

**STAFF REPORT**

**24**

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12/06/19

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A2114

D. Simpkin

**PUBLIC AGENCY PERMIT AND RIGHT-OF-WAY MAP  
PURSUANT TO SECTION 101.5 OF THE STREETS AND HIGHWAYS CODE AND  
SECTION 6210.3 OF THE PUBLIC RESOURCES CODE**

**APPLICANT:**

California Department of Transportation

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land at Owens Lake, near Olancho, Inyo County

*AUTHORIZED USE:*

Use, maintenance, and widening of U.S. Route 395.

*LEASE TERM:*

Continuous use, plus 1 year, beginning December 6, 2019.

*CONSIDERATION:*

Reasonable value of the right-of-way to be deposited into the State Parks Recreation Fund.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6210.3, 6216, and 6301; Streets and Highways Code section 101.5.

**Public Trust and State's Best Interests Analysis:**

U.S. Route 395 (Route 395) is a 557-mile-long Interstate which runs in a north to south alignment extending from the Canadian border through the states of Washington and Oregon into California, with a short stretch running through the state of Nevada serving the cities of Reno and Carson City. In California, Route 395 extends along the eastern side of the state from the Oregon border near Goose Lake to Interstate 15 in the city of Hisperia, north of San Bernardino. Route 395 connects the areas of the Owens Valley, Mammoth Lakes, and Mono Lake to the Inland Empire and the greater Southern California region.

## STAFF REPORT NO. 24 (CONT'D)

The California Department of Transportation (Caltrans) has applied for the issuance of a Public Agency Permit and Right-of-Way Map pursuant to Section 101.5 of the Streets and Highways Code. As part of Caltrans' Olancho/Cartago Four-Lane Project (Project), 12.6 miles of the existing two-lane highway will be converted to a four-lane divided expressway from postmile 29.2 to 41.8. Approximately 1.31 acres of the proposed project is located on sovereign land located on the historic western shore of the now dry bed of Owens Lake. A portion of the existing highway has been at this location for many years but was previously unauthorized. In addition, Caltrans has applied to purchase 17.13 acres of State-owned school land located within the project's footprint and is also applying for a General Lease – Public Agency Use to access 1.07 acres during project construction. The Commission will also consider issuance of an archaeological permit to conduct cultural resources mitigation. These additional applications are a separate agenda item to be considered at this Commission meeting. While these separate proposed actions relate to the same Project, they are being considered separately for administrative and legal purposes since one location involves sovereign land and the other involves State-owned school land.

According to Caltrans, the Project will increase roadway safety, close gaps between existing four-lane sections to the north and south, meet present and future traffic demands, and bring the highway up to current design standards. The Project will also include a new shoulder, a nonmotorized multiuse undercrossing, Class III bicycle route, bus turnout, and intersection improvements to benefit pedestrian and bicycle mobility. Construction is anticipated to begin in 2020 and be completed by the fall of 2022.

The proposed Project will continue to allow the movement of people and goods between Northern and Southern California. In addition, the highway provides access to Owens Lake off Route 395 and via Highway 190 and Highway 136. In addition, Route 395 provides access to Death Valley National Park and Mount Whitney, the tallest mountain in the contiguous United States. Issuance of the proposed permit and Right-of-Way Maps will not alienate the State's fee simple interest and will not significantly impair Public Trust resources and values, including wildlife habitat, public access, recreation, and aesthetic enjoyment on this portion of Owens Lake at this time.

### **Climate Change:**

As stated in Safeguarding California Plan: 2018 Update (California Natural Resources Agency 2018), climate change is projected to increase the

## STAFF REPORT NO. 24 (CONT'D)

frequency and severity of natural disasters related to flooding, drought, and storms. Section 3.2.5. of the Project EIR provides an in-depth discussion on climate change. The section cites Executive Order S-13-08 signed by then-Governor Arnold Schwarzenegger in 2008, which directed a number of state agencies to address California's vulnerability to sea-level rise caused by climate change.

In 2009, the California Natural Resources Agency (Resources Agency) was directed to coordinate with local, regional, state, and federal public and private entities to develop the California Climate Adaptation Strategy (Strategy), which summarizes the best-known science on climate change impacts to California, assesses California's vulnerability to the identified impacts, and then outlines solutions that can be implemented within and across state agencies to promote resiliency. The Strategy outline is in direct response to Executive Order S-13-08 that specifically asked the Resources Agency to identify how state agencies can respond to rising temperatures, changing precipitation patterns, sea-level rise, and extreme natural events.

Climate change adaptation for transportation infrastructure involves long-term planning and risk management to address vulnerabilities in the transportation system from increased precipitation and flooding; the increased frequency and intensity of storms and wildfires; rising temperatures; and rising sea levels. In the Project EIR, Caltrans states it is an active participant in the efforts being conducted in response to Executive Order S-13-08 and that it is currently working to assess which transportation facilities are at greatest risk from climate change effects. However, Caltrans states that without statewide planning scenarios for climate change effects, it has not been able to determine what change, if any, may be made to its design standards for its transportation facilities.

The Project area is open desert land with low vegetation fuels that is typically vulnerable to the increase in the frequency and severity of natural disaster events that climate change is projected to bring. These events might include dust storms, flooding during above average snowmelt and precipitation, and flash flooding from thunderstorms. The Project area and surrounding land is unlikely to be vulnerable to flooding events; the highway alignment is elevated from the surrounding area by design, and precipitation would flow off the road onto Owens Lake or desert lands to the west. The Owens River and its tributary streams also channel flood water away from the Project area and onto Owens Lake. Owens Lake has water diversion infrastructure in place for flood control on its dust mitigation sites maintained by the Los Angeles Department of Water and

## STAFF REPORT NO. 24 (CONT'D)

Power. Dust storms are monitored, and the highway is closed if visibility impacts safety. For these reasons these projected climate change effects are not expected to affect the uses of the permitted lands resulting from project activities.

### **Tribal Coordination:**

Commission staff has a long history of close and regular coordination with the Owens Valley tribes, largely due to the City of Los Angeles' ongoing dust suppression efforts on the Lake. In late August 2016, Commission staff initiated informal coordination with the Lone Pine Paiute–Shoshone Reservation's designated representative regarding the Project. While the Tribe requested formal Consultation on the Project as a whole, due to concerns related to cultural resources on State-owned school land in the project alignment, the Tribe has not expressed concern with the area of the Project crossing the lakebed, and Commission staff is not aware of the presence of significant resources in this specific area of the Project alignment. Additionally, the Historic Properties Treatment Plan prepared for the Project contains provisions for treatment of unanticipated discoveries during construction.

### **Conclusion:**

For all the reasons above, staff believes issuance of this permit will not substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed permit; and is in the best interests of the State.

### **OTHER PERTINENT INFORMATION:**

1. Approval or denial of this permit is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the portion of highway and restore the premises to their original condition. Upon termination of the permit, the Permittee also has no right to a new permit.
2. These actions are consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. Under Streets and Highways Code section 101.5, Caltrans is required to determine the reasonable value of the right-of-way needed for the Project

STAFF REPORT NO. 24 (CONT'D)

and deposit the amount in the State Parks and Recreation Fund. The amount deposited is then considered to be part of the highway construction cost.

4. An EIR, State Clearinghouse No. 2010091023, was prepared for this Project by Caltrans, and certified on June 28, 2017. Staff has reviewed this document and the mitigation measures that were made a condition of approval for the Project.
5. Findings made in conformance with the State California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15096) are contained in the attached Exhibit G.
6. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq.; however, the Commission has declared that all lands are significant by nature of their public ownership (as opposed to environmentally significant). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project's consistency with the use classification as required by California Code of Regulations, title 2, section 2954 is not applicable.

**EXHIBITS:**

- A. Site and Location Map
- B. 101.5 Right-of-Way Map
- C.– E., H. Intentionally omitted; not applicable
- F. Mitigation Monitoring Program
- G. Statement of Findings

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that an EIR, State Clearinghouse No. 2010091023, was prepared for this project by Caltrans and certified on June 28, 2017, and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as contained in the attached Exhibit F.

STAFF REPORT NO. 24 (CONT'D)

Adopt the Findings, made in conformance with California Code of Regulations, title 14, sections 15091 and 15096, subdivision (h), as contained in the attached Exhibit G.

Determine that the project, as approved, will not have a significant effect on the environment.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed permit will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the permit; and is in the best interests of the State.

**AUTHORIZATION:**

Authorize a Public Agency Permit and approve a Right-of-Way Map as submitted by the California Department of Transportation pursuant to section 101.5 of the Streets and Highways Code and as authorized by Section 6210.3 of the Public Resources Code, effective December 6, 2019, for continuous use plus 1 year, of a right-of-way for the use, maintenance and widening of U.S. Route 395, Owens Lake, near Cartago, as shown on Exhibits A and B attached and by this reference made a part hereof.

NO SCALE

# SITE



## COUNTY OF INYO

T.18S. R.36E. M.D.M  
SECTION 25

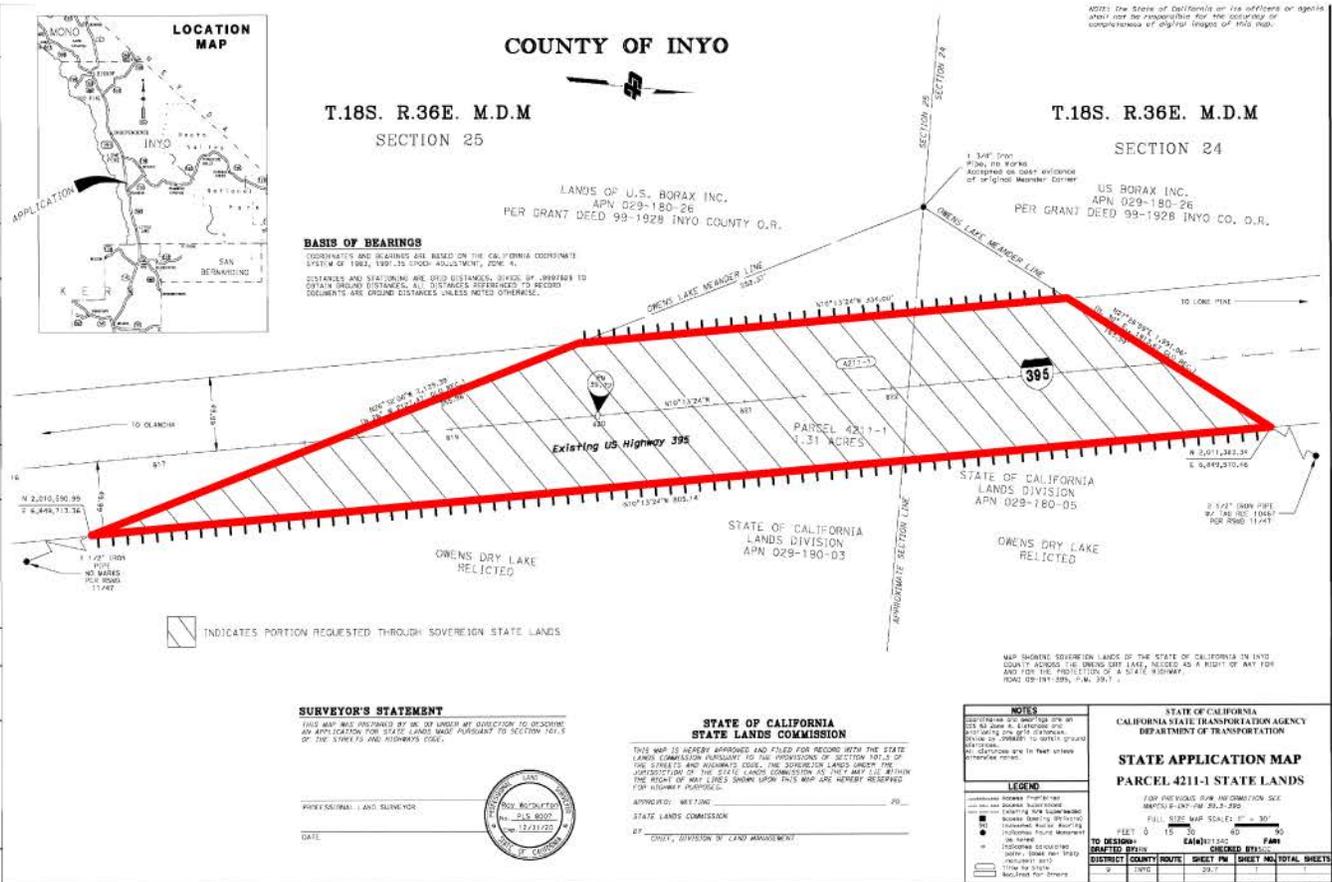
T.18S. R.36E. M.D.M  
SECTION 24

LANDS OF U.S. BORAX INC.  
APN 029-180-26  
PER GRANT DEED 99-1928 INYO COUNTY O.R.

US BORAX INC.  
APN 029-180-26  
PER GRANT DEED 99-1928 INYO CO. O.R.

### BASIS OF BEARINGS

COORDINATE AND BEARINGS ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, 1983-25 1000-KU/STATION, JOB 4.  
DISTANCES AND STATIONING ARE GRID DISTANCES, UNLESS OTHERWISE NOTED. DISTANCES REFERENCED TO RECORD DOCUMENTS ARE GROUND DISTANCES, UNLESS NOTED OTHERWISE.



INDICATES PORTION REQUESTED THROUGH SOVEREIGN STATE LANDS

### SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME, OR UNDER MY SUPERVISION TO ACCOMPANY AN APPLICATION FOR STATE LANDS MADE PURSUANT TO SECTION 101.5 OF THE STREETS AND HIGHWAYS CODE.

PROFESSIONAL LAND SURVEYOR  
DATE: \_\_\_\_\_



### STATE OF CALIFORNIA STATE LANDS COMMISSION

THIS MAP IS HEREBY APPROVED AND FILED FOR RECORD WITH THE STATE LANDS COMMISSION PURSUANT TO THE PROVISIONS OF SECTION 101.5 OF THE STREETS AND HIGHWAYS CODE. THE SOVEREIGN LANDS UNDER THE JURISDICTION OF THE STATE LANDS COMMISSION ARE SHOWN WITHIN THE BOUNDARIES OF THE LINES SHOWN UPON THIS MAP AND ARE HEREBY RESERVED FOR FUTURE PURCHASE.

APPROVED: \_\_\_\_\_  
STATE LANDS COMMISSION  
BY: CHIEF, DIVISION OF LAND MANAGEMENT

### NOTES

1. ALL DISTANCES ARE IN FEET UNLESS OTHERWISE NOTED.  
2. ALL BEARINGS ARE TRUE UNLESS OTHERWISE NOTED.  
3. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

### STATE OF CALIFORNIA CALIFORNIA STATE TRANSPORTATION AGENCY DEPARTMENT OF TRANSPORTATION

### STATE APPLICATION MAP PARCEL 4211-1 STATE LANDS

TO BE SHOWN	CHECKED BY	DATE
DISTRICT		
COUNTY ROUTE		
SHEET NO.		
TOTAL SHEETS		

TO BE SHOWN	CHECKED BY	DATE
DISTRICT		
COUNTY ROUTE		
SHEET NO.		
TOTAL SHEETS		

## HWY 395 @ OWENS LAKE NEAR CARTAGO

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

# Exhibit A

A2114  
CA. DEPT. OF TRANS.  
APN 29-180-05, 29-190-03  
STREETS & HIGHWAY  
CODE SECTION 101.5  
INYO COUNTY



MJF 6/26/19



**EXHIBIT F**  
**CALIFORNIA STATE LANDS COMMISSION**  
**MITIGATION MONITORING PROGRAM**  
**OLANCHA CARTAGO FOUR LANE PROJECT**  
(A2114 and A2115, State Clearinghouse No. 2010091023)

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The California State Lands Commission (Commission or CSLC) is a responsible agency under the California Environmental Quality Act (CEQA) for the Olancha/Cartago Four-Lane Project (Project). The CEQA lead agency for the Project is the California Department of Transportation.

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures for the portion(s) of the Project located on Commission lands. The purpose of a MMP is to impose feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND). State CEQA Guidelines section 15097, subdivision (a), states in part:<sup>1</sup>

*In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.*

The lead agency certified an EIR, State Clearinghouse No. 2010091023, made mitigation measures a condition of project approval for the whole of the Project (see Exhibit F, Attachment F-1), and remains responsible for ensuring that implementation of the mitigation measures. The Commