 0.5:1 (one half the average value of an acre of land within the HCA). Within all other areas outside of the HCA, the mitigation fee

would be based on a 1:1 compensation ratio. The criteria utilized to delineate disturbed habitat is shown in Table 2-7. Map 2-8 graphically displays the three compensation areas.

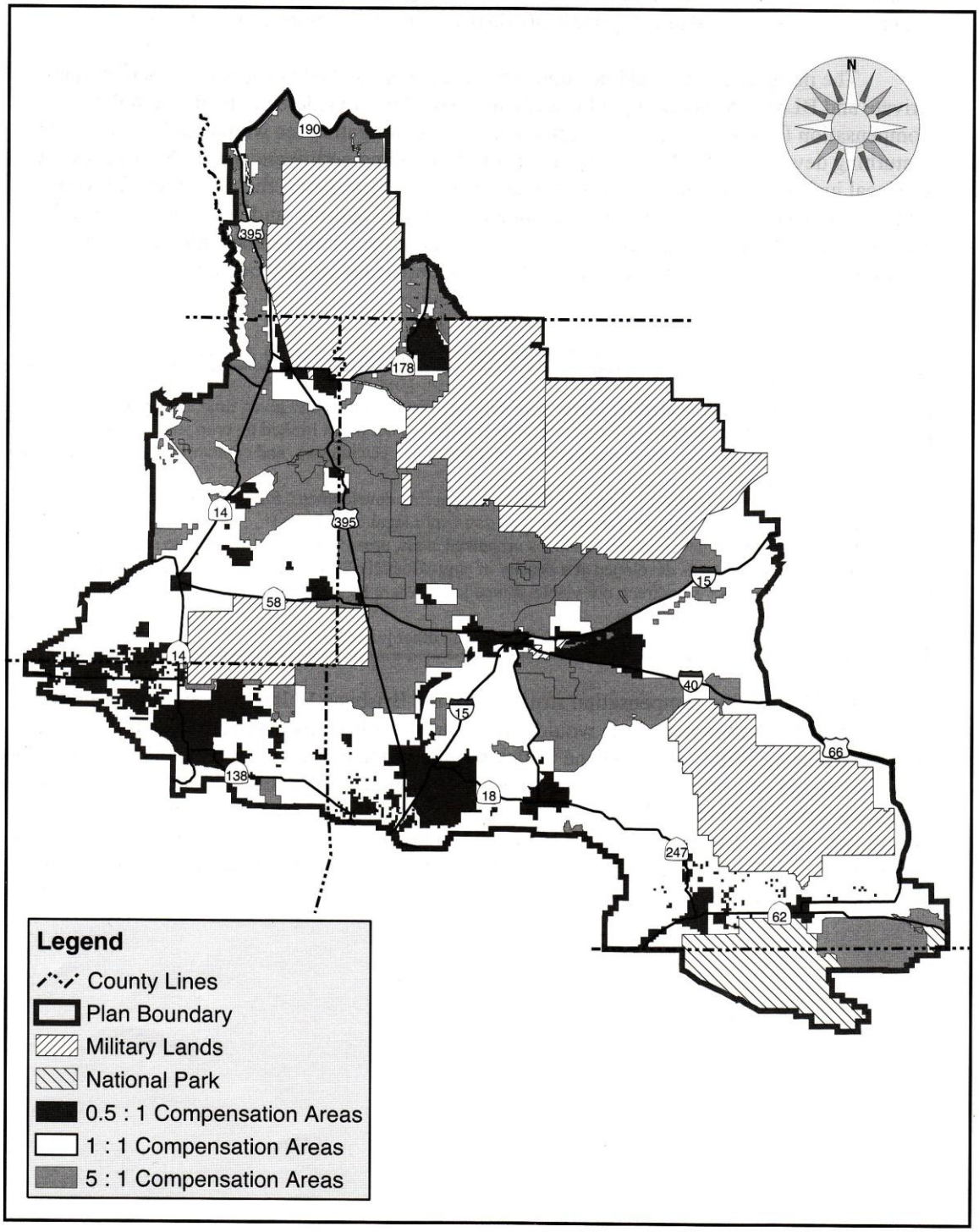
The mitigation fee would be applicable to development and/or loss of habitat on both private and BLM administered public lands, and would be considered to be the complete compensation for loss of habitat. On private lands, the mitigation fee would apply to all new land disturbing development subject to a grading and/or building permit and would be collected by the local jurisdiction at the time of permit issuance. On BLM lands, the mitigation fee would apply to all new land disturbing projects subject to federal permits, and would be collected by the BLM at the time of permit issuance. The mitigation fee would not be additive where multiple species exist on site, or where conservation areas for species overlap.

Table 2-7
Criteria Used to Delineate Disturbed (0.5 to 1) Areas

1) Agriculture (active & fallow)
   Fallow land is any land that has ever been cultivated and is not, at any given time, in current use for crop production. Evidence of prior cultivation includes, but is not limited to, crop surveys by government agencies, aerial photographs, statements by eyewitnesses, and contemporaneous documentation.
2) Defensible boundaries (nearest 1/4 section lines encompassing development; follow roads or other physical features such as aqueduct, railroad line, power line; don t split legal boundaries)
3) Clustered/concentrated development (includes urbanized areas, areas where infrastructure to support urban development exists, and areas developed at a density of approximately 25 structures per 1/4 section or greater)
4) Impaired habitat (direct & indirect; not viable; mined lands where 80 acres or more have been disturbed)
5) Contiguity to existing development
6) Outside military land, NPS and State Parks boundary (no other jurisdiction)

(HCA-30) The compensation structure for the Brisbane Valley portion of the Mojave Monkeyflower Conservation Area would differ somewhat from the compensation framework described above. Within the Brisbane Valley portion of the conservation area, the mitigation fee would be based on a compensation ratio of 5:1. Surrounding this conservation area, a Survey Incentive Area would be established. The compensation ratio within the Survey Incentive Area would vary from 1:1 to 2:1 depending on whether a botanical survey is conducted and results of that survey. (See Section 2.2.4.10.13 for a detailed description of the conservation strategy for the Mojave monkeyflower.)

Fee Compensation Areas



West Mojave Plan FEIR/S
Map 2-8

Scale: 1 : 1,750,000
0 10 20 30 Km
0 10 20 30 Miles

7/29/04

(HCA-31) A different method of compensation would be utilized for mining projects within the Carbonate Endemic Plants management area. The provisions of compensation for take of undisturbed habitat in this area are described in the separate interagency Carbonate Habitat Management Strategy (CHMS). The CHMS provides incentives for donations, land exchanges and conservation of occupied habitat, and applies a 3:1 mitigation ratio for compensation lands to replace habitat lost to mining. Non-mining projects within the management area would follow the mitigation fee provisions of the West Mojave Plan.

Certain uses would be exempt from the established mitigation fee. The development of a single-family residence on a lot of record outside of the HCA, and maintenance activities within an existing and previously improved road or utility right-of-way, are examples of uses exempt from payment of the mitigation fee. A complete listing of uses exempt from fee payment on private land is displayed in Table 2-8. Uses exempt from the mitigation fee on BLM administered land are shown in Table 2-9.

Table 2-8
Activities/Uses Exempt from Fees on Private Land

EXEMPT ACTIVITIES AND USES
• Single family residential dwellings and associated accessory structures, including non-discretionary second dwelling units that are permitted pursuant to California state law. Exemption applies to single family residential dwellings and non-discretionary second dwelling units on legal lots of record created prior to (date of enactment of fee ordinance). Residential construction on lots created after (date of enactment of fee ordinance) would be subject to the fee. This exemption does not apply within the Habitat Conservation Area.
• Remodels and renovations totaling no more than 25% of pre-existing development. (Note: Fee applies only to those classes of construction that generally represent new ground disturbance.)
• Demolitions
• Mobilehome replacements and reconstruction of any structure damaged or destroyed by fire or other cause.
• Maintenance activities within an existing and previously improved road or utility right-of-way. For the purposes of this section, maintenance includes paving, repaving, grading, and laying of gravel or other base, as long as these activities take place within an already graded road right of way.
• Any project for which a discretionary or ministerial approval was granted by the local jurisdiction prior to (date of enactment of fee ordinance), and any project for which a Vesting Tentative Map or Development Agreement approved prior to (date of enactment of fee ordinance) confers vested rights under a local jurisdiction ordinance or State law to proceed with development. Projects subject to this exemption must comply with all provisions of State and Federal law. (Note: This exemption is intended to apply to already approved projects where the application of subsequently adopted fees would be in conflict with State law.)
• Development that has already obtained required permits from the State Department of Fish and Game and/or U.S. Fish and Wildlife Service.
• Any project occurring on an area that was legally paved, landscaped, or graded and covered with a base prior to adoption of the West Mojave Plan.

Table 2-9
Activities/Uses Exempt from Fees on BLM Land

EXEMPT ACTIVITIES AND USES
• Any project included on the BLM CX List (list of Categorical Exclusions) as incorporated into the DOI NEPA manual at 516 DM6, Appendix 5, Section 5.4 (effective 5/19/92), unless the project is found to have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species (Exception 2.8, DOI NEPA manual at 516DM2, Appendix 2 [effective 9/26/84]). • Any project for which required permits from the U.S. Fish and Wildlife Service were obtained prior to the Record of Decision for the West Mojave Plan. • Any project for which habitat compensation requirements were established prior to the Record of Decision for the West Mojave Plan. Any such project would comply with the mitigation requirements established through the NEPA process. • Any project accomplished by the BLM, or its authorized agent, to implement provisions of the West Mojave Plan.

On private lands, the mitigation fee would be based on the size of the parcel to be developed. Development on parcels less than one acre in size would be charged on a pro rata basis. The mitigation fee for residential development on parcels between one acre and 2 ‰ acres in size will be based on either one acre of development that represents the typical amount of direct disturbance for rural residential land use on 2 ‰ acres parcels within the Plan area, or the actual amount of grading associated with the individual residential project, whichever is greater. Commercial and industrial development will pay a mitigation fee for the actual acreage to be disturbed in the same manner as development on parcels greater than 2 ‰ acres in size. The fee for projects on private land parcels greater than 2 ‰ acres may be calculated by determining the acreage of land actually disturbed, if steps are taken by the project proponent to ensure that the remainder of the parcel would remain undisturbed (e.g. the project area is fenced off from the remainder of the parcel and a conservation easement is granted for the remaining land). For projects occurring on public land, the mitigation fee would be based on the total acreage of land to be disturbed.

(HCA-32) In order to identify the loss or disturbance of habitat without compensation, a base line aerial photo data set would be established to identify those properties that were developed prior to the adoption of the Plan. An owner of property that is developed subsequent to the adoption of the plan would be subject to payment of the mitigation fee. Although no fee would be required for agriculture and other uses that do not require a development or building permit, the conversion of existing agricultural land, either under current cultivation or fallow, to any use that requires a development or building permit would be subject to the mitigation fee.

Administration of Mitigation Fees: An Implementing Authority established by agreement among the participating jurisdictions would administer mitigation fees collected on private lands. Mitigation fees collected on BLM lands would be managed by the BLM and maintained in a special account established for the acquisition of mitigation lands within the HCA, as well as for monitoring, enhancement and management of those lands. Appendix C (Implementation Plan) identifies priorities for the acquisition of land within the HCA.

California Department of Fish and Game
4665 LAMPSON AVE, SUITE J
LOS ALAMITOS, CA 90720
California Endangered Species Act
Incidental Take Permit No. 2081-2005-002-06
VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY
VVWRA WASTEWATER TREATMENT PLANT EXPANSION

Authority: This California Endangered Species Act ("CESA") Incidental Take Permit ("Permit") is issued by the Department of Fish and Game ("Department") pursuant to Fish and Game Code sections 2081(b) and 2081(c), and California Code of Regulations, title 14, subdivision 3, chapter 6, article 1, commencing with section 783. CESA prohibits the take[1] of any species of wildlife designated as an endangered, threatened, or candidate species by the Fish and Game Commission[2]. The Department, however, may authorize the take of such species by permit if the conditions set forth in Fish and Game Code sections 2081(b) and 2081(c) are met. (See also Cal. Code Regs., tit. 14, § 783.4.)

Permittee: Victor Valley Wastewater Reclamation Authority

Name and title of principal officer: Mr. Daniel Gallagher, General Manager

Contact person: Mr. Daniel Gallagher

Mailing address: 2011 Shay Road
Victorville, CA 92394

Effective Date and Expiration Date of Permit:

This Permit shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of the Permit and returned to the Department's Office of the General Counsel. Unless renewed by the Department, this Permit's authorization to take the Covered Species shall expire on **December 31, 2007.**

Project Location: The project site is located in the northwestern portion of the City of Victorville, west of and adjacent to the Mojave River Channel and east of the Southern California Logistics Airport (Section 12, T6N, R5W) in the city of Victorville, County of San Bernardino.

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[1]Pursuant to Fish and Game Code section 86, "'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill."

[2]"Candidate species" are species of wildlife that have not yet been placed on the list of endangered species or the list of threatened species, but which are under formal consideration for listing pursuant to Fish and Game Code section 2074.2.

Project Description: The proposed project consists of modifications/ improvements to existing facilities within the southern portion of the existing treatment facility. This will result in the permanent destruction of 35 acres of occupiable habitat for Mohave ground squirrel and may result in take of individual of the species (hereafter, the "Project").

Covered Species:

This Permit covers the following species:

Name	**Status**[3]
Mammals	
1. Mohave ground squirrel (*Spermophilus mohavensis*)	Threatened

This species and only this species is hereinafter referred to as "Covered Species."

Impacts to Covered Species:

The Project will result in the permanent destruction of 35 acres of habitat for the Covered Species. Individuals of the Covered Species may be incidentally taken as a result of mortality due to development activities, mortality due to project-related traffic on and off site, and project-caused habitat losses.

Incidental Take Authorization:

The Department authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Project, subject to the limitations described in this section and the conditions of approval identified below. This Permit does not authorize any take of Covered Species from activities outside the scope of the Project as described above; take of Covered Species resulting from violation of this Permit; or intentional take of Covered Species except for capture and relocation of Covered Species as authorized by this permit.

Conditions of Approval:

The Department's issuance of this Permit and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following conditions of approval:

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[3]Refers to status under CESA. Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species. All other species are "unlisted."

1) Permittee shall comply with all applicable state, federal, and local laws in existence on the effective date of this Permit or adopted thereafter.

2) Permittee shall fully implement and adhere to the conditions of this Permit within the time frames set forth in Attachment 1, the Mitigation Monitoring and Reporting Program (MMRP), and shall comply with any requirements of the MMRP that are not otherwise set forth in this Permit.

3) Permittee shall implement and adhere to mitigation measures Nos. 2 and 4 in the Biological Resources section of the Mitigated Negative Declaration and Initial Study (SCH # 2004091007), adopted by the lead agency, Victor Valley Wastewater Reclamation Authority, for the VVWRA Regional Wastewater Treatment Facility Expansion Project on Sept. 28, 2004.

4) Permittee shall fully implement and adhere to the following conditions:

a) General Provisions:

i) Before initiating ground-disturbing activities, Permittee shall designate a representative (Designated Representative) responsible for communications with the Department and for overseeing compliance with this Permit. The Department shall be notified in writing prior to commencement of ground-disturbing activities of the representative's name, business address, and contact information, and shall be notified in writing if a substitute representative is designated.

ii) A Designated Biologist knowledgeable and experienced in the biology and natural history of the Covered Species is required to monitor construction activities in areas of Covered Species habitat to help avoid the take of individual animals and to minimize habitat disturbance. At least 30 days prior to ground-disturbing activities, Permittee shall submit to the Department in writing the proposed Designated Biologist's name, qualifications, business address, and contact information for review. The Designated Biologist must be approved by the Department prior to the commencement of ground-disturbing activities.

iii) Permittee shall conduct an education program for all persons who will work on-site during Project implementation and construction. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology of the Covered Species, the habitat needs of the Covered Species, its status under CESA, and the management measures provided in this Permit. A fact sheet containing this information shall also be prepared and distributed. Upon completion of the program, employees shall sign a form stating that they attended

the program and understand all protection measures. These forms shall be filed at VVWRA offices and shall be made available to the Department upon request.

iv) Firearms and domestic dogs shall be prohibited from the Project site and site access routes during construction and development of the Project.

v) The Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this Permit, and to order any reasonable measure to avoid the take of an individual of the Covered Species.

vi) A trash abatement program shall be initiated during pre-construction phases of the Project and shall continue throughout the duration of the Project. Trash and food items shall be contained in closed (raven-proof) containers and removed regularly (at least once a week) to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.

vii) Permittee shall clearly delineate the property boundaries of the Project site with fencing, stakes or flags and shall similarly delineate the limits of construction areas.

viii) Project-related personnel shall access the Project site during construction and development activities using existing routes and shall not cross Covered Species' habitat outside of the Project site. To the extent possible, previously disturbed areas within the Project site shall be used for temporary storage areas, laydown sites, and any other surface-disturbing activities. If construction of offsite routes of travel will be required, the Department shall be contacted prior to carrying out such an activity. This Incidental Take Permit may require amendment if additional take of Covered Species may result from Project modification.

ix) All Project-related parking, storage areas, laydown sites, equipment storage, and any other surface disturbing activities shall be confined to the Project site. Off-site Covered Species habitat shall not be used. Project-related vehicle traffic shall be restricted to established roads, staging, and parking areas. Permittee shall post signs; place posting stakes, flags, and/or rope or cord; and place fencing as necessary to minimize the disturbance of Covered Species habitat. Vehicle speeds shall not exceed 20 mph in order to avoid Mohave ground squirrels on or traversing the roads.

x) Any fuel or hazardous waste leaks or spills on the Project site during construction and development activities shall be stopped/repaired immediately and cleaned up at the time of occurrence. The storage and handling of hazardous materials shall

be excluded from the construction zone and any unused or leftover hazardous products shall be properly disposed of offsite.

xi) Permittee shall provide Department representatives with reasonable access to the Project site and mitigation lands under the control of the Permittee, and shall otherwise fully cooperate with Department efforts to verify compliance with or effectiveness of mitigation measures set forth in the Permit. Neither the Designated Biologist, nor the Department shall be liable for any costs incurred in complying with the management measures, including cease-work orders issued by the Department or as provided in the Permit.

xii) Upon Project completion, all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes shall be removed from the site and disposed of properly.

xiii) Notwithstanding any expiration date on this Permit's take authorization, Permittee's obligations under this Permit do not end until the Department accepts the Final Mitigation Report as complete.

b) Notification and Reporting:

i) Permittee shall notify the Department and shall document compliance with all pre-construction Conditions of Approval before initiating ground-disturbing activities.

ii) Permitte shall notify the Department fourteen (14) calendar days before initiating ground-disturbing activities.

iii) Permittee shall immediately notify the Department in writing if it determines that it is not in compliance with any condition of approval of this Permit, including but not limited to any actual or anticipated failure to implement mitigation measures within the time periods indicated in this Permit and/or the MMRP.

iv) Compliance inspections shall be conducted a minimum of once per week by the Designated Biologist during clearing, grubbing, and grading. Compliance inspections shall be conducted a minimum of once per month after clearing, grubbing, and grading are completed. A monthly compliance report shall be submitted to the Department's Bishop office at the address listed below. The Designated Biologist shall check for compliance with all mitigation/avoidance measures, and shall check all exclusion zones to ensure that signs, stakes, and fencing are still intact and that human activities have been restricted in these protective zones.

v) Beginning with issuance of the Permit and continuing for the life of the Permit, Permittee shall provide the Department an annual Status Report no later than January 31 of every year. Each Status Report shall include, at a minimum: 1) a general description of the status of the Project site and construction activities, including actual or projected completion dates, if known; 2) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; and 3) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for Project impacts.

vi) All observations of Covered Species and their sign during Project activities shall be conveyed to the Permittee's Designated Representative or Designated Biologist. This information shall be included in the next monthly compliance report submitted to the Department by on the behalf of the Permittee.

vii) No later than 45 days after completion of the Project, including completion of all mitigation measures, Permittee shall provide the Department with a Final Mitigation Report. The Final Mitigation Report shall be prepared by the Designated Biologist and shall include, at a minimum: 1) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; 2) all available information about Project-related incidental take of Covered Species; 3) information about other Project impacts on the Covered Species; 4) construction dates; 5) an assessment of the effectiveness of the Permit's conditions of approval in minimizing and compensating for Project impacts; 6) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the Covered Species; and 7) any other pertinent information, including the level of take of the Covered Species associated with the Project.

viii) If a Mohave ground squirrel is killed by project-related activities during construction, or if a Mohave ground squirrel is otherwise found dead, the Designated Biologist shall be immediately notified and a written report will be sent to the Department within two (2) calendar days. The report will include the date, time of the finding or incident, location of the carcass, and the circumstances.

c) Other Take Minimization and Mitigation Measures for Mohave Ground Squirrel:

i) If a Mohave ground squirrel is found in a burrow during Project-related activities on the Project site, it shall be immediately relocated to a burrow at a protected off-site location approved by the Department's Regional Representative. The Mohave ground squirrel may only be relocated by a qualified biologist. The relocation burrow shall be prepared in the following manner: dig a hole at least two (2) feet deep, place a nine (9) inch diameter plastic container (with thick enough walls that

it will not collapse when buried) in the hole, place cotton bedding material in the container, connect the container to a three (3) inch diameter flexible plastic pipe (with thick enough walls that it will not collapse when buried) running to the surface at a 45 degree angle, cover the artificial burrow with dirt leaving the surface end of the 3 inch pipe open, and place the Mohave ground squirrel in the artificial burrow and lightly plug the burrow mouth with soil (in a manner similar to what Mohave ground squirrel do in natural burrows). The Designated Representative shall immediately notify the Department of the incident unless the incident occurs outside of normal business hours. In that event, the Department shall be notified no later than noon on the next business day. Notification to the Department shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location and circumstances of the incident, the name of the party that actually relocated the animal, and the location (including GPS coordinates) to which the animal was moved.

ii) If a Mohave ground squirrel is injured as a result of project related activities, it shall be immediately taken to a Department-approved wildlife rehabilitation and or veterinary facility. Permittee shall identify the facility prior to the start of ground disturbing activities. Any costs associated with the care or treatment of such injured Mohave ground squirrels shall be borne by Permittee. The Department shall be notified immediately unless the incident occurs outside of normal business hours. In that event the Department shall be notified no later than noon on the next business day. Notification to the Department shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location and circumstances of the incident, and the name of the facility where the animal was taken.

5) Prior to initiating ground-disturbing Project activities, or no later than 18 months from the effective date of this Permit if Security is provided pursuant to Condition 6 below, Permittee shall acquire and permanently preserve 35 acres of Habitat Management Lands ("HM Lands") that the Department has determined will provide suitable mitigation for impacts to the Covered Species. The required acreage is based upon the Department's estimate of the acreage required to provide for adequate biological carrying capacity at a replacement location as a means of fully mitigating the Project's impacts on the Covered Species. The Department's approval of the HM Lands acquisition must be obtained prior to acquisition and transfer by use of the Proposed Lands for Acquisition Form (see Attachment 2B) or by other means specified by the Department. As part of this condition, Permittee shall:

a) Transfer fee title to the HM Lands or a conservation easement over the HM Lands to the Department under terms approved by the Department. Alternatively, the transfer may be to another public entity or non-profit corporation approved by the Department under terms approved by the Department.

b) Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A and 2B). All documents conveying the HM Lands and all conditions of title are subject to the approval of the Department, the Department of General Services and, if applicable, the Fish and Game Commission.

c) Provide for the initial protection and enhancement of the HM Lands as determined by the Department once Permittee identifies the HM Lands. The Department estimates that initial protection and enhancement will be approximately $95.00/acre. Alternatively, Permittee may fund the Department's initial protection and enhancement of the lands by providing the funds required for the initial protection and enhancement to the Department.

d) Provide to the Department a check in the amount of $7,000.00 for use as principal for a permanent capital endowment. Interest from this amount shall be available for the operation, management and protection of the HM Lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the HM Lands. The endowment principal shall not be drawn upon unless such withdrawal is deemed necessary by the Department to ensure the continued viability of the species on the HM Lands. Monies received by the Department pursuant to this provision shall be deposited in a special deposit account established pursuant to Fish and Game Code section 13014. The Department may pool the endowment with other endowments for the operation, management and protection of HM Lands for local populations of the Covered Species.

e) Reimburse the Department for reasonable expenses incurred during title and documentation review, expenses incurred from other state agency reviews, and overhead related to transfer of HM Lands to the Department. The Department estimates that this Project will create an additional cost to the Department of no more than $3,000 for every fee title deed or easement processed.

6) Permittee may proceed with ground-disturbing Project activities before completing all of the required mitigation (including acquisition of HM Lands), monitoring, and reporting activities only if Permittee ensures funding to complete those activities by providing to the Department prior to commencing ground-disturbing activities or within 30 days after the effective date of this Permit, whichever occurs first: (1) the endowment of $7,000.00 as described in Condition 5, and (2) an irrevocable letter of credit, a pledged savings account, or another form of security ("Security") approved by the Department's Office of the General Counsel (see Attachment 4). The Security shall allow the Department to draw on the principal sum if the Department, at its sole discretion, determines that

Permittee has failed to comply with the Conditions of Approval of this Permit. The Security shall be in the amount of **$31,325.00** based on the following estimated costs of implementing the Permit's mitigation, monitoring and reporting requirements.

a) Land acquisition costs for impacts to habitat, calculated at $800/acre for 35 acres: $28,000.

b) Costs of enhancing HM Lands, calculated at $95.00/acre for 35 acres: $3,325.

7) This Permit may be amended without the concurrence of the Permittee if the Department determines that continued implementation of the Project under existing permit conditions would jeopardize the continued existence of a Covered Species. The Department may also amend the Permit at any time without the concurrence of the Permittee as required by law.

8) The Department may issue Permittee a written stop-work order to suspend any activity covered by this Permit for an initial period of up to 25 days to prevent or remedy a violation of Permit conditions (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. Permittee shall comply with the stop-work order immediately upon receipt thereof. The Department may extend a stop-work order under this provision for a period not to exceed 25 additional days, upon written notice to the Permittee. The Department shall commence the formal suspension process pursuant to California Code of Regulations, Title 14, section 783.7 within five working days of issuing a stop-work order.

Compliance with Other Laws

This Permit contains the Department's requirements for the Project pursuant to CESA. This permit does not necessarily create an entitlement to proceed with the Project. The Permittee is responsible for complying with all other applicable state, federal, and local laws.

Notices

Written notices, reports and other communications relating to this Permit shall be delivered to the Department by first class mail at the following addresses, or at addresses the Department may subsequently provide the Permittee. Notices, reports, and other communications should reference the Project name, Permittee, and Permit Number (2081-2005-002-06) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Curt Taucher, Regional Manager
4665 Lampson Avenue, Suite J
Los Alamitos, CA 90720
Telephone (562) 431-1295
FAX (562) 799-8427

Copy of cover without attachment(s) to:

General Counsel
Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

And:

Habitat Conservation Planning Branch
1416 Ninth Street, Suite 1260
Sacramento, CA 95814

Unless Permittee is notified otherwise, the Department's Regional Representative for purposes of addressing issues that arise during implementation of permit conditions is:

Ms. Adrienne Disbrow
407 W. Line Street
Bishop, CA 93514
(760) 873-4412 phone
(760) 872-1284 fax

Compliance with the California Environmental Quality Act

Department's issuance of the Permit is subject to the California Environmental Quality Act, Public Resources Code, section 21000 et seq. ("CEQA"). The Department is a responsible agency under CEQA with respect to the Permit because of prior environmental review of the Project by the lead agency, VVWRA. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Negative Declaration and Initial Study dated Sept 1, 2004 (SCH # 2004091007), that the VVWRA adopted for VVWRA Regional Wastewater Treatment Facility Expansion Project on Sept. 28, 2004. At the time the lead agency adopted the Negative Declaration and approved the Project it also adopted all mitigation measures (including the measures outlined below) as "Conditions of Project Approval."

In fulfilling its obligations as a responsible agency, the Department's obligations under CEQA are more limited than the lead agency. (CEQA Guidelines, § 15096, subd. (g)(1).)[4] The Department, in particular, is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve and mitigating or avoiding only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, § 15096, subds. (f), (g)(1).) Accordingly, because the Department's exercise of discretion is limited to issuance of the Permit, the Department is responsible for considering only the environmental effects that fall within its permitting authority under CESA.

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

CESA Findings

With respect to CESA, the Department finds that, in issuing the Permit, all of the following conditions have been met:

(1) Take of Covered Species as defined in the Permit will be incidental to the otherwise lawful activities covered under the Permit;

(2) Impacts of the taking of the Covered Species will be minimized and fully mitigated through the implementation of measures required by this Permit and as described in the Mitigation Monitoring and Reporting Program (MMRP). Measures include: 1) monthly compliance reports; 2) land compensation for species where habitat is impacted; and 3) an education program for all persons working on-site.

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[4] The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

(3) The take avoidance and mitigation measures required pursuant to the conditions of this Permit and its attachments are roughly proportional in extent to the impact of Permittee's take.

(4) The measures required by this Permit maintain Permittee's objectives to the greatest extent possible;

(5) All required measures are capable of successful implementation;

(6) The Permit is consistent with any regulations adopted pursuant to Fish and Game Code sections §2112 and §2114;

(7) Permittee has ensured adequate funding to implement the measures required by the Permit as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and

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

Attachments:

ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2A,2B	Habitat Management Lands Checklist; PLFAF Form
ATTACHMENT 3	Mitigation Payment Transmittal Form
ATTACHMENT 4	Letter of Credit Forms

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME

on 5/15/05.

CURT TAUCHER, Regional Manager
EASTERN SIERRA-INLAND DESERTS REGION

APPROVED AS TO FORM:

MICHAEL R. VALENTINE, General Counsel

ACKNOWLEDGMENT

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

By: _____ Date: 5/23/2005

Printed Name: DANIEL P. GALLAGHER Title: GENERAL MANAGER

Attachment 1

DEPARTMENT OF FISH AND GAME
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

CALIFORNIA INCIDENTAL TAKE PERMIT NO. 2081-2005-002-06
PERMITTEE: Victor Valley Wastewater Reclamation Authority
PROJECT: VVWRA Wastewater Tratement Plant Expansion

PURPOSE OF THE MMRP

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

OBLIGATIONS OF PERMITTEE

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

VERIFICATION OF COMPLIANCE, EFFECTIVENESS

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

TABLE OF MITIGATION MEASURES

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

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
PRE-CONSTRUCTION					
1	Before initiating ground-disturbing activities, Permittee shall designate a representative (Designated Representative) responsible for communications with the Department and for overseeing compliance with this Permit. The Department shall be notified in writing prior to commencement of ground-disturbing activities of the representative's name, business address, and contact information, and shall be notified in writing if a substitute representative is designated.	Permit	Pre-Project/ Entire project	Permittee	
2	A Designated Biologist knowledgeable and experienced in the biology and natural history of the Covered Species is required to monitor construction activities in areas of Covered Species habitat to help avoid the take of individual animals and to minimize habitat disturbance. At least 30 days prior to ground-disturbing activities, Permittee shall submit to the Department in writing the proposed Designated Biologist's name, qualifications, business address, and contact information for review. The Designated Biologist must be approved by the Department prior to the commencement of ground-disturbing activities.	Permit	Pre-project	Permittee	
3	Permittee shall conduct an education program for all persons who will work on-site during Project implementation and construction. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology of the Covered Species, the habitat needs of the Covered Species, its status under CESA, and the management measures provided in this Permit. A fact sheet containing this information shall also be prepared and distributed. Upon completion of the program, employees shall sign a form stating that they attended the program and understand all protection measures. These forms shall be filed at VVWRA offices and shall be made available to the Department upon request.	Permit	Pre-Project/ Entire project	Permittee	
4	A trash abatement program shall be initiated during pre-construction phases of the Project and shall continue throughout the duration of the Project. Trash and food items shall be contained in closed (raven-proof) containers and removed regularly (at least once a week) to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.	Permit	Pre-Project/ Entire project	Permittee	
5	Permittee shall clearly delineate the property boundaries of the Project site with fencing, stakes or flags and shall similarly delineate the limits of construction areas.				
6	Permitte shall notify the Department fourteen (14) calendar days before initiating ground-disturbing activities.				
7	Permittee shall notify the Department and shall document compliance with all pre-construction Conditions of Approval before initiating ground-disturbing activities	Permit	Pre-project	Permittee	
8	Permittee shall acquire and permanently preserve 35 acres of Habitat Management Lands approved by the Department ("HM Lands") for the Covered Species prior to initiating ground-disturbing project activities or no later than 18 months from the effective date of this Permit if Security is provided pursuant to Condition 6 of the Permit. The required acreage is based upon the Department's estimate of the acreage required to provide for adequate biological carrying capacity at a replacement location as a means of fully mitigating the Project's impacts on the Covered Species. HM lands shall be transferred to the Department in accordance with Condition 5 of the Permit.	Permit	Pre-project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
9	Permittee may proceed with ground-disturbing Project activities before completing all of the required mitigation (including acquisition of HM Lands), monitoring, and reporting activities only if Permittee ensures funding to complete those activities by providing to the Department prior to commencing ground-disturbing activities or within 30 days after the effective date of this permit, whichever occurs first: (1) the endowment of $7,000.00 as described in Condition 5, and (2) an irrevocable letter of credit, a pledged savings account, or another form of security ("Security") approved by the Office of the General Counsel. The Security shall allow the Department to draw on the principal sum if the Department, at its sole discretion, determines that Permittee has failed to comply with the Conditions of Approval of this Permit. The Security shall be in the amount of **$31,325.00** based on the following estimated costs of implementing the Permit's mitigation, monitoring and reporting requirements. a. Land acquisition costs for impacts to habitat, calculated at $800/acre for 35 acres: $28,000.00. b. Costs of enhancing HM lands, calculated at $95.00/acre for 35 acres: $3,325.00.	Permit	Pre-project	Permittee	
DURING CONSTRUCTION					
10	For the duration of construction activities, Permittee shall conduct compliance inspections at least once a week to assess compliance with all construction-phase impact minimization and mitigation measures, especially those requiring creation and maintenance of exclusion zones.	Permit	Entire project	Permittee	
11	Compliance inspections shall be conducted a minimum of once per week by the Designated Biologist during clearing, grubbing, and grading. Compliance inspections shall be conducted a minimum of once per month after clearing, grubbing, and grading are completed. A monthly compliance report will be provided to the Department's Bishop office at the address listed below. The Designated Biologist shall check for compliance with all of the mitigation/avoidance measures, and the exclusion zones shall be checked to ensure that the signs, stakes, and fencing are still intact and that human activities have been restricted in these protective zones.	Permit	Entire project	Permittee	
12	Beginning with issuance of the Permit and continuing for the life of the project, Permittee shall provide the Department an annual Status Report no later than January 31st of every year. Each Status Report shall include, at a minimum: 1) a general description of the status of the project, including actual or projected completion dates, if known; 2) a copy of this table with notes showing the current implementation status of each mitigation measure; and 3) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for project impacts.	Permit	Entire project	Permittee	
13	Permittee shall immediately notify the Department in writing if it determines that any of the mitigation measures were not implemented during the period indicated here or in the Permit, or if Permittee anticipates for any reason that measures may not be implemented within the time period indicated.	Permit	Entire project	Permittee	
14	All observations of Covered Species and their sign during project activities shall be conveyed to the Permittee's Designated Representative or Designated Biologist. This information shall be included in the next monthly compliance report to the Department	Permit	Entire project	Permittee	
15	The Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this permit, and to order any reasonable measure to avoid the take of an individual of a Covered Species	Permit	Entire project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
16	Personnel shall access the project site using existing routes and shall not cross covered species' habitat outside of the project site. To the extent possible, previously disturbed areas within the Project site shall be used for temporary storage areas, laydown sites, and any other surface-disturbing activities. If construction of offsite routes of travel will be required, the Department shall be contacted prior to carrying out such an activity. This Incidental Take Permit may require amendment if additional take of Covered Species may result from project modification.	Permit	Entire project	Permittee	
17	Any fuel or hazardous waste leaks or spills shall be stopped/repaired immediately and cleaned up at the time of occurrence. The storage and handling of hazardous materials shall be excluded from the construction zone and any unused or leftover hazardous products shall be properly disposed of offsite	Permit	Entire project	Permittee	
18	All project-related parking and equipment storage shall be confined to the Project site. Off-site Covered Species habitat shall not be used for parking or equipment storage. Project-related vehicle traffic shall be restricted to established roads, staging, and parking areas. Permittee shall post signs; place posting stakes, flags, and/or rope or cord; and place fencing as necessary to minimize the disturbance of Covered Species habitat. Vehicle speeds shall not exceed 20 mph in order to avoid Mohave ground squirrels on or traversing the roads	Permit	Entire project	Permittee	
19	If a Mohave ground squirrel is found in a burrow during project-related activities on the Project site, it shall be immediately relocated to a burrow at a protected off-site location approved by the Department's Regional Representative. The Mohave ground squirrel may only be relocated by a qualified biologist. The relocation burrow shall be prepared as described in Condition of Approval 4(c)(ii) of the Permit.	Permit	Entire project	Permittee	
20	If a Mohave ground squirrel is injured as a result of project related activities, it shall be immediately taken to a Department approved Wildlife Rehabilitation facility. Any costs associated with the care or treatment of such injured Mohave ground squirrels shall be borne by Permittee. The Department shall be notified immediately unless the incident occurs outside of normal business hours. In that event the Department shall be notified no later than 12:00 noon on the next business day. Notification to the Department shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location and circumstances of the incident, and the name of the facility to which the animal was taken.	Permit	Entire project	Permittee	
21	If a Mohave ground squirrel is killed by project-related activities during construction, or if a Mohave ground squirrel is otherwise found dead, a written report will be sent to the Department within two (2) calendar days. The report will include the date, time of the finding or incident, location of the carcass, and the circumstances.	Permit	Entire project	Permittee	
22	The Department may issue Permittee a written stop-work order to suspend any activity covered by this permit for an initial period of up to 25 days to prevent or remedy a violation of Permit conditions (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. Permittee shall comply with the stop-work order immediately upon receipt thereof. The Department may extend a stop-work order under this provision for a period not to exceed 25 additional days, upon written notice to the Permittee. The Department shall commence the formal suspension process pursuant to California Code of Regulations, Title 14, §783.7 within five working days of issuing a stop-work order.	Permit	Entire project	Department of Fish and Game	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
POST-CONSTRUCTION					
23	Upon Project completion, all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes shall be removed from the site and disposed of properly	Permit	Post-project	Permittee	
24	No later than 45 days after completion of the project, including completion of all mitigation measures, Permittee shall provide the Department with a Final Mitigation Report. The Final Mitigation Report shall be prepared by the Designated Biologist and shall include, at a minimum: 1) a copy of this table with notes showing when each of the mitigation measures was implemented; 2) all available information about project-related incidental take of species named in the Permit; 3) information about other project impacts on the species named in the Permit; 4) construction dates; 5) an assessment of the effectiveness of each mitigation measure in minimizing and compensating for project impacts; 6) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the species; and 7) any other pertinent information. Permittee's monitoring and reporting obligations under this MMRP will end only after the Department accepts the Final Mitigation Report as complete.	Permit	Post-project	Permittee	
25	The Department accepts the Final Mitigation Report as complete.	Permit	Post-project	Department of Fish and Game	

ATTACHMENT 2A

DEPARTMENT OF FISH AND GAME

HABITAT MANAGEMENT LAND ACQUISITION PACKAGE CHECKLIST FOR PROJECT APPLICANTS

The following checklist is provided to inform you of what documents are necessary to expedite Department processing of your Habitat Management Land acquisition proposal. Any land acquisition processing requests which are incomplete when received, will be returned. The Region contact will review and approve the document package and forward it to the Lands and Facilities Branch (LFB) Realty Services Coordinator with a request to process the land acquisition for formal acceptance.

To: _____
Regional Manager, Region Name

From: _____
Project Applicant

Phone: _____

Tracking #: _____
CDFG assigned permit or agreement #

Project Name: _____

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

Documents in this package include:

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

Date executed: _____

☐ Proposed Lands for Acquisition Form (PLFAF)

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

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

- ☐ document(s) to support title exceptions
- ☐ document(s) to explain title encumbrances
- ☐ a plot or map of easements/encumberances on the property

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

☐ County Assessor Parcel Map(s) for subject property

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

☐ Final Permit or Agreement (or other appropriate instrument)

Type of agreement: ☐ Bank Agreement ☐ Mitigation Agreement

☐ Permit _____ Other: _____
(write in type of permit)

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

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

ATTACHMENT 2B

PROPOSED LANDS FOR ACQUISITION FORM ("PLFAF")

Date: _____

TO: Regional Representative

_____

_____

_____

Facsimile:

FROM:_____

_____

_____

_____

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

Section	Township	Range	Number of Acres
_____	_____	_____	_____

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

_____

_____

_____

Location of Parcel:

_____

_____

_____

_____

APPROVED ___ By:_____ DATE:_____

REJECTED ___

_____

Region

Explanation:_____

_____

_____

California Department of Fish and Game

Mitigation Payment Transmittal Form

ATTACHMENT 3

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

(1) **DATE:** _____

TO: Curt Taucher, Regional Manager
4665 Lampson Ave., Suite J
Los Alamitos, CA 90720

(2) **FROM:** _____
Name

_____
Mailing Address

_____
City, State, Zip

_____
Telephone Number/FAX Number

(3) **RE:** Heller Development TT-03-001

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

□ 2081 Permit □ Conservation Bank □ 1802 Agreement

□ 2835 NCCP □ Other _____

2081-2005-002-06
[Project Tracking Number]

_____
[FASB Mitigation Tracking Number (if available)]

Index _____ PCA _____

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

Check information:

Total $_____ Check No. _____

Account No. _____ Bank Routing No. _____

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

b. Habitat Enhancement Subtotal $_____

c. Security:

1. Cash Refundable Security Deposit Subtotal $_____

2. Letter of Credit Subtotal $_____

1. Financial Institution: _____

2. Letter of Credit Number: _____

3. Date of Expiration: _____

ATTACHMENT 4

IRREVOCABLE "STANDBY" LETTER OF CREDIT

ISSUER:

_____
_____
_____
_____

ACCOUNT PARTY/CUSTOMER:

_____
_____
_____
_____

IRREVOCABLE LETTER OF CREDIT NO.: 2005-1 Dated: MAY 23, 2005

TO BENEFICIARY:

California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814
Attention: Director

Dear Sirs:

1. At the request and on the instructions of our CUSTOMER, VICTOR VALLEY WASTEWATER RECLAMATION ("Applicant"), we hereby establish in favor of the BENEFICIARY, the California Department of Fish and Game (the "Department"), this Irrevocable Standby Letter of Credit ("CREDIT") in the Principal Sum of $ 31,325.00.

2. This CREDIT is and has been established for the sole benefit of the Department pursuant to the terms of the Incidental Take Permit ("Permit") issued by the Department on MAY 16,2005.

3. This CREDIT is intended by the Applicant and the Department to serve as a security device for the performance by Applicant of its obligations under the Permit.

4. Upon any failure by Applicant to comply with conditions of approval of the Permit, as determined by the Department in its sole discretion, the Department shall be entitled to draw upon this CREDIT by presentation of a duly executed CERTIFICATE FOR DRAWING in substantially the same form as Attachment A, attached hereto, at our office located at 20111 SHAY ROAD, VICTORVILLE, CA 92394.

5. The CERTIFICATE shall be completed and signed by an "Authorized Representative" as defined in paragraph 12. Presentation by the Department of a completed CERTIFICATE may be made in person or by registered mail, return receipt requested.

6. Upon presentation of a duly executed CERTIFICATE as above provided, payment shall be made to the Department, or to an account designated by the Department, in immediately available funds, at such time and place as the Department shall specify.

7. Funds may be drawn in one or more drawings not to exceed the Principal Sum.

8. If a demand for payment does not conform to the terms of this CREDIT, we shall give the Department prompt notice that the demand for payment was not effected in accordance with the terms of this CREDIT, state the reasons therefor, and await further instructions.

9. Upon being notified that the demand for payment was not effected in conformity with the CREDIT, the Department may correct any such non-conforming demand for payment.

10. All drawings under this CREDIT shall be paid with our funds. Each drawing honored by us hereunder shall reduce, pro tanto, the Principal Sum. By paying to the Department an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.

11. This CREDIT will be cancelled in whole or in part upon receipt by us of a CERTIFICATE OF CANCELLATION, which (i) shall be in the form of Attachment B attached hereto, and (ii) shall be completed and signed by any person purporting to be an Authorized Representative, as defined in the next paragraph.

12. An "Authorized Representative" shall mean one of the following persons: Director of the Department of Fish and Game, or the General Counsel of the Department of Fish and Game.

13. Communications with respect to this CREDIT shall be in writing and addressed to us at DANIEL P. GALLAGHER, GENERAL MANAGER, 20111 SHAY ROAD, VICTORVILLE, CA 92394 specifically referring upon such writing to this CREDIT by number.

14. This CREDIT may not be transferred or assigned, either in whole or in part.

15. This CREDIT shall be deemed a contract made under the laws of the State of California.

16. This CREDIT shall, if not cancelled as provided herein, expire no later than DECEMBER 31, 2007 of the date of its execution.

THEREFORE, THE VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY (VVWRA) has executed and delivered this IRREVOCABLE STANDBY LETTER OF CREDIT to the BENEFICIARY as of the 23RD day of MAY, 2005.

CERTIFICATE FOR DRAWING

ISSUER:

_____
_____
_____
_____

ACCOUNT PARTY/CUSTOMER:

_____
_____
_____
_____

IRREVOCABLE LETTER OF CREDIT NO.: _____

BENEFICIARY:

California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814

The undersigned, a duly Authorized Representative of the California Department of Fish and Game (the Department) (as defined in the above-referenced CREDIT), hereby certifies to the ISSUER that:

1. In the opinion of the Department, Applicant has failed to comply with conditions of approval in the Permit.

2. The undersigned is authorized under the terms of the above-referenced CREDIT to present this CERTIFICATE as the sole means of demanding payment on the CREDIT.

3. The Department is therefore making a drawing under the above-referenced CREDIT in the amount of $ _____.

4. The amount demanded does not exceed the Principal Sum.

5. Sums received shall be used by the Department in accordance with the terms of the Permit.

THEREFORE, the Department has executed and delivered this CERTIFICATE as of the _____ day of _____, 20___.

DEPARTMENT OF FISH AND GAME
OF THE STATE OF CALIFORNIA

By: _____
Title: _____
Authorized Representative

CERTIFICATE FOR CANCELLATION

ISSUER:

_____
_____
_____
_____

ACCOUNT PARTY/CUSTOMER:

_____
_____
_____
_____

IRREVOCABLE LETTER OF CREDIT NO.: _____

BENEFICIARY:

California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814

The undersigned, a duly Authorized Representative of the California Department of Fish and Game (the Department) (as defined in the above-referenced CREDIT), hereby certifies to the ISSUER that:

1. Pursuant to the Permit issued to _____("Applicant") and the Department, Applicant has presented documentary evidence of full compliance with the terms and conditions of the Permit, or, the natural expiration of the CREDIT has occurred.

2. The Department therefore requests the cancellation of the above-referenced CREDIT.

THEREFORE, the Department of the State of California has executed and delivered this CANCELLATION as of the _____ day of _____, 20___.

DEPARTMENT OF FISH AND GAME
OF THE STATE OF CALIFORNIA

_____

By: _____
Title: _____
Authorized Representative

California Department of Fish and Game
4665 LAMPSON AVE, SUITE J
LOS ALAMITOS, CA 90720
California Endangered Species Act
Incidental Take Permit No. 2081-2004-034-06
CMC
PM-04-001 (TT16169)

Authority: This California Endangered Species Act ("CESA") Incidental Take Permit ("Permit") is issued by the Department of Fish and Game ("Department") pursuant to Fish and Game Code section 2081(b) and section 2081(c), and California Code of Regulations, title 14, subdivision 3, chapter 6, article 1, commencing with section 783. CESA prohibits the take[1] of any species of wildlife designated as an endangered, threatened, or candidate species by the Fish and Game Commission[2]. The Department, however, may authorize the take of such species by permit if the conditions set forth in Fish and Game Code sections 2081(b) and 2081(c) are met. (See also Cal. Code Regs., tit. 14, § 783.4.)

Permittee: CMC

Contact person: **Mr. Dick Benes**

Mailing address: **CMC**
2450 South Downing Street
Denver, CO 80210
(303)741-4500

Effective Date and Expiration Date of Permit:

This Permit shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of the Permit and returned to the Department's Office of the General Counsel. Unless renewed by the Department, this Permit's authorization to take the Covered Species shall expire on **December 31, 2006.**

Project Location: The project site is located north of the intersection of Civic Drive and Roy Rogers Drive (Section 17, T 5N, R 4W) in the city of Victorville, County of San Bernardino.

---

[1]Pursuant to Fish and Game Code section 86, "'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill."

[2]"Candidate species" are species of wildlife that have not yet been placed on the list of endangered species or the list of threatened species, but which are under formal consideration for listing pursuant to Fish and Game Code section 2074.2.

Project Description: The proposed project includes the subdivision and commercial development of approximately 11.7 acres.

Covered Species:

This Permit covers the following species:

Name	**Status**[3]
Mammals	
1. Mohave ground squirrel (*Spermophilus mohavensis*)	Threatened

This species and only this species is hereinafter referred to as "Covered Species."

Impacts to Covered Species:

The Project will result in the permanent destruction of 11.7 acres of habitat for the Covered Species. Individuals of the Covered Species may be incidentally taken as a result of mortality due to development activities, mortality due to project-related traffic on and off site, and project-caused habitat losses.

Incidental Take Authorization:

The Department authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Project, subject to the limitations described in this section and the conditions of approval identified below. This Permit does not authorize any intentional take of Covered Species except for capture and relocation of individual animals as pursuant to this permit; take of Covered Species from activities outside the scope of the Project as described above; or take of Covered Species resulting from violation of this Permit.

Conditions of Approval:

The Department's issuance of this Permit and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following conditions of approval:

---

[3]Refers to status under CESA. Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species. All other species are "unlisted."

1) Permittee shall comply with all applicable state, federal, and local laws in existence on the effective date of this Permit or adopted thereafter.

2) Permittee shall fully implement and adhere to conditions of this Permit within the time frames set forth in Attachment 1, the Mitigation Monitoring and Reporting Program (MMRP), and shall comply with any requirements of the MMRP that are not otherwise set forth in this Permit.

3) Permittee shall implement and adhere to mitigation measure No. 2 in the Negative Declaration and Initial Study for PM-04-001 (SCH # 20033121111) adopted by the City of Victorville on January 28, 2004.

4) Permittee shall fully implement and adhere to the following conditions:

a) General Provisions:

i) Before initiating ground-disturbing activities, CMC shall designate a representative (Designated Representative) responsible for communications with the Department and for overseeing compliance with this Permit. The Department shall be notified in writing prior to commencement of ground-disturbing activities of the representative's name, business address, and telephone number, and shall be notified in writing if a substitute representative is designated.

ii) A biologist (Designated Biologist) knowledgeable and experienced in the biology and natural history of the Covered Species is required to monitor construction activities in areas of Covered Species habitat to help avoid the take of individual animals and to minimize habitat disturbance. At least 30 days prior to ground-disturbing activities, CMC shall submit to the Department in writing the proposed Designated Biologist's name, qualifications, business address, and telephone number for review. The Designated Biologist must be approved by the Department prior to the commencement of ground-disturbing activities.

iii) CMC shall conduct an orientation program for all persons who will work on-site during project implementation and construction. The program shall consist of a brief presentation from the Designated Biologist. The education program shall include a discussion of the biology of the Covered Species, the habitat needs of these species, their status under CESA, and the management measures provided in this Permit. A fact sheet containing this information shall also be prepared and distributed. Upon completion of the orientation, employees shall sign a form stating that they attended the program and understand all protection measures. These forms shall be filed at City of Victorville offices and shall be made available to the Department upon request.

iv) Firearms and domestic dogs shall be prohibited from the Project site and site access routes.

v) All observations of Covered Species and their sign during project activities shall be conveyed to the Permittee's Designated Representative or Designated Biologist. This information shall be included in the next monthly compliance report to the Department.

vi) The Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this Permit, and to order any reasonable measure to avoid the take of an individual of a Covered Species.

vii) A trash abatement program shall be initiated during pre-construction phases of the Project and shall continue through the duration of the Project. Trash and food items shall be contained in closed (raven-proof) containers and removed regularly (at least once a week) to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.

viii) Personnel shall access the Project site using existing routes and shall not cross Covered Species' habitat outside of the Project site. To the extent possible, previously disturbed areas within the Project site shall be used for temporary storage areas, laydown sites, and any other surface-disturbing activities. If construction of offsite routes of travel will be required, the Department shall be contacted prior to carrying out such an activity. This Incidental Take Permit may require amendment if additional take of Covered Species may result from project modification.

ix) Upon Project completion, all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes shall be removed from the site and disposed of properly.

x) Any fuel or hazardous waste leaks or spills shall be stopped/repaired immediately and cleaned up at the time of occurrence. The storage and handling of hazardous materials shall be excluded from the construction zone and any unused or leftover hazardous products shall be properly disposed of offsite.

xi) Permittee shall provide Department representatives with reasonable access to the Project site and mitigation lands under its control, and shall otherwise fully cooperate with Department efforts to verify compliance with or effectiveness of mitigation measures. Neither the Designated Biologist, nor the Department shall be liable for any costs incurred in complying with the management measures, including cease-work orders.

xii) Notwithstanding any expiration date on this Permit's take authorization, Permittee's obligations under this Permit do not end until the Department accepts the Final Mitigation Report as complete.

b) Notification and Reporting:

i) Permittee shall notify the Department and shall document compliance with all pre-construction Conditions of Approval before initiating ground-disturbing activities.

ii) Permittee shall immediately notify the Department in writing if it determines that it is not in compliance with any condition of approval of this Permit, including but not limited to any actual or anticipated failure to implement mitigation measures within the time periods indicated in this Permit and/or Attachment 1, the Mitigation Monitoring and Reporting Program (MMRP).

iii) Compliance inspections shall be conducted a minimum of once per week by the Designated Biologist during clearing, grubbing, and grading. Compliance inspections shall be conducted a minimum of once per month after clearing, grubbing, and grading are completed. A monthly compliance report will be provided to the Department's Bishop office at the address listed below. The Designated Biologist shall check for compliance with all of the mitigation/avoidance measures, and the exclusion zones shall be checked to ensure that the signs, stakes, and fencing are still intact and that human activities have been restricted in these protective zones.

iv) Beginning in 2006 and continuing for the life of the Project, Permittee shall provide the Department an annual Status Report no later than January 31 of every year. Each Status Report shall include, at a minimum: 1) a general description of the status of the Project site and construction activities, including actual or projected completion dates, if known; 2) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; and 3) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for Project impacts.

v) No later than 45 days after completion of the Project, including completion of all mitigation measures, Permittee shall provide the Department with a Final Mitigation Report. The Final Mitigation Report shall be prepared by the Designated Biologist and shall include, at a minimum: 1) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; 2) all available information about Project-related incidental take of species covered in the Permit; 3) information about other Project impacts on the species covered in the Permit; 4) construction dates; 5) an assessment of the effectiveness of the Permit's

conditions of approval in minimizing and compensating for Project impacts; 6) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the species; and 7) any other pertinent information, including the level of take associated with the Project.

vi) If a Mohave ground squirrel is killed by project-related activities during construction, or if a Mohave ground squirrel is otherwise found dead, a written report will be sent to the Department within two (2) calendar days. The report will include the date, time of the finding or incident, location of the carcass, and the circumstances.

c) Other Take Minimization and Mitigation Measures for Mohave Ground Squirrel:

i) All Project-related parking and equipment storage shall be confined to the Project site. Off-site Covered Species habitat shall not be used for parking or equipment storage. Project-related vehicle traffic shall be restricted to established roads, staging, and parking areas. Permittee shall post signs; place posting stakes, flags, and/or rope or cord; and place fencing as necessary to minimize the disturbance of Covered Species habitat. Vehicle speeds shall not exceed 20 mph in order to avoid Mohave ground squirrels on or traversing the roads.

ii) If a Mohave ground squirrel is found in a burrow during Project-related activities on the Project site, it shall be immediately relocated to a burrow at a protected off-site location approved by the Department's Regional Representative. The Mohave ground squirrel may only be relocated by a qualified biologist. The relocation burrow shall be prepared in the following manner: dig a hole at least two (2) feet deep, place a nine (9) inch diameter plastic container (with thick enough walls that it will not collapse when buried) in the hole, place cotton bedding material in the container, connect the container to a three (3) inch diameter flexible plastic pipe (with thick enough walls that it will not collapse when buried) running to the surface at a 45 degree angle, cover the artificial burrow with dirt leaving the surface end of the 3 inch pipe open, and place the Mohave ground squirrel in the artificial burrow and lightly plug the burrow mouth with soil (in a manner similar to what Mohave ground squirrel do in natural burrows). The Designated Representative shall immediately notify the Department of the incident unless the incident occurs outside of normal business hours. In that event, the Department shall be notified no later than noon on the next business day. Notification to the Department shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location and circumstances of the incident, the name of the party that actually relocated the animal, and the location (including GPS coordinates) to which the animal was moved.

iii) If a Mohave ground squirrel is injured as a result of project related activities, it shall be immediately taken to a Department-approved wildlife rehabilitation facility. Any costs associated with the care or treatment of such injured Mohave ground squirrels shall be borne by Permittee. The Department shall be notified immediately unless the incident occurs outside of normal business hours. In that event the Department shall be notified no later than noon on the next business day. Notification to the Department shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location and circumstances of the incident, and the name of the facility to which the animal was taken.

5) Permittee shall acquire and permanently preserve 11.7 acres of Habitat Management Lands approved by the Department ("HM Lands") for the Covered Species prior to initiating ground-disturbing project activities or no later than **18 months** from the effective date of this Permit if Security is provided pursuant to Condition 6 below. The required acreage is based upon the Department's estimate of the acreage required to provide for adequate biological carrying capacity at a replacement location as a means of fully mitigating the Project's impacts on the Covered Species. As part of this condition, Permittee shall:

a) Transfer fee title to the HM Lands or a conservation easement over the HM Lands to the Department under terms approved by the Department. Alternatively, the transfer may be to another public entity or non-profit corporation approved by the Department under terms approved by the Department.

b) Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A and 2B). All documents conveying the HM Lands and all conditions of title are subject to the approval of the Department, the Fish and Game Commission and, if applicable, the Department of General Services.

c) Provide for the initial protection and enhancement of the HM Lands as determined by the Department once Permittee identifies the HM Lands. The Department estimates that initial protection and enhancement will be approximately $95.00/acre. Alternatively, Permittee may fund the Department's initial protection and enhancement of the lands by providing the funds required for the initial protection and enhancement to the Department.

d) Provide to the Department a check in the amount of $2,340.00 drawn from a banking institution located within California for use as principal for a permanent capital endowment. Interest from this amount shall be available for the operation, management and protection of the HM Lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law

enforcement measures, and any other action designed to protect or improve the habitat values of the HM Lands. The endowment principal shall not be drawn upon unless such withdrawal is deemed necessary by the Department to ensure the continued viability of the species on the HM Lands. Monies received by the Department pursuant to this provision shall be deposited in a special deposit account established pursuant to Government Code §16370. The Department may pool the endowment with other endowments for the operation, management and protection of HM Lands for local populations of the Covered Species.

e) Reimburse the Department for reasonable expenses incurred during title and documentation review, expenses incurred from other state agency reviews, and overhead related to transfer of HM Lands to the Department. The Department estimates that this Project will create an additional cost to the Department of no more than $3,000 for every fee title deed or easement processed.

6) Permittee may proceed with ground-disturbing Project activities before completing all of the required mitigation (including acquisition of HM Lands), monitoring, and reporting activities only if Permittee ensures funding to complete those activities by providing to the Department prior to commencing ground-disturbing activities or within 30 days after the effective date of this Permit, whichever occurs first: (1) the endowment of $2,340.00 as described in Condition 5, and (2) an irrevocable letter of credit, a pledged savings account, or another form of security ("Security") approved by the Department's Office of the General Counsel (see Attachment 4). The Security shall allow the Department to draw on the principal sum if the Department, at its sole discretion, determines that Permittee has failed to comply with the Conditions of Approval of this Permit. The Security shall be in the amount of **$10,471.50** based on the following estimated costs of implementing the Permit's mitigation, monitoring and reporting requirements.

   a. Land acquisition costs for impacts to habitat, calculated at $800/acre for 11.7 acres: $9,360.00.

   b. Costs of enhancing HM Lands, calculated at $95.00/acre for 11.7 acres: $1,111.50

7) This Permit may be amended without the concurrence of the Permittee if the Department determines that continued implementation of the Project under existing permit conditions would jeopardize the continued existence of a Covered Species. The Department may also amend the Permit at any time with out the concurrence of the Permittee as required by law.

8) The Department may issue Permittee a written stop-work order to suspend any activity covered by this Permit for an initial period of up to 25 days to prevent or remedy a

violation of Permit conditions (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. Permittee shall comply with the stop-work order immediately upon receipt thereof. The Department may extend a stop-work order under this provision for a period not to exceed 25 additional days, upon written notice to the Permittee. The Department shall commence the formal suspension process pursuant to California Code of Regulations, Title 14, §783.7 within five working days of issuing a stop-work order.

Compliance with Other Laws

This Permit contains the Department's requirements for the Project pursuant to CESA. This permit does not necessarily create an entitlement to proceed with the Project. The Permittee is responsible for complying with all other applicable state, federal, and local laws.

Notices

Written notices, reports and other communications relating to this Permit shall be delivered to the Department by first class mail at the following addresses, or at addresses the Department may subsequently provide the Permittee. Notices, reports, and other communications should reference the Project name, Permittee, and Permit Number (2081-2004-034-06) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Curt Taucher, Regional Manager
4665 Lampson Avenue, Suite J
Los Alamitos, CA 90720
Telephone (562) 598-9782
FAX (562) 799-3629

Copy of cover without attachment(s) to:

General Counsel
Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

And:

Habitat Conservation Planning Branch
1416 Ninth Street, Suite 1260
Sacramento, CA 95814

Unless Permittee is notified otherwise, the Department's Regional Representative for purposes of addressing issues that arise during implementation of permit conditions is:

Ms. Adrienne Disbrow
407 W. Line Street
Bishop, CA 93514
(760) 873-4412 phone
(760) 872-1284 fax

Compliance with the California Environmental Quality Act

The Department's issuance of the Permit is a "project" subject to the California Environmental Quality Act, Public Resources Code, section 21000 et seq. ("CEQA"). The Department is a "responsible agency" under CEQA with respect to the Permit because of prior environmental review of the Project by the "lead agency," City of Victorville. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the PM-04-001 (SCH # 20033121111) Negative Declaration (Neg Dec), that the City of Victorville adopted on January 28, 2004. At the time the lead agency adopted the Neg Dec and approved the project it also adopted all mitigation measures (including the measures outlined below) as "Conditions of Project Approval".

The Department is fulfilling its CEQA obligations with respect to the Permit as a responsible agency. In that capacity, the Department's obligations are "more limited" than those of the lead agency. (CEQA Guidelines, § 15096, subd. (g)(1).)[4] The Department, in particular, is "responsible for considering only the effects of those activities involved in [the] project which it is required by law to carry out or approve." (Pub. Resources Code, § 21002.1, subd. (d).) Thus, while the Department must "consider the environmental effects" of the Project as identified in the Neg Dec adopted by the lead agency, the Department "has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve." (CEQA Guidelines, § 15096, subds. (f), (g)(1).) Accordingly, because the Department's exercise of discretion is limited to issuance of the Permit, the Department is responsible for considering only the environmental effects that fall within its permitting authority under CESA. Indeed, with respect to all other effects associated with implementation of the Project, the Department is bound by the legal presumption that the Neg Dec certified by the City of Victorville fully complies with CEQA and the CEQA Guidelines. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d at pp. 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.)

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[4] The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Even with its more limited obligations as a responsible agency, the Department must still consider, and hereby documents its consideration of, the lead agency's prior Neg Dec and the environmental effects related to issuance of the Permit. (CEQA Guidelines, § 15096, subd. (f).) In so doing, the Department finds that issuance of the Permit will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, and the Department does not believe that is the case, the Department finds that adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, as well as adherence to and implementation of the conditions of approval imposed by the Department through the issuance of the Permit, will avoid or reduce to below a level of significance any such potential effects.

CESA Findings

With respect to CESA, the Department finds that, in issuing the Permit, all of the following conditions have been met:

(1) Take of Covered Species as defined in the Permit will be incidental to the otherwise lawful activities covered under the Permit;

(2) The impacts of the take will be minimized and fully mitigated through the implementation of measures required by this Permit and described in the Mitigation Monitoring and Reporting Program (MMRP). Measures include land compensation for species where habitat is impacted.

(3) The take avoidance and mitigation measures required pursuant to the conditions of this Permit and its attachments are roughly proportional in extent to the impact of Permittee's take.

(4) Where various measures are available to meet the mitigation requirement under CESA, the measures required will maintain Permittee's objectives to the greatest extent possible;

(5) All required measures are capable of successful implementation;

(6) The Permit is consistent with any regulations adopted pursuant to §2112 and §2114 of the Fish and Game Code;

(7) Permittee has ensured adequate funding to implement the measures required by the Permit as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and

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

Attachments:

ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2A,2B	Habitat Management Lands Checklist; PLFAF Form
ATTACHMENT 3	Mitigation Payment Transmittal Form
ATTACHMENT 4	Letter of Credit Forms

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME

on 2/3/05.

Dee Siddarth for

CURT TAUCHER, Regional Manager
EASTERN SIERRA-INLAND DESERTS REGION

APPROVED AS TO FORM:

for MRV

MICHAEL R. VALENTINE, General Counsel

Incidental Take Permit
No. 2081-2004-034-06
CMC
PM-04-001

ACKNOWLEDGMENT

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

By: [signature] Date: 2/21/05

Printed Name: ~~RICHARD L. BENES~~ CRAIG R. BENES Title: PBES

Incidental Take Permit
No. 2081-2004-034-06
CMC
PM-04-001

Attachment 1

DEPARTMENT OF FISH AND GAME
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

CALIFORNIA INCIDENTAL TAKE PERMIT NO. 2081-2004-034-06
PERMITTEE: CMC
PROJECT: PM-04-001

PURPOSE OF THE MMRP

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

OBLIGATIONS OF PERMITTEE

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

VERIFICATION OF COMPLIANCE, EFFECTIVENESS

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

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TABLE OF MITIGATION MEASURES

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

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
PRE-CONSTRUCTION					
1	Before initiating ground-disturbing activities, CMC shall designate a representative (Designated Representative) responsible for communications with the Department and for overseeing compliance with this Permit. The Department shall be notified in writing prior to commencement of ground-disturbing activities of the representative's name, business address, and telephone number, and shall be notified in writing if a substitute representative is designated.	Permit	Pre-Project/ Entire project	Permittee	
2	A biologist (Designated Biologist) knowledgeable and experienced in the biology and natural history of the Covered Species is required to monitor construction activities in areas of Covered Species habitat to help avoid the take of individual animals and to minimize habitat disturbance. At least 30 days prior to ground-disturbing activities, CMC shall submit to the Department in writing the proposed Designated Biologist's name, qualifications, business address, and telephone number for review. The Designated Biologist must be approved by the Department prior to the commencement of ground-disturbing activities.	Permit	Pre-project	Permittee	
3	CMC shall conduct an orientation program for all persons who will work on-site during project implementation and construction. The program shall consist of a brief presentation from the Designated Biologist. The education program shall include a discussion of the biology of the Covered Species, the habitat needs of these species, their status under CESA, and the management measures provided in this Permit. A fact sheet containing this information shall also be prepared and distributed. Upon completion of the orientation, employees shall sign a form stating that they attended the program and understand all protection measures. These forms shall be filed at City of Victorville offices and shall be made available to the Department upon request.	Permit	Pre-Project/ Entire project	Permittee	
4	A trash abatement program shall be initiated during pre-construction phases of the Project, and shall continue through the duration of the Project. Trash and food items shall be contained in closed (raven-proof) containers and removed regularly (at least once a week) to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.	Permit	Pre-Project/ Entire project	Permittee	
5	Permittee shall notify the Department and shall document compliance with all pre-construction Conditions of Approval before initiating ground-disturbing activities	Permit	Pre-project	Permittee	
6	Permittee shall acquire and permanently preserve 11.7 acres of Habitat Management Lands approved by the Department ("HM Lands") for the Covered Species prior to initiating ground-disturbing project activities or no later than 18 months from the effective date of this Permit if Security is provided pursuant to Condition 6 of the Permit. The required acreage is based upon the Department's estimate of the acreage required to provide for adequate biological carrying capacity at a replacement location as a means of fully mitigating the Project's impacts on the Covered Species. HM lands shall be transferred to the Department in accordance with Condition 5 of the Permit.	Permit	Pre-project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
7	Permittee may proceed with ground-disturbing Project activities before completing all of the required mitigation (including acquisition of HM Lands), monitoring, and reporting activities only if Permittee ensures funding to complete those activities by providing to the Department prior to commencing ground-disturbing activities or within 30 days after the effective date of this permit, whichever occurs first: (1) the endowment of $2,340.00 as described in Condition 5, and (2) an irrevocable letter of credit, a pledged savings account, or another form of security ("Security") approved by the Office of the General Counsel. The Security shall allow the Department to draw on the principal sum if the Department, at its sole discretion, determines that Permittee has failed to comply with the Conditions of Approval of this Permit. The Security shall be in the amount of **$10,471.50** based on the following estimated costs of implementing the Permit's mitigation, monitoring and reporting requirements. a. Land acquisition costs for impacts to habitat, calculated at $800/acre for 11.7 acres: $9,360.00. b. Costs of enhancing HM lands, calculated at $95.00/acre for 11.7 acres: $1,111.50.	Permit	Pre-project	Permittee	
DURING CONSTRUCTION					
8	Compliance inspections shall be conducted a minimum of once per week by the Designated Biologist during clearing, grubbing, and grading. Compliance inspections shall be conducted a minimum of once per month after clearing, grubbing, and grading are completed. A monthly compliance report will be provided to the Department's Bishop office at the address listed below. The Designated Biologist shall check for compliance with all of the mitigation/avoidance measures, and the exclusion zones shall be checked to ensure that the signs, stakes, and fencing are still intact and that human activities have been restricted in these protective zones.	Permit	Entire project	Permittee	
9	Beginning in 2006 and continuing for the life of the project, Permittee shall provide the Department an annual Status Report no later than January 31st of every year. Each Status Report shall include, at a minimum: 1) a general description of the status of the project, including actual or projected completion dates, if known; 2) a copy of this table with notes showing the current implementation status of each mitigation measure; and 3) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for project impacts.	Permit	Entire project	Permittee	
10	Permittee shall immediately notify the Department in writing if it determines that any of the mitigation measures were not implemented during the period indicated here or in the Permit, or if Permittee anticipates for any reason that measures may not be implemented within the time period indicated.	Permit	Entire project	Permittee	
11	All observations of Covered Species and their sign during project activities shall be conveyed to the Permittee's Designated Representative or Designated Biologist. This information shall be included in the next monthly compliance report to the Department	Permit	Entire project	Permittee	
12	The Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this permit, and to order any reasonable measure to avoid the take of an individual of a Covered Species	Permit	Entire project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
13	Personnel shall access the project site using existing routes and shall not cross covered species' habitat outside of the project site. To the extent possible, previously disturbed areas within the Project site shall be used for temporary storage areas, laydown sites, and any other surface-disturbing activities. If construction of offsite routes of travel will be required, the Department shall be contacted prior to carrying out such an activity. This Incidental Take Permit may require amendment if additional take of Covered Species may result from project modification.	Permit	Entire project	Permittee	
14	Any fuel or hazardous waste leaks or spills shall be stopped/repaired immediately and cleaned up at the time of occurrence. The storage and handling of hazardous materials shall be excluded from the construction zone and any unused or leftover hazardous products shall be properly disposed of offsite	Permit	Entire project	Permittee	
15	All project-related parking and equipment storage shall be confined to the Project site. Off-site Covered Species habitat shall not be used for parking or equipment storage. Project-related vehicle traffic shall be restricted to established roads, staging, and parking areas. Permittee shall post signs; place posting stakes, flags, and/or rope or cord; and place fencing as necessary to minimize the disturbance of Covered Species habitat. Vehicle speeds shall not exceed 20 mph in order to avoid Mohave ground squirrels on or traversing the roads	Permit	Entire project	Permittee	
16	If a Mohave ground squirrel is found in a burrow during project-related activities on the Project site, it shall be immediately relocated to a burrow at a protected off-site location approved by the Department's Regional Representative. The Mohave ground squirrel may only be relocated by a qualified biologist. The relocation burrow shall be prepared as described in Condition of Approval 4(c)(ii) of the Permit.	Permit	Entire project	Permittee	
17	If a Mohave ground squirrel is injured as a result of project related activities, it shall be immediately taken to a Department approved Wildlife Rehabilitation facility. Any costs associated with the care or treatment of such injured Mohave ground squirrels shall be borne by Permittee. The Department shall be notified immediately unless the incident occurs outside of normal business hours. In that event the Department shall be notified no later than 12:00 noon on the next business day. Notification to the Department shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location and circumstances of the incident, and the name of the facility to which the animal was taken.	Permit	Entire project	Permittee	
18	If a Mohave ground squirrel is killed by project-related activities during construction, or if a Mohave ground squirrel is otherwise found dead, a written report will be sent to the Department within two (2) calendar days. The report will include the date, time of the finding or incident, location of the carcass, and the circumstances.	Permit	Entire project	Permittee	
19	The Department may issue Permittee a written stop-work order to suspend any activity covered by this permit for an initial period of up to 25 days to prevent or remedy a violation of Permit conditions (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. Permittee shall comply with the stop-work order immediately upon receipt thereof. The Department may extend a stop-work order under this provision for a period not to exceed 25 additional days, upon written notice to the Permittee. The Department shall commence the formal suspension process pursuant to California Code of Regulations, Title 14, §783.7 within five working days of issuing a stop-work order.	Permit	Entire project	Department of Fish and Game	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
POST-CONSTRUCTION					
20	Upon Project completion, all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes shall be removed from the site and disposed of properly	Permit	Post-project	Permittee	
21	No later than 45 days after completion of the project, including completion of all mitigation measures, Permittee shall provide the Department with a Final Mitigation Report. The Final Mitigation Report shall be prepared by the Designated Biologist and shall include, at a minimum: 1) a copy of this table with notes showing when each of the mitigation measures was implemented; 2) all available information about project-related incidental take of species named in the Permit; 3) information about other project impacts on the species named in the Permit; 4) construction dates; 5) an assessment of the effectiveness of each mitigation measure in minimizing and compensating for project impacts; 6) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the species; and 7) any other pertinent information. Permittee's monitoring and reporting obligations under this MMRP will end only after the Department accepts the Final Mitigation Report as complete.	Permit	Post-project	Permittee	
22	The Department accepts the Final Mitigation Report as complete.	Permit	Post-project	Department of Fish and Game	

ATTACHMENT 2A
DEPARTMENT OF FISH AND GAME
HABITAT MANAGEMENT LAND ACQUISITION PACKAGE CHECKLIST FOR PROJECT APPLICANTS

The following checklist is provided to inform you of what documents are necessary to expedite Department processing of your Habitat Management Land acquisition proposal. Any land acquisition processing requests which are incomplete when received, will be returned. The Region contact will review and approve the document package and forward it to the Lands and Facilities Branch (LFB) Realty Services Coordinator with a request to process the land acquisition for formal acceptance.

To: _____
Regional Manager, Region Name

From: _____
Project Applicant

Phone: _____

Tracking #: _____
CDFG assigned permit or agreement #

Project Name: _____

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

Documents in this package include:

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

Date executed: _____

☐ Proposed Lands for Acquisition Form (PLFAF)

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

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

- ☐ document(s) to support title exceptions
- ☐ document(s) to explain title encumbrances
- ☐ a plot or map of easements/encumberances on the property

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

☐ County Assessor Parcel Map(s) for subject property

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

☐ Final Permit or Agreement (or other appropriate instrument)

Type of agreement: ☐ Bank Agreement ☐ Mitigation Agreement

☐ Permit _____ Other: _____
(write in type of permit)

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

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

ATTACHMENT 2B

PROPOSED LANDS FOR ACQUISITION FORM ("PLFAF")

Date: _____

TO: Regional Representative
_____
_____
_____
Facsimile:

FROM: _____
_____
_____
_____

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

Section	Township	Range	Number of Acres
_____	_____	_____	_____

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

Location of Parcel:
_____
_____
_____
_____

APPROVED ___ By: _____ DATE: _____
REJECTED ___ _____
Region

Explanation: _____
_____
_____

Mitigation Payment Transmittal Form

ATTACHMENT 3

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

(1) **DATE:** _____

TO: Curt Taucher, Regional Manager
4665 Lampson Ave., Suite J
Los Alamitos, CA 90720

(2) **FROM:** _____
Name

_____
Mailing Address

_____
City, State, Zip

_____
Telephone Number/FAX Number

(3) **RE:** CMC PM-04-001 (TT16169)

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

□ 2081 Permit □ Conservation Bank □ 1802 Agreement

□ 2835 NCCP □ Other _____

2081-2004-034-06
[Project Tracking Number]

[FASB Mitigation Tracking Number (if available)]

Index _____ PCA _____

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

Check information:

Total $_____ Check No. _____

Account No. _____ Bank Routing No. _____

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

b. Habitat Enhancement Subtotal $_____

c. Security:

1. Cash Refundable Security Deposit Subtotal $_____

2. Letter of Credit Subtotal $_____

1. Financial Institution: _____

2. Letter of Credit Number: _____

3. Date of Expiration: _____

MAR-02-2005 16:41 FROM:CHC GROUP 3031414549 TO:7609333042 P.25/28

ATTACHMENT 4

IRREVOCABLE "STANDBY" LETTER OF CREDIT

ISSUER:

_____
_____
_____
_____

ACCOUNT PARTY/CUSTOMER:

_____
_____
_____
_____

IRREVOCABLE LETTER OF CREDIT NO : _____ Dated: _____

TO BENEFICIARY:

California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814
Attention: Director

Dear Sirs:

1. At the request and on the instructions of our CUSTOMER, _____ ("Applicant"), we hereby establish in favor of the BENEFICIARY, the California Department of Fish and Game (the "Department"), this Irrevocable Standby Letter of Credit ("CREDIT") in the Principal Sum of $ _____.

2. This CREDIT is and has been established for the sole benefit of the Department pursuant to the terms of the Incidental Take Permit ("Permit") issued by the Department on _____.

3. This CREDIT is intended by the Applicant and the Department to serve as a security device for the performance by Applicant of its obligations under the Permit.

4. Upon any failure by Applicant to comply with conditions of approval of the Permit, as determined by the Department in its sole discretion, the Department shall be entitled to draw upon this CREDIT by presentation of a duly executed CERTIFICATE FOR DRAWING in substantially the same form as Attachment A, attached hereto, at our office located at _____.

5. The CERTIFICATE shall be completed and signed by an "Authorized Representative" as defined in paragraph 12. Presentation by the Department of a completed CERTIFICATE may be made in person or by registered mail, return receipt requested.

6. Upon presentation of a duly executed CERTIFICATE as above provided, payment shall be made to the Department, or to an account designated by the Department, in immediately available funds, at such time and place as the Department shall specify.

7. Funds may be drawn in one or more drawings not to exceed the Principal Sum

8. If a demand for payment does not conform to the terms of this CREDIT, we shall give the Department prompt notice that the demand for payment was not effected in accordance with the terms of this CREDIT, state the reasons therefor, and await further instructions.

9. Upon being notified that the demand for payment was not effected in conformity with the CREDIT, the Department may correct any such non-conforming demand for payment.

10. All drawings under this CREDIT shall be paid with our funds. Each drawing honored by us hereunder shall reduce, pro tanto, the Principal Sum. By paying to the Department an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.

11. This CREDIT will be cancelled in whole or in part upon receipt by us of a CERTIFICATE OF CANCELLATION, which (i) shall be in the form of Attachment B attached hereto, and (ii) shall be completed and signed by any person purporting to be an Authorized Representative, as defined in the next paragraph.

12. An "Authorized Representative" shall mean one of the following persons: Director of the Department of Fish and Game, or the General Counsel of the Department of Fish and Game.

13. Communications with respect to this CREDIT shall be in writing and addressed to us at _____ specifically referring upon such writing to this CREDIT by number.

14. This CREDIT may not be transferred or assigned, either in whole or in part.

15. This CREDIT shall be deemed a contract made under the laws of the State of California.

16. This CREDIT shall, if not cancelled as provided herein, expire no later than _____ of the date of its execution.

THEREFORE, _____

_____

has executed and delivered this IRREVOCABLE STANDBY LETTER OF CREDIT to the BENEFICIARY as of the ____ day of _____, 20___.

MAR-02-2005 16:41 FROM:CHC GROUP 5051414549 TO:7609555042 P.21/28

CERTIFICATE FOR DRAWING

ISSUER:

_____
_____
_____
_____

ACCOUNT PARTY/CUSTOMER:

_____
_____
_____
_____

IRREVOCABLE LETTER OF CREDIT NO.: _____

BENEFICIARY:

California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814

The undersigned, a duly Authorized Representative of the California Department of Fish and Game (the Department) (as defined in the above-referenced CREDIT), hereby certifies to the ISSUER that:

1. In the opinion of the Department, Applicant has failed to comply with conditions of approval in the Permit.

2. The undersigned is authorized under the terms of the above-referenced CREDIT to present this CERTIFICATE as the sole means of demanding payment on the CREDIT.

3. The Department is therefore making a drawing under the above-referenced CREDIT in the amount of $ _____.

4. The amount demanded does not exceed the Principal Sum.

5. Sums received shall be used by the Department in accordance with the terms of the Permit.

THEREFORE, the Department has executed and delivered this CERTIFICATE as of the _____ day of _____, 20___.

DEPARTMENT OF FISH AND GAME
OF THE STATE OF CALIFORNIA

By: _____
Title: _____
Authorized Representative

MAR-02-2005 18:42 FROM:CHC GROUP 3031414349 TO:7609333042 P.28/28

CERTIFICATE FOR CANCELLATION

ISSUER.

_____
_____
_____
_____

ACCOUNT PARTY/CUSTOMER.

_____
_____
_____
_____

IRREVOCABLE LETTER OF CREDIT NO.: _____

BENEFICIARY:

California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814

The undersigned, a duly Authorized Representative of the California Department of Fish and Game (the Department) (as defined in the above-referenced CREDIT), hereby certifies to the ISSUER that:

1. Pursuant to the Permit issued to _____("Applicant") and the Department, Applicant has presented documentary evidence of full compliance with the terms and conditions of the Permit, or, the natural expiration of the CREDIT has occurred.

2. The Department therefore requests the cancellation of the above-referenced CREDIT.

THEREFORE, the Department of the State of California has executed and delivered this CANCELLATION as of the _____ day of _____, 20___.

DEPARTMENT OF FISH AND GAME
OF THE STATE OF CALIFORNIA

_____

By: _____
Title: _____
Authorized Representative

RECEIVED
NOV 14 2003
RDA

California Department of Fish and Game
330 GOLDEN SHORE, SUITE 210
LONG BEACH, CA 90802

California Endangered Species Act
Incidental Take Permit No. 2081-2003-022-06
CITY OF VICTORVILLE REDEVELOPMENT AGENCY
FOXBOROUGH INDUSTRIAL SITE

Authority: This California Endangered Species Act ("CESA") Incidental Take Permit ("permit") is issued by the Department of Fish and Game ("Department") pursuant to Fish and Game Code section 2081(b) and section 2081(c), and California Code of Regulations, title 14, subdivision 3, chapter 6, article 1, commencing with section 783. CESA prohibits the take[1] of any species of wildlife that is included in the list of endangered species, the list of threatened species, or the list of candidate species[2]. However, the Department may authorize, by permit, the take of such species if the conditions set forth in section 2081(b) and section 2081(c) are met.

Permittee: City of Victorville Redevelopment Agency

Contact person: **Mr. Keith Metzler**

Mailing address: **PO Box 5001**
Victorville, CA 92393-5011
(760)955-5146

Project Location: The project site is located north of Nisquali Road, east of Hesperia Road, and west of the BNSF railroad alignment in the City of Victorville. It is within Section 27, Township 5N, Range 4W, within USGS Hesperia quadrangles, 7.5 minute series topographic maps, San Bernardino County, California.

Project Description: The proposed project is the subdivision and development of approximately 77 acres at the Foxborough Industrial Park. The site is currently owned by the City of Victorville Redevelopment Agency, who will grade the property and prepare the

---

[1]Pursuant to Fish and Game Code section 86, "'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill."

[2]"Candidate species" are species of wildlife that have not yet been placed on the list of endangered species or the list of threatened species, but which are under formal consideration for listing pursuant to Fish and Game Code section 2074.2.

building pads before selling the parcels for full development. The development of the site is expected to include manufacturing and warehouse/distribution uses.

Covered Species:

This Permit covers the following species:

Name	**Status**[3]
Mammals	
1. Mohave ground squirrel (*Spermophilus mohavensis*)	Threatened

This species and only this species is hereinafter referred to as "Covered Species."

Impacts to Covered Species:

The Project will result in permanent impacts to 77 acres of habitat for the Covered species. Individuals of the Covered Species may be incidentally taken as a result of mortality due to development activities, mortality due to project-related traffic on and off-site, and project-caused habitat losses.

Effective Date and Expiration Date of Permit:

This Permit shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of the permit and returned to the Department Office of the General Counsel. Unless renewed by the Department, this Permit's authorization to take the Covered Species shall expire on **December 31, 2005.**

Incidental Take Authorization:

The Department authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Project, subject to the limitations described in this section and the conditions of approval identified below. This Permit does not authorize any intentional take of Covered Species, take of Covered Species from activities outside the scope of the Project as described above, or take of Covered Species resulting from a permit violation.

---

[3]Refers to status under CESA. Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species. All other species are "unlisted."

Fully Protected Species

This Permit does not authorize the take of any fully protected species. See Fish and Game Code section 3511, section 4700, section 5050, and section 5515. The Department finds that the Project can be carried out without the take of any Fully Protected Species. The Department therefore finds that the Project as conditioned can be carried out in compliance with the Fish and Game Code.

Conditions of Approval:

The Department's issuance of this Permit and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following conditions of approval.

1) Permittee shall comply with all applicable state, federal, and local laws in existence on the effective date of this permit or adopted thereafter.

2) Permittee shall fully implement and adhere to conditions of this Permit within the time frames set forth in Attachment 1, the Mitigation Monitoring and Reporting Program (MMRP), and shall comply with any requirements of the MMRP that are not otherwise set forth in this Permit.

3) Permittee shall implement and adhere to mitigation measures 3, 4, and 5 from the Biological Resources section in the PM-03-009 Mitigated Negative Declaration adopted on May 28, 2003.

4) Permittee shall fully implement and adhere to the following conditions:

   a) General Provisions:

      i) Before initiating ground-disturbing activities, the City of Victorville shall designate a representative (Designated Representative) responsible for communications with the Department and for overseeing compliance with this Permit. The Department shall be notified in writing of the representative's name, business address, and telephone number, and shall be notified in writing if a substitute representative is designated.

      ii) Before initiating ground-disturbing activities, The City of Victorville shall designate a knowledgeable, experienced biologist (Designated Biologist) to monitor construction activities in areas of Covered Species habitat to help avoid the take of

individual animals and to minimize habitat disturbance. The Designated Biologist shall be approved by the Department.

iii) City of Victorville shall conduct an orientation program for all persons who will work on-site during project implementation and construction. The program shall consist of a brief presentation from the Designated Biologist. The education program shall include a discussion of the biology of the Covered Species, the habitat needs of these species, their status under CESA, and the management measures provided in this Permit. A fact sheet containing this information shall also be prepared and distributed. Upon completion of the orientation, employees shall sign a form stating that they attended the program and understand all protection measures. These forms shall be filed at City of Victorville offices and shall be made available to the Department upon request.

iv) Firearms and domestic dogs shall be prohibited from the Project site and site access routes.

v) All observations of Covered Species and their sign during project activities shall be conveyed to the Permittee's Designated Representative or Designated Biologist. This information shall be included in the next monthly compliance report to the Department.

vi) The Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this permit, and to order any reasonable measure to avoid the take of an individual of a Covered Species.

vii) A trash abatement program shall be initiated during pre-construction phases of the Project, and shall continue through the duration of the Project. Trash and food items shall be contained in closed (raven-proof) containers and removed regularly (at least once a week) to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.

viii) Existing routes of travel shall be used whenever possible. To the extent possible, previously disturbed areas within the Project site shall be used for temporary storage areas, laydown sites, and any other surface-disturbing activities. Wherever offsite routes of travel require construction or modification, the Department shall be contacted. This Incidental Take Permit may require modification if additional take of Covered Species may result from project modification.

ix) Upon Project completion, all construction refuse, including, but not limited to,

broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes shall be removed from the site and disposed of properly.

x) Any fuel or hazardous waste leaks or spills shall be stopped/repaired immediately and cleaned up at the time of occurrence. The storage and handling of hazardous materials shall be excluded from the construction zone and any unused or leftover hazardous products shall be properly disposed of offsite.

xi) Permittee shall provide Department representatives with reasonable access to the Project site and mitigation lands under its control, and shall otherwise fully cooperate with Department efforts to verify compliance with or effectiveness of mitigation measures. Neither the Designated Biologist, nor the Department shall be liable for any costs incurred in complying with the management measures, including cease-work orders.

xii) Notwithstanding any expiration date on this permit's take authorization, Permittee's obligations under this permit do not end until the Department accepts the Final Mitigation Report as complete.

b) Notification and Reporting:

i) Permittee shall notify the Department and shall document compliance with all pre-construction Conditions of Approval before initiating ground-disturbing activities.

ii) Permittee shall immediately notify the Department in writing if it determines that it is not in compliance with any condition of approval of this Permit, including but not limited to any actual or anticipated failure to implement mitigation measures within the time periods indicated in this Permit and/or Attachment 1, the Mitigation Monitoring and Reporting Program (MMRP).

iii) Compliance inspections shall be conducted a minimum of once per week by the Designated Biologist, and a monthly compliance report will be provided to the Department's Bishop office at the address listed below. The Designated Biologist shall check for compliance with all of the mitigation/avoidance measures, and the exclusion zones shall be checked to ensure that the signs, stakes, and fencing are still intact and that human activities have been restricted in these protective zones.

iv) Beginning with issuance of the Permit and continuing for the life of the Project, Permittee shall provide the Department an annual Status Report no later than January 31 of every year. Each Status Report shall include, at a minimum: 1) a

general description of the status of the Project site and construction activities, including actual or projected completion dates, if known; 2) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; and 3) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for Project impacts.

v) No later than 45 days after completion of the Project, including completion of all mitigation measures, Permittee shall provide the Department with a Final Mitigation Report. The Final Mitigation Report shall be prepared by a knowledgeable, experienced Biologist and shall include, at a minimum: 1) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; 2) all available information about Project-related incidental take of species covered in the Permit; 3) information about other Project impacts on the species covered in the Permit; 4) construction dates; 5) an assessment of the effectiveness of the permit's conditions of approval in minimizing and compensating for Project impacts; 6) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the species; and 7) any other pertinent information, including the level of take associated with the Project.

vi) If a Mohave ground squirrel is killed by project-related activities during construction, or if a Mohave ground squirrel is otherwise found dead, a written report will be sent to the Department within two (2) calendar days. The report will include the date, time of the finding or incident, location of the carcass, and the circumstances.

c) Take Minimization Measures for Mohave Ground Squirrel:

i) All project-related parking and equipment storage shall be confined to the Project site. Off-site Covered Species habitat shall not be used for parking or equipment storage. Project-related vehicle traffic shall be restricted to established roads, staging, and parking areas. Permittee shall post signs; place posting stakes, flags, and/or rope or cord; and place fencing as necessary to minimize the disturbance of Covered Species habitat. Vehicle speeds shall not exceed 20 mph in order to avoid Mohave ground squirrels on or traversing the roads.

ii) Personnel shall be instructed to check under and around equipment for Mohave ground squirrel prior to moving the equipment.

iii) If a Mohave ground squirrel is found in a burrow during project-related activities on the Project site, it shall be immediately relocated to a burrow at a protected off-site location approved by the Department's Regional Representative. The Mohave

ground squirrel may only be relocated by a qualified biologist who holds a current MOU with the Department to handle Mohave ground squirrel. The relocation burrow shall be prepared in the following manner: dig a hole at least two (2) feet deep, place a nine (9) inch diameter plastic container (with thick enough walls that it will not collapse when buried) in the hole, place cotton bedding material in the container, connect the container to a three (3) inch diameter flexible plastic pipe (with thick enough walls that it will not collapse when buried) running to the surface at a 45 degree angle, cover the artificial burrow with dirt leaving the surface end of the 3 inch pipe open, and place the Mohave ground squirrel in the artificial burrow. The Designated Representative shall immediately notify the Department of the incident unless the incident occurs outside of normal business hours. In that event, the Department shall be notified no later than 12:00 noon on the next business day. Notification to the Department shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location and circumstances of the incident, the name of the party that actually relocated the animal, and the location (including GPS coordinates) to which the animal was moved.

iv) If a Mohave ground squirrel is injured as a result of project related activities, it shall be immediately taken to a Department approved Wildlife Rehabilitation facility. Any costs associated with the care or treatment of such injured Mohave ground squirrels shall be borne by Permittee. The Department shall be notified immediately unless the incident occurs outside of normal business hours. In that event the Department shall be notified no later than 12:00 noon on the next business day. Notification to the Department shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location and circumstances of the incident, and the name of the facility to which the animal was taken.

5) Permittee shall acquire and permanently preserve 77 acres of Habitat Management Lands ("HM Lands") for the Covered Species prior to initiating ground-disturbing project activities or no later than 18 months from the effective date of this Permit if Security is provided pursuant to Condition 6 below. The required acreage is based upon the Department's estimate of the acreage required to provide for adequate biological carrying capacity at a replacement location as a means of fully mitigating the Project's impacts on the Covered Species. As part of this condition, Permittee shall:

a) Transfer fee title to the HM Lands or a conservation easement over the HM Lands to the Department under terms approved by the Department. Alternatively, the transfer may be to another public entity or non-profit corporation approved by the Department under terms approved by the Department. As a means of satisfying this condition,

Permittee may provide Desert Tortoise Preserve Committee (DTPC) with funds in the amount of $61,600.00 which shall be used for acquisition of habitat to benefit the Covered Species. This amount is based on land acquisition costs, calculated at $800/acre for 77 acres. In the event this option is selected, Permittee shall provide the Department with written assurance from Desert Tortoise Preserve Committee that lands benefiting the Covered Species have been identified and are available for acquisition, and shall enter into a legally binding agreement with DTPC, approved by the Department, that requires DTPC to use funds obtained from the Permittee to acquire at least 77 acres of suitable MGS habitat located at a location approved by the Department; and execute and deliver to the Department a conservation easement approved by the Department over the habitat lands acquired to mitigate the impacts of the Project on Covered Species.

b) Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents. All documents conveying the HM lands and all conditions of title are subject to the approval of the Department, the Department of General Services and, if applicable, the Fish and Game Commission.

c) Provide for the initial protection and enhancement of the HM lands as described in this Permit and/or its attachments, or alternatively fund the Department's initial protection and enhancement of the lands by providing to the Department a check in the amount of $7,315.00 drawn from a banking institution located within California.

d) Provide to the Department a check in the amount of $15,400.00 drawn from a banking institution located within California for use as principal for a permanent capital endowment, if fee title to the HM lands is transferred to the Department or to an approved non-profit corporation. Interest from this amount shall be available for the operation, management and protection of the HM lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the HM lands. The endowment principal shall not be drawn upon unless such withdrawal is deemed necessary by the Department to ensure the continued viability of the species on the HM lands. Monies received by the Department pursuant to this provision shall be deposited in a special deposit account established pursuant to Government Code §16370. The Department may pool the endowment with other endowments for the operation, management and protection of HM lands for local populations of the Covered Species.

e) Reimburse the Department for reasonable expenses incurred during title and documentation review, expenses incurred from other state agency reviews, and overhead related to transfer of HM Lands to the Department. The Department

estimates that this Project will create an additional cost to the Department of no more than $3,000 for every fee title deed or easement processed.

6) Permittee may proceed with ground-disturbing Project activities before completing all of the required mitigation (including acquisition of HM Lands), monitoring, and reporting activities only if Permittee ensures funding to complete those activities by providing to the Department prior to commencing ground-disturbing activities or within 30 days after the effective date of this permit, whichever occurs first: (1) the endowment of $15,400 as described in Condition 5, and (2) an irrevocable letter of credit, a pledged savings account, or another form of security ("Security") approved by the Office of the General Counsel. The Security shall allow the Department to draw on the principal sum if the Department, at its sole discretion, determines that Permittee has failed to comply with the Conditions of Approval of this Permit. The Security shall be in the amount of **$68,915** based on the following estimated costs of implementing the Permit's mitigation, monitoring and reporting requirements.

    a. Land acquisition costs for impacts to habitat, calculated at $800/acre for 77 acres: $61,600.

    b. Costs of enhancing HM lands, calculated at $95.00/acre for 77 acres: $7,315.00.

7) This permit may be amended without the concurrence of the Permittee if the Department determines that continued implementation of the Project under existing permit conditions would jeopardize the continued existence of a Covered Species.

8) The Department may issue Permittee a written stop-work order to suspend any activity covered by this permit for an initial period of up to 25 days to prevent or remedy a violation of Permit conditions (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. Permittee shall comply with the stop-work order immediately upon receipt thereof. The Department may extend a stop-work order under this provision for a period not to exceed 25 additional days, upon written notice to the Permittee. The Department shall commence the formal suspension process pursuant to California Code of Regulations, Title 14, §783.7 within five working days of issuing a stop-work order.

Compliance with Other Laws

This permit contains the Department's requirements for the Project pursuant to CESA. This permit does not necessarily create an entitlement to proceed with the Project. The

Permittee is responsible for complying with all other applicable state, federal, and local laws.

Notices

Written notices, reports and other communications relating to this permit shall be delivered to the Department by first class mail at the following addresses, or at addresses the Department may subsequently provide the Permittee. Notices, reports, and other communications should reference the Project name, Permittee, and Permit Number (2081-2003-022-06) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Curt Taucher, Regional Manager
330 Golden Shore, Suite 210
Long Beach, CA 90802
(562)590-5113 phone
(562)590-5192 fax

Copy of cover without attachment(s) to:

General Counsel, Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

And:

Habitat Conservation Planning Branch
1416 Ninth Street, suite 1260
Sacramento, CA 95814

Unless Permittee is notified otherwise, the Department's Regional Representative for purposes of addressing issues that arise during implementation of permit conditions is:

Ms. Adrienne Disbrow
407 W. Line Street
Bishop, CA 93514
(760)873-4412 phone, (760)872-1284 fax.

Compliance with the California Environmental Quality Act

The Department's issuance of a permit is a "project" subject to the California Environmental Quality Act, Public Resources Code, section 21000, et seq. ("CEQA"). A **MITIGATED NEGATIVE DECLARATION** was prepared for the **FOXBOROUGH INDUSTRIAL SITE (AKA PARCEL MAP PM-03-009/SITE PLAN SP-03-003)**. The Lead Agency for review of the Project, **CITY OF VICTORVILLE**, certified the CEQA document on **MAY 28, 2003**. During certification of

the environmental document, all mitigation measures (including the measures outlined below) were adopted as "Conditions of Project Approval".

The Department is acting as a "Responsible Agency" under CEQA in issuing this permit. Section 15096(a) of the CEQA Guidelines states that, "A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the Lead Agency and by reaching its own conclusions on whether or how to approve the project involved." Section 15096(g)(1) of the CEQA Guidelines further states that, "A Responsible Agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve." In issuing the permit, therefore, CEQA required the Department to review the Lead Agency's document for the Project and to ensure that the direct and indirect environmental effects approved or authorized in the permit for the Project will be adequately mitigated or avoided. As stated in the CESA findings, below, the Department has determined that all impacts of taking Covered Species from Project activities are minimized and fully mitigated under the conditions of approval of this permit.

CESA Findings

With respect to CESA, the Department finds that all of the following conditions have been met:

(1) Take of Covered Species as defined in the Permit will be incidental to the otherwise lawful activities covered under the Permit;

(2) The impacts of the take will be minimized and fully mitigated through the implementation of measures required by this Permit and described in the Mitigation Monitoring and Reporting Program (MMRP) and Reclamation Plan. Measures include: 1) annual compliance reports; 2) land compensation for species where habitat is impacted; and 3) an education program for all persons working on-site.

(3) The conservation and mitigation measures required pursuant to the conditions of this permit and its attachments are roughly proportional in extent to the impact of Permittee's take.

(4) Where various measures are available to meet the mitigation requirement under CESA, the measures required will maintain Permittee's objectives to the greatest extent possible;

(5) All required measures are capable of successful implementation;

(6) The permit is consistent with any regulations adopted pursuant to Sections 2112 and 2114 of the Fish and Game Code;

(7) Permittee has ensured adequate funding to implement the measures required by the Permit as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and

(8) Issuance of the Permit will not jeopardize the continued existence of the Covered Species based on the best scientific and other information that is reasonably available, and includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (a) known population trends; (b) known threats to the species; and (c) reasonably foreseeable impacts on the species from other related projects and activities. The Department's finding is based, in part, on the Department's express authority to amend the terms and conditions of the Permit as necessary to avoid jeopardy.

Attachments:

ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Habitat Management Lands Checklist
ATTACHMENT 3	Mitigation Payment Transmittal Form
ATTACHMENT 4	Letter of Credit Forms

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME

on _____.

CURT TAUCHER, Regional Manager
EASTERN SIERRA-INLAND DESERTS REGION

APPROVED AS TO FORM:

MICHAEL R. VALENTINE, General Counsel

ACKNOWLEDGMENT

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

By: Terry E. Caldwell Date: November 19, 2003

Printed Name: Terry E. Caldwell Title: Mayor

ATTACHMENT #1

DEPARTMENT OF FISH AND GAME
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

CALIFORNIA INCIDENTAL TAKE PERMIT NO. 2081-2003-022-06
PERMITTEE: City of Victorville Redevelopment Agency
PROJECT: Foxborough Industrial Site

PURPOSE OF THE MMRP

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

OBLIGATIONS OF PERMITTEE

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

VERIFICATION OF COMPLIANCE, EFFECTIVENESS

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

TABLE OF MITIGATION MEASURES

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

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
PRE-CONSTRUCTION					
1	The Permittee shall submit to the Department, for Department approval, the names and credentials of biologists ("Designated Biologist") the Permittee wishes to employ.	Permit	Prior to start of ground disturbing activities	Permittee	
2	The Permittee shall designate a representative to be responsible for communications with the Department and for overseeing compliance with this permit. The Permittee shall notify the Department in writing of the representative's name, business address, and telephone number, and shall notify the Department in writing if a substitute representative is designated.	Permit	Prior to initiating ground disturbing activities	Permittee	
3	The Permittee shall notify the Department of the date scheduled for initial ground disturbing activities and shall document compliance with all pre-construction conditions.	Permit	Prior to initiating ground disturbing activities	Permittee	
4	The Permittee shall ensure funding to complete the required mitigation, monitoring, and reporting activities by providing Security, as defined in Condition of Approval 6 of the Permit, in the amount of $68,915.00	Permit	Prior to commencing ground disturbing activities or within 30-days after the effective date of the permit, whichever occurs first	Permittee	
5	The Permittee shall provide the Department with a check in the amount of $15,400.00 drawn from a banking institution located within California for use as principal for a permanent capital endowment as described in Condition of Approval 5(d) of the Permit.	Permit	Prior to commencing ground disturbing activities or within 30-days after the effective date of this permit, whichever occurs first.	Permittee	
6	The Permittee shall acquire and permanently preserve 77 acres of Habitat Management Lands ("HM Lands") for the Covered Species as described in Condition of Approval 5 of the Permit, or shall enter into a legally binding agreement with the Desert Tortoise Preserve Committee (DTPC) to purchase the HM Lands, as described in Condition of Approval 5(a) of the Permit.	Permit	Prior to commencing ground disturbing activities or within 18 months of the effective date of the Permit if Security has been provided	Permittee	
DURING CONSTRUCTION					
7	The Permittee shall immediately notify the Department in writing if it determines that it is not in compliance with any condition of approval of the Permit, including but not limited to any actual or anticipated failure to implement mitigation measures within the time periods indicated in the Permit or this MMRP.	Permit	Entire project	Permittee	
8	Permittee shall conduct compliance inspections at least once a week to assess compliance with all construction-related impact minimization and mitigation measures, especially those requiring creation and maintenance of exclusion zones.	Permit MMRP	During construction	Permittee	
9	Every month for the duration of construction, Permittee shall provide the Department's Bishop office with a written Compliance Report to communicate observations made during compliance monitoring, a summary of the avoidance and minimization measures being implemented, and any other information obtained by Permittee.	Permit MMRP	During construction	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
10	Beginning with issuance of the Permit and continuing for the life of the project, Permittee shall provide the Department an annual Status Report no later than January 31 of every year. Each Status Report shall include, at a minimum: 1) a general description of the status of the project, including actual or projected completion dates, if known; 2) a copy of this table with notes showing the current implementation status of each mitigation measure; and 3) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for project impacts.	Permit	Entire project	Permittee	
11	All observations of Covered Species and their sign during project activities shall be conveyed to the Permittee's Designated Representative or Designated Biologist. This information shall be included in the next monthly compliance report to the Department	Permit	Entire project	Permittee	
12	If a Mohave ground squirrel is killed by project-related activities during construction, or if a Mohave ground squirrel is otherwise found dead, a written report will be sent to the Department within two (2) calendar days. The report will include the date, time of the finding or incident, location of the carcass, and the circumstances.	Permit	Entire project	Permittee	
13	If a Mohave ground squirrel is found in a burrow during project-related activities on the Project site, it shall be immediately relocated to a burrow at a protected off-site location approved by the Department's Regional Representative. The MGS may only be relocated by a qualified biologist who holds a current MOU with the Department to handle MGS. The relocation burrow shall be prepared in the following manner: dig a hole at least two (2) feet deep, place a nine (9) inch diameter plastic container (with thick enough walls that it will not collapse when buried) in the hole, place cotton bedding material in the container, connect the container to a three (3) inch diameter flexible plastic pipe (with thick enough walls that it will not collapse when buried) running to the surface at a 45 degree angle, cover the artificial burrow with dirt leaving the surface end of the 3 inch pipe open, and place the Mohave ground squirrel in the artificial burrow. The Designated Representative shall immediately notify the Department of the incident unless the incident occurs outside of normal business hours. In that event the Department shall be notified no later than 12:00 noon on the next business day. Notification to the Department shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location and circumstances of the incident, the name of the party that actually relocated the animal, and the location (including GPS coordinates) to which the animal was moved.	Permit	Entire project	Permittee	
14	If a Mohave ground squirrel is injured as a result of project related activities, it shall be immediately taken to a Department approved Wildlife Rehabilitation facility. Any costs associated with the care or treatment of such injured Mohave ground squirrels shall be borne by Permittee. The Department shall be notified immediately unless the incident occurs outside of normal business hours. In that event the Department shall be notified no later than 12:00 noon on the next business day. Notification to the Department shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location and circumstances of the incident, and the name of the facility to which the animal was taken.	Permit	Entire project	Permittee	
POST-CONSTRUCTION					
15	Upon Project completion, all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes shall be removed from the site and disposed of properly.	Permit	Project Completion	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
16	No later than 45 days after completion of the project, including completion of all mitigation measures, Permittee shall provide the Department with a Final Mitigation Report. The Final Mitigation Report shall be prepared by a knowledgeable, experienced biologist and shall include, at a minimum: 1) a copy of this table with notes showing when each of the mitigation measures was implemented; 2) all available information about project-related incidental take of species named in the Permit; 3) information about other project impacts on the species named in the Permit; 4) construction dates; 5) an assessment of the effectiveness of each mitigation measure in minimizing and compensating for project impacts; 6) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the species; and 7) any other pertinent information. Permittee's monitoring and reporting obligations under this MMRP will end only after the Department accepts the Final Mitigation Report as complete.	Permit	Project completion	Permittee	
17	The Department accepts the Final Mitigation Report as complete.	MMRP	Project completion	Department of Fish and Game	

ATTACHMENT 2

HABITAT MANAGEMENT LANDS ACQUISITION CHECKLIST

The following checklist is provided for your convenience and to expedite Department processing of your Habitat Management Lands acquisition proposal. This list indicates the appropriate real estate documents which must be provided to the Department of Fish and Game so that review and formal acceptance can be accomplished. Any land acquisition processing requests that are incomplete when received will be returned.

_ Proposed Lands for Acquisition Form (PLFAF)
(forward to Region for approval; Region will send to Realty Services Coordinator)

_ Hazardous Materials Site Assessment Report
(an existing report may be used, but it must be less than two years old)

_ Preliminary Title Report(s) for subject property
(an existing title policy is not acceptable)

_ Grant Deed or Easement Deed
(deed must be an original, signed and acknowledged, or a certified copy thereof)

_ County Assessor Parcel Map(s) for subject property

_ Site Location Map
(site location with property boundaries outlined on a USGS 1:24, 000 scale Topographic Quadrangle Map)

The Region will forward the PLFAF to the Lands and Natural Areas Program (LNAP) Realty Services Coordinator and request that LNAP process the land acquisition for formal acceptance. With the exception of the PLFAF, all documents listed above should be submitted directly to the Realty Services Coordinator at the following address:

Mr. Richard Jackson
Department of Fish and Game
Lands and Facilities Branch
1416 - 9th Street
Sacramento, CA 95814

○ For some transactions, additional documents may be required, such as documents to support title exceptions or to explain title encumbrances. These additional documents may be requested by the Realty Services Coordinator during his review.

○ Please note that the Project Applicant is responsible for all land acquisition costs, including title document costs, escrow fees, recording fees, title insurance premiums, other escrow-related fees or costs, and costs incurred by the Department of Fish and Game and the Department of General Services in reviewing and approving the documents.

PROPOSED LANDS FOR ACQUISITION FORM ("PLFAF")

Date: _____

TO: Regional Representative

_____

_____

_____

Facsimile:

FROM: _____

_____

_____

_____

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

Section	Township	Range	Number of Acres
_____	_____	_____	_____

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

_____

_____

_____

Location of Parcel:

_____

_____

_____

_____

APPROVED ___ By: _____ DATE: _____

REJECTED ___ _____

Region

Explanation: _____

_____

_____

ATTACHMENT 3

CALIFORNIA DEPARTMENT OF FISH AND GAME
MITIGATION PAYMENT TRANSMITTAL FORM

MITIGATION PAYMENT TRANSMITTAL FORM INSTRUCTIONS

(1) DATE: Applicant or Permittee enters date in month / day / year format.

(2) FROM:

a. Name – Enter first name, middle initial, last name and title of principal officer if permittee is a business and name of business; or contact person if different than permittee and principal officer.

b. Mailing Address – Enter complete business mailing address or mailing address of contact person.

c. Telephone Number / FAX Number – Telephone number and fax number of principal officer or contact person listed above.

(3) RE:

Project Name – Region enters project name as it appears on Permit or Agreement document.

(4) PERMIT OR AGREEMENT TYPE / ACCOUNT INFORMATION

a. Agreement Type – Check the appropriate agreement or permit type.

b. Tracking Number– Region enters the project tracking number as it appears on the Tracking Surname Cover Sheet and Permit or Agreement document.

c. FASB Mitigation Tracking Number (if available) – Region enters the Mitigation Tracking Number (MT #) assigned by FASB for the project specific mitigation account if account has been set up prior to receiving current mitigation payment.

d. Index and PCA – Region enters the mitigation account codes associated with the accounts for deposit and expenditures.

(5) PAYMENT TYPE: Applicant or Permittee enters the following information.

a. Permanent Endowment for Management of Conservation Land – Enter the amount of the attached payment. A permanent endowment is an account established for the long-term management of habitat management land for conservation purposes as required by a Permit or Agreement.

b. Habitat Enhancement Fees – Enter the amount of the attached payment. The habitat enhancement fees are intended for the initial preparation of the land for transfer as habitat management lands.

c. Cash Refundable Security Deposit – Enter the amount of the deposit attached. A cash refundable security deposit may be a required condition of a Permit or Agreement to ensure the proper and timely implementation of those conditions.

d. Letter of Credit – Enter the amount of the attached letter of credit. 1. Financial Institution - Include the name of the financial institution from which the letter of credit was issued. 2. Date of Expiration – Enter the date of expiration from the letter of credit.

ATTACHMENT 3

CALIFORNIA DEPARTMENT OF FISH AND GAME
MITIGATION PAYMENT TRANSMITTAL FORM

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

(1) **DATE:** _____

TO: Curt Taucher, Regional Manager
330 Golden Shore, suite 210, Long Beach, CA 90802

(2) **FROM:** _____
Name

_____
Mailing Address

_____
City, State, Zip

_____
Telephone Number/FAX Number

(3) **RE:** _____
[Project Name]

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

☐ 2081 Permit ☐ Conservation Bank ☐ 1802 Agreement ☐ 2835 NCCP

_____
[HCPB Project Tracking Number]

_____
[FASB Mitigation Tracking Number (if available)]

Index _____ PCA_____

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

Check information:

Total $_____ Check No. _____

Account No. _____ Bank Routing No. _____

a. Endowment: for Management of Conservation Land

Subtotal $_____

b. Habitat Enhancement

Subtotal $_____

c. Security: Cash Refundable Security Deposit

Subtotal $_____

d. Letter of Credit

Subtotal $_____
1. Financial Institution:_____
2. Letter of Credit Number: _____
3. Date of Expiration:_____

ATTACHMENT 4

IRREVOCABLE "STANDBY" LETTER OF CREDIT

ISSUER:

_____
_____
_____
_____

ACCOUNT PARTY/CUSTOMER:

_____
_____
_____
_____

IRREVOCABLE LETTER OF CREDIT NO.: _____ Dated: _____

TO BENEFICIARY:

California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814
Attention: Director

Dear Sirs:

1. At the request and on the instructions of our CUSTOMER, _____ ("Applicant"), we hereby establish in favor of the BENEFICIARY, the California Department of Fish and Game (the "Department"), this Irrevocable Standby Letter of Credit ("CREDIT") in the Principal Sum of $ _____.

2. This CREDIT is and has been established for the sole benefit of the Department pursuant to the terms of the _____ ("Agreement") entered into between Applicant and the Department _____, 20____.

3. This CREDIT is intended by the parties to the Agreement to serve as a security device for the performance by Applicant of its obligations under the Agreement.

4. Upon the occurrence of any default by Applicant as determined by the Department in its sole discretion under the Agreement, the Department shall be entitled to draw upon this CREDIT by presentation of a duly executed CERTIFICATE FOR DRAWING in substantially the same form as Attachment A, attached hereto, at our office located at _____.

5. The CERTIFICATE shall be completed and signed by an "Authorized Representative" as defined in paragraph 12. Presentation by the Department of a completed CERTIFICATE may be made in person or by registered mail, return receipt requested.

6. Upon presentation of a duly executed CERTIFICATE as above provided, payment shall be made to the Department, or to an account designated by the Department, in immediately available funds, at such time and place as the Department shall specify.

7. Funds may be drawn in one or more drawings not to exceed the Principal Sum.

8. If a demand for payment does not conform to the terms of this CREDIT, we shall give the Department prompt notice that the demand for payment was not effected in accordance with the terms of this CREDIT, state the reasons therefor, and await further instructions.

9. Upon being notified that the demand for payment was not effected in conformity with the CREDIT, the Department may correct any such non-conforming demand for payment.

10. All drawings under this CREDIT shall be paid with our funds. Each drawing honored by us hereunder shall reduce, pro tanto, the Principal Sum. By paying to the Department an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.

11. This CREDIT will be cancelled in whole or in part upon receipt by us of a CERTIFICATE OF CANCELLATION, which (i) shall be in the form of Attachment B attached hereto, and (ii) shall be completed and signed by any person purporting to be an Authorized Representative, as defined in the next paragraph.

12. An "Authorized Representative" shall mean one of the following persons: Director of the Department of Fish and Game, or the General Counsel of the Department of Fish and Game.

13. Communications with respect to this CREDIT shall be in writing and addressed to us at _____ specifically referring upon such writing to this CREDIT by number.

14. This CREDIT may not be transferred or assigned, either in whole or in part.

15. This CREDIT shall be deemed a contract made under the laws of the State of California.

16. This CREDIT shall, if not cancelled as provided herein, expire no later than _____ of the date of its execution.

THEREFORE, _____

_____ has executed and delivered this IRREVOCABLE STANDBY LETTER OF CREDIT to the BENEFICIARY as of the ____ day of _____, 20___.

CERTIFICATE FOR DRAWING

ISSUER:

_____
_____
_____
_____

ACCOUNT PARTY/CUSTOMER:

_____
_____
_____
_____

IRREVOCABLE LETTER OF CREDIT NO.: _____

BENEFICIARY:

California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814

The undersigned, a duly Authorized Representative of the California Department of Fish and Game (the Department) (as defined in the above-referenced CREDIT), hereby certifies to the ISSUER that:

1. In the opinion of the Department, an Event of Default has occurred as defined in section __ of the Agreement.

2. The undersigned is authorized under the terms of the above-referenced CREDIT to present this CERTIFICATE as the sole means of demanding payment on the CREDIT.

3. The Department is therefore making a drawing under the above-referenced CREDIT in the amount of $ _____.

4. The amount demanded does not exceed the Principal Sum.

5. Sums received shall be used by the Department in accordance with the terms of the Agreement.

THEREFORE, the Department has executed and delivered this CERTIFICATE as of the _____ day of _____ , 20___.

DEPARTMENT OF FISH AND GAME
OF THE STATE OF CALIFORNIA

By: _____
Title: _____
Authorized Representative

CERTIFICATE FOR CANCELLATION

ISSUER:

_____
_____
_____
_____

ACCOUNT PARTY/CUSTOMER:

_____
_____
_____
_____

IRREVOCABLE LETTER OF CREDIT NO.: _____

BENEFICIARY:

California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814

The undersigned, a duly Authorized Representative of the California Department of Fish and Game (the Department) (as defined in the above-referenced CREDIT), hereby certifies to the ISSUER that:

1. Pursuant to the Agreement entered into between _____ _____("Applicant") and the Department, Applicant has presented documentary evidence of full compliance with the terms and conditions of the Agreement, or, the natural expiration of the CREDIT has occurred.

2. The Department therefore requests the cancellation of the above-referenced CREDIT.

THEREFORE, the Department of the State of California has executed and delivered this CANCELLATION as of the _____ day of _____ , 20___.

DEPARTMENT OF FISH AND GAME
OF THE STATE OF CALIFORNIA

_____

By: _____
Title: _____
Authorized Representative

California Department of Fish and Game
330 Golden Shore, Suite 50
Long Beach, California 90802
California Endangered Species Act
Incidental Take Permit No. 2081-1999-050-6
High Desert Power Project, LLC
High Desert Power Project

Authority: This California Endangered Species Act ("CESA") Incidental Take Permit ("permit") is issued by the Department of Fish and Game ("Department") pursuant to Fish and Game Code section 2081(b) and section 2081(c), and California Code of Regulations, title 14, subdivision 3, chapter 6, article 1, commencing with section 783. CESA prohibits the take[1] of any species of wildlife that is included in the list of endangered species, the list of threatened species, or the list of candidate species[2]. However, the Department may authorize, by permit, the take of such species if the conditions set forth in section 2081(b) and section 2081(c) are met.

Permittee: High Desert Power Project, LLC

Name and title of principal officer: Thomas M. Barnett, Vice President

Mailing address: 3501 Jamboree Road
South Tower, Suite 606
Newport Beach, CA 92660

Phone (949) 856-1361
Fax (949) 856-2313

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[1]Pursuant to Fish and Game Code section 86, "'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill."

[2]"Candidate species" are species of wildlife that have not yet been placed on the list of endangered species or the list threatened species, but which are under formal consideration for listing pursuant to Fish and Game Code section 2074.2.

Agent for service of process:

General Counsel
High Desert Power Project, LLC
c/o Constellation Power Source
111 Market Place, Suite 500
Baltimore, Maryland 21202

Project location: The High Desert Power Project (HDPP) would be located on a 25-acre parcel on the Southern California Logistics Airport (SCLA), formerly named the Southern California International Airport, in the City of Victorville, San Bernardino County, California.

The proposed power plant is located in Section 24, Township 6 North, Range 5 West (San Bernardino Base and Meridian). The transmission line corridor is approximately seven miles long and extends south from the power plant site along Perimeter Road and El Evado Road to just southeast of SCLA Gate 5 and runs south to the SCE Victor substation on Palmdale Road. The 2.5-mile water pipeline will be constructed on the east side of Helendale Road and Perimeter Road, beginning just south of Colusa Road and will proceed south to the power plant site. The 3.5-mile natural-gas pipeline will go north from the intersection of Cobalt Road and Airbase Road, travel east on Air Base Road to Nevada Avenue, and north on Nevada Avenue to Phantom Street. From Phantom Street it will extend east to El Evado Road and then north along Perimeter Road to the Power plant site. The 6.5 mile water pipeline will begin at the southwest corner of the plant site and run south through SCLA to Air Base Road. From there it will proceed to Cobalt Road and south along to Rancho Road, east to Amethyst Road and south to Cactus Road and east to El Evado Road where it will connect with an existing water pipeline. The 32-mile natural-gas pipeline from the power plant site will proceed north along Perimeter and Helendale Roads to Colusa Road where it will then travel west, crossing Highway 395 and then proceed north where it will tap into the Kern River Gas Transmission Co. and PG&E pipelines approximately one quarter-mile south of Highway 58 and one mile east of the intersection of Highways 395 and 58.

Project description: The HDPP is planning to construct, own and operate a combined cycle natural gas-fueled electrical generation power plant of approximately 700 megawatts of capacity. Two water pipelines (a 2.5-mile pipeline and a 6.5-mile pipeline) and seven injection/extraction wells providing water primarily for power plant cooling will either be constructed by HDPP or through a contract with the Victor Valley Water District. Southern California Edison will construct, own and operate the necessary transmission interconnection facilities for the HDPP including a 7.2-mile transmission line. Natural gas will be supplied to the project by either a 32-mile pipeline

to the north or a 3.5-mile pipeline to the south, or by a combination of both. The HDPP or its approved designee will construct, own and operate the natural gas pipeline(s).

Covered species: This permit covers the following species:

Mammals

1. *Spermophilus mohavensis* (Mohave ground squirrel) - State threatened.

Reptiles and amphibians

1. *Gopherus* [=*Xerobates*] *agassizii* (desert tortoise)- State and Federal threatened.

These species and only these species are hereinafter referred to as "Covered Species."

The Department has determined that impacts on riparian species will be avoided if the California Energy Commission's conditions of certification Soil & Water 1- 19 are implemented, and consequently riparian species are not included in this permit. If the Commission's existing soil and water conditions are not implemented, the permit may need to be amended to cover the following species: Least Bell's Vireo, Willow Flycatcher, Yellow-billed Cuckoo, southwestern pond turtle, southwest arroyo toad and Mojave River vole.

Effective date and expiration date of permit:

This permit shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by applicant (see below) and returned to the Department. Unless renewed by the Department, this permit shall expire on January 1, 2030.

Incidental take authorization:

The Department authorizes the permittee, its employees, contractors and agents to take Covered Species incidentally in carrying out the project, subject to the limitations described in this section and the conditions of approval identified below. This permit does not authorize any intentional take of Covered Species, take of Covered Species from activities outside the scope of the project as described above, or take of Covered Species resulting from a permit violation.

Conditions of Approval:

The Department's issuance of this permit and Permittee's authorization to take the Covered Species is subject to Permittee's compliance with and implementation of the following conditions of approval:

1. Permittee shall comply with all applicable state, federal and local laws in existence on the effective date of this permit or adopted thereafter.

2. Permittee shall fully implement and adhere to the following measures:

   A. Conditions in Attachment 1, the Potential Impacts and Mitigation Measures for 2081-99-056-6.

   B. The requirements of Attachment 2, the Mitigation Monitoring and Reporting Program, High Desert Power Project.

   C. The conditions of certification for biological resources (Bio-1 through Bio-9) and for soil and water (Soil&Water-1 through Soil&Water-19) adopted by the California Energy Commission ("CEC") as part of its order dated May 3, 2000, and reproduced as Attachment 3. These conditions include but are not limited to measures to avoid and minimize take of Covered Species and to acquire and permanently protect habitat for the Covered Species.

3. This permit may be amended without the concurrence of the permittee if the Department determines that continued implementation of the project under existing permit conditions would jeopardize the continued existence of a Covered Species or that changed biological conditions necessitate a permit amendment to ensure that impacts to the Covered Species are minimized and fully mitigated.

4. The Department may issue permittee a written stop work order to suspend any activity covered by this permit for an initial period of up to 25 days to prevent a violation of this permit or the illegal take of an endangered, threatened or candidate species. Permittee shall comply with the stop work order immediately upon receipt thereof. The Department may extend a stop work order under this provision for a period not to exceed 25 additional days, upon written notice to the permittee. The Department shall commence the formal suspension process pursuant to California Code of Regulations, title 14, section 783.7 within five working days of issuing a stop work order.

5. The permittee shall obtain any necessary Streambed Alteration Agreements from the Department pursuant to section 1603 of the Fish and Game Code.

Notices

Written notices, reports and other communications relating to this permit shall be delivered to the Department by first class mail at the following addresses, or at addresses the Department may subsequently provide the Permittee:

Original to: Regional Manager
Region 6
330 Golden Shore, Suite 50
Long Beach, CA 90802

Copy to: General Counsel
Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

Compliance with the California Environmental Quality Act:

The Department's issuance of a permit constitutes an approval of a project subject to the California Environmental Quality Act, Public Resources Code section 21000, et seq. ("CEQA"). The CEQA lead agency for this project is the CEC. The CEC's power plant site certification program has been certified as meeting the requirements of Public Resources Code section 21080.5, and the Department consequently considered environmental documents prepared by CEC for this project pursuant to 14 CCR section 15253.

The Department is acting as a "Responsible Agency" under CEQA in issuing this permit. Section 15096(a) of the CEQA Guidelines states that "A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether or how to approve the project involved." Section 15096(g)(1) of the CEQA Guidelines further states that "A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve." In issuing the permit, therefore, CEQA requires the Department to review the lead agency's document for the Project and to ensure that the direct and indirect environmental effects approved or authorized in the permit for the Project will be adequately mitigated or avoided. As stated in the CESA findings, below, the Department has determined that all impacts of taking Covered Species from Project

activities are minimized and fully mitigated under the conditions of approval of this permit.

CESA Findings

Section 2081 of CESA states, in pertinent part:

. . .

(b) The department may authorize, by permit, the take of endangered species, threatened species, and candidate species if all of the following conditions are met:

(1) The take is incidental to an otherwise lawful activity.

(2) The impacts of the authorized take shall be minimized and fully mitigated. The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. For purposes of this section only, impacts of taking include all impacts on the species that result from any act that would cause the proposed taking.

(3) The permit is consistent with any regulations adopted pursuant to Sections 2112 and 2114.

(4) The applicant shall ensure adequate funding to implement the measures required by paragraph (2), and for monitoring compliance with, and effectiveness of, those measures.

(c) No permit may be issued pursuant to subdivision (b) if issuance of the permit would jeopardize the continued existence of the species. The Department shall make this determination based on the best scientific and other information that is reasonably available, and shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities.

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These CESA provisions constitute the criteria for the issuance of a permit. The Department finds that these criteria are met for the issuance of a permit to Permittee as follows:

1. The take of Covered Species as defined in the permit will be incidental to otherwise lawful Project activities.

2. The impacts of take of Covered Species will be minimized and fully mitigated through implementation of measures that are required as permit conditions of approval.

3. The minimization and mitigation measures required in the permit are roughly proportional in extent to the Project's impact of taking Covered Species.

4. The required minimization and mitigation measures will maintain the Permittee's Project objectives to the greatest possible extent.

5. All required measures are capable of successful implementation.

6. This permit is consistent with any regulations adopted Pursuant to sections 2112 and 2114 of the Fish and Game Code.

7. The Permittee has ensured adequate funding to implement required minimization and mitigation measures, and for monitoring compliance with, and the effectiveness of, those measures.

8. Issuance of this permit will not jeopardize the continued existence of any Covered Species. The Department's finding is based on the best information that is reasonably available, and includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (a) known population trends; (b) known threats to the species; and (c) reasonably foreseeable impacts on the species from other related projects and activities. The Department's finding is further based on the Department's express authority to revise the terms of the permit as necessary to avoid jeopardy.

Fully protected species

This permit does not authorize the take of any fully protected species. See Fish and Game Code sections 3511, 4700, 5050, and 5515. The Department finds that the conditions of approval of this permit, if fully implemented and adhered to, will avoid the take of golden eagle during Project implementation. The Department therefore finds that the Project as conditioned by this permit can be carried out in compliance with Fish and Game Code, section 3511.

Attachments:

ATTACHMENT 1	Potential Impacts and Mitigation for Covered Species
ATTACHMENT 2	Mitigation Monitoring and Reporting Program
ATTACHMENT 3	CEC Conditions of Certification

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME
on 10/16 **, 2000.**

Curt Taucher, Regional Manager
Eastern Sierra and Inland Deserts Region

Approved as to form:

Michael R. Valentine, General Counsel

ACKNOWLEDGMENT

The undersigned applicant acknowledges receipt of this permit and, by signing, accepts and agrees to comply with all terms and conditions of the permit.

By: _____ Date: 10-24-00

Name: THOMAS M. BARNETT

Title: VICE PRESIDENT

ATTACHMENT 1

POTENTIAL IMPACTS AND MITIGATION MEASURES
HIGH DESERT POWER PROJECT
INCIDENTAL TAKE PERMIT No. 2081-1999-050-6

Potential Impacts

Construction of the HDPP will have both short - and long-term impacts. Any clearing of native vegetation in the project area is considered to be long-term impacts because of the long regenerative periods needed for desert flora. Long-term impacts include grading disturbance and permanent displacement. For the purpose of the incidental take permit, all permanent habitat disturbance is merged into the long-term habitat disturbance category. Short-term impacts are characterized as disturbing, but not permanently damaging, sensitive habitats. For example, vehicle use in vegetated areas which would not be graded, but would result in crushed vegetation, is classified a short-term impact. A total of 386.14 acres of disturbance will be long-term and 244 acres of disturbance will be short-term.

Wildlife species may be injured or killed during construction activities by being run over by a vehicle, falling into an open hole or trench, killed or crushed under foot, or crushed in burrows. Resident species may also be disturbed by construction activities, noise and personnel. Habitats necessary for fulfilling life sustaining needs of plant and animal species, such as nutrient rich soil, food, cover and nesting structures, may also be temporarily lost during construction activities. Wind and water erosion may also occur during the construction period.

Mitigation - Take Minimization and Compensation Measures

Take Minimization Measures

1. At least thirty (30) days before initiating ground-disturbing activities, HDPP shall designate a representative responsible for communications with the Department and for overseeing compliance with this permit. The Department shall be notified in writing of the representative's name, business address and telephone number, and shall be notified in writing if a substitute representative is designated.

2. The District shall notify the Department fourteen (14) days before initiating ground-disturbing activities.

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3. A knowledgeable, experienced biologist (Designated Biologist) with qualifications as described in the California Energy Commissions' Conditions of Certification Bio-1, shall be present during all construction activities in areas of Listed Species habitat to help avoid the take of individual animals and to minimize disturbance to the habitat. The Designated Biologist shall be approved by the Department, California Energy Commission, CPM, and United States Fish and Wildlife Service (Service) at least 30 days prior to any ground disturbing activities. The biologist shall conduct daily inspections of the Project site and shall ensure compliance with the management measures provided in this permit.

4. The Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this permit, and to order any reasonable measure to avoid the take of an individual of a Listed Species.

5. The Designated Biologist shall possess a valid MOU with the Department for handling tortoises.

6. Neither the Designated Biologist, nor the Department shall be liable for any costs incurred in complying with the management measures, including cease-work orders.

7. HDPP shall conduct an orientation program for all persons who will work on-site during construction. The program shall consist of a brief presentation from a person knowledgeable about the biology of the Listed Species, the terms of the permit and CESA. The education program shall include a discussion of the biology of the Listed Species, the habitat needs of these species, their status under CESA, and the management measures provided in this permit. A fact sheet containing this information shall also be prepared and distributed. Upon completion of the orientation, employees shall sign a form stating that they attended the program and understand all protection measures. These forms shall be filed at Applicant's offices and shall be made available to the Department upon request.

8. HDPP shall clearly delineate the right-of-way boundaries of the Project site by posting stakes, flags, and/or rope or cord, and shall post signs and place fencing as necessary to exclude vehicle traffic unrelated to Project construction.

9. All Project-related parking and equipment storage shall be confined to the construction site or to previously disturbed off-site areas. Undisturbed areas and off-site Listed Species habitat shall not be used for parking or equipment storage. Project related vehicle traffic shall be restricted to established roads, construction areas, storage areas, and staging and parking areas. HDPP shall post signs and shall place posting stakes, flags, and/or rope or cord, and shall post signs and place fencing as necessary to minimize the disturbance of the Listed Species habitat and shall enforce a twenty-five (25) m.p.h. speed limit on the Project site.

10. Pre-construction activities which could take desert tortoises in any manner (e.g. driving off an established road, clearing vegetation, etc.) shall occur in the presence of the Designated

Biologist. The Designated Biologist shall travel with each work crew to ensure that all desert tortoises and their burrows are avoided during these activities. Any hazards to desert tortoises that may be created by this activity shall be eliminated prior to the work crew leaving the site.

11. The project area shall be surveyed for desert tortoise burrows within 24 hours prior to the onset of site disturbance. The inspections shall be conducted by the Designated Biologist and shall provide 100% coverage of the right-of-way. Those burrows within the project area which cannot be avoided shall be excavated by hand during this time period. All excavation of tortoise burrows shall be in accordance with the Service's approved guidelines and handling procedures. Measures will be taken to prevent tortoises from re-occupying the burrow sites. Burrows shall be excavated and tortoises handled only by the Designated Biologist.

12. All tortoises found on the project site, whether above ground, in excavated burrows, or in an open trench shall be moved 300 to 1,000 feet outside of the right-of-way in undisturbed habitat by the Designated Biologist. Desert tortoises shall be placed in the shade of a large, marked shrub. Disposable latex gloves shall be used to handle all desert tortoises. All desert tortoise handling and relocation shall be done in accordance to Service approved protocols (Desert Tortoise Handling Guidelines prepared by the Desert Tortoise Council, Revised 1999).

13. All materials which come in contact with desert tortoises shall be used only once and then properly discarded to minimize contact with the causative factor(s) for upper respiratory tract disease. Tortoises shall be kept upright of all times and handled in a secure but gentle manner to minimize stress including the possibility of voiding the bladder.

14. Any desert tortoise burrow that may be affected (within 30 feet of trenching activities or in the opinion of the Designated Biologist) shall be clearly marked by the Designated Biologist to avoid crushing and shall be carefully monitored to ensure that the desert tortoise and its burrow are not taken. If the Designated Biologist determines that this monitoring effort is insufficient to protect the desert tortoise, temporary fencing shall be placed between the burrow and the construction area in a manner that will direct the desert tortoise away from harm's way. The fence shall be installed and removed either by, or under the direction of, the Designated Biologist.

15. Trash and food items shall be removed daily by the construction workers, placed in raven-proof containers and promptly removed to an approved disposal site to avoid attracting common ravens.

16. The development of all access and right-of-way roads associated with construction shall be minimized and constructed without blading where feasible. The Designated Biologist shall ensure that blading is conducted only where necessary. All roadways not necessary for continued facility maintenance shall be blocked, ripped and revegetated following construction completion to prevent public use.

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17. Trenches not backfilled immediately shall be inspected for trapped desert tortoises three times a day and immediately prior to backfilling by the Designated Biologist. Desert tortoises found within trenches will be relocated as described above.

18. Compliance inspections shall be conducted once per week by the Designated Biologist and a monthly compliance report will be provided to the Department's Palmdale office at the address listed below. The Designated Biologist shall check for compliance with all of the mitigation avoidance measures and the exclusion zones shall be checked to ensure that the signs, stakes, and fencing are still intact and that human activities have been restricted in these protective zones. A post-construction compliance report shall be provided to the Department's Palmdale office within 90 calendar days following project completion. The report shall document the effectiveness of the mitigation measures, the level of take associated with the project including the number of desert tortoises excavated from burrows, and the number of desert tortoises moved from construction sites. The report will make recommendations for modifying or refining the above conditions to enhance desert tortoise protection.

19. Unless otherwise specified, the Department regional representative shall be Ms. Rebecca Jones, 36431 41st Street East, Palmdale, CA 93552, (661) 285-5867.

20. If in any event a desert tortoise is injured as a result of project related activities during construction, it will be immediately taken to a Department-approved veterinary clinic. The veterinary clinic in the vicinity of Victorville is Desert Care Animal Hospital, 15664 Main Street, Hesperia, CA 92345 (telephone number:(760) 949-7387). Any veterinary bills for such injured tortoises will be paid by the HDPP. The recuperated tortoise will be conveyed to the appropriate place to be determined by the Department and the Service. Notification to the Department and the Service shall occur in writing, within 5 calendar days of the incident. Notification shall include the date, time, location and circumstances of the incident.

21. If a tortoise is killed by project related activities during construction, or if a tortoise is otherwise found dead, a written report will be sent to the Department and the Service within five (5) calendar days. The report will include the date, time of the finding or incident (if known), location of the carcass and the circumstances (if known). Tortoise remains shall be collected and frozen as soon as possible. The Department or the Service shall be contacted as to the ultimate disposition of the remains.

22. The Department regional representative shall be requested to attend any consultation with the Service.

23. Project personnel shall not discharge firearms on the project site.

24. To prevent tortoise harassment or mortality or destruction of tortoise habitat, dogs shall not be allowed on the project site.

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25. Disturbed areas will be revegetated with native species to accelerate recovery of the habitat. The project proponent shall monitor the effects of revegetation. Information on plant species composition and absolute cover shall be measured during spring of each year following construction for the first three years, then again in years five, eight and ten. A vegetation monitoring plan shall be developed by the project proponent and submitted to the Department for review and approval prior to initiation of construction.

26. HDPP shall allow the Department representatives access to the Project site to monitor compliance with the terms and conditions of this permit, subject to such reasonable restrictions as HDPP's requests.

Compensation Measures

1. Habitat acquisition - Before initiating ground-breaking activities, HDPP shall acquire and preserve a total of 1,242.8 acres of habitat management ("HM") lands acceptable to the Department, CEC Project Management Section (CPM), and the Service, as set forth below:

A. 318.1 acres shall be conveyed to the Bureau of Land Management to compensate for project impacts to habitat on federal lands, or alternatively HDPP shall provide BLM with funds for restoration or acquisition of an equivalent amount of habitat; and

B. 924.7 acres (167.8 acres if the pipeline to Kramer Junction is not built) shall be transferred to Department in fee title, or, by mutual agreement of the Parties, the HM lands may be transferred to a non-profit corporation or public entity approved by Department under terms approved by Department. HDPP will provide a preliminary title report for the HM lands to Department. All documents conveying the HM lands and all conditions of title are subject to the approval of Department, the Department of General Services and, if applicable, the Fish and Game Commission.

2. Initial Enhancement - HDPP will complete the following initial protection and enhancement measures for the HM lands before initiating ground-breaking activities. Alternatively, HDPP may fund the Department's initial protection and enhancement of the HM lands by providing to the Department $52,200.08 ($36,014.45 if the pipeline to Kramer Junction is not built).

A. Removal of trash or garbage from HM lands.
B. Fencing all or a portion of the property to protect it. This will be dependent on the location of property.
C. Revegetation of disturbed areas.

3. Endowment - If the HM lands are transferred to the Department or to an approved non-profit corporation, HDPP shall provide the Department with $482,640.00 ($353,100.00 if the pipeline

to Kramer Junction is not built) for use as principal for a permanent capital endowment. Interest from this amount will be available for the operation, management and protection of the HM lands. Operation, management, and protection activities may include reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the HM lands. The endowment principal will not be drawn upon unless such withdrawal is deemed necessary by the Department or the non-profit corporation to ensure the continued viability of the species on the HM lands. Monies received by Department pursuant to this provision will be deposited in a special deposit account established pursuant to Government Code §16370. The Department may pool the endowment with other endowments for the operation, management and protection of HM lands for local populations of the Listed Species.

4. Security - HDPP may proceed with ground-disturbing Project activities before fully performing its duties and obligations as set forth above if HDPP secures its performance by establishing letter of credit or other trust account acceptable to the Department. The trust account shall designate the Department as beneficiary, and shall be in an amount sufficient to fund the performance of HDPP's unperformed duty or obligation. No ground disturbance shall take place prior to review and approval of the security by the Department and CPM. The security shall be in the amount of $1,403,234.00 ($551,476.00 if the pipeline to Kramer Junction is not built).

5. If the security is provided to allow the commencement of site disturbance prior to transfer of habitat lands, the project owner must complete the required acquisition, protection and transfer of land no more than 12 months after the start of power plant and linear facilities site disturbance and the endowment must be established for the benefit of the fee title grantee prior to transfer of the land. Within the 12 months specified above or before, HDPP shall provide written confirmation of its decision with respect to whether or not the natural gas pipeline to Kramer Junction is to be built. If the pipeline will be built, HDPP shall inform the Department of the approximate start date of site disturbance and shall increase the established security such that the amounts equal to the amount specified above. HDPP shall complete the required acquisition, protection and transfer of land no more than 12 months after the start of site disturbance.

6. Upon HDPP's satisfactory completion of compensation measures 1, 2, 3 and 4, the Department will take necessary actions to release or return the security to HDPP. If HDPP fails to acquire, enhance and transfer the HM lands within the time periods set forth above, the Department may draw on the security and use the funds to complete the required compensation.

7. Research funding - Prior to any surface disturbance HDPP shall provide the Desert Tortoise Preserve Committee fifty-thousand dollars to support Mohave ground squirrel research that will aid in determining habitat characteristics indicative of suitability within various parts of its range. Once transferred, the money shall be non refundable.

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STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:	)	Docket No. 07-AFC-1
	)	
Application for Certification,	)	**ELECTRONIC PROOF OF SERVICE**
for the VICTORVILLE 2	)	**LIST**
HYBRID POWER PROJECT	)	
by the City of Victorville	)	**(revised September 6, 2007)**
	)	
	)	

☒ Transmission via electronic mail and by depositing one original signed document with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the following:

DOCKET UNIT

CALIFORNIA ENERGY COMMISSION
Attn: DOCKET NO. 07-AFC-1
1516 Ninth Street, MS-4
Sacramento, California 95814-5512
docket@energy.state.ca.us

☒ Transmission via electronic mail addressed to the following:

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DECLARATION OF SERVICE

I, Paul Kihm, declare that on March 21, 2008, I deposited a copy of the attached:

HABITAT COMPENSATION IN THE WEST MOJAVE URBAN INTERFACE: SURETY AND EQUITABLE PRECEPTS (WITH ATTACHMENTS)

with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the California Energy Commission. I further declare that transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service List above.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 21, 2008, at Costa Mesa, California.

Paul Kihm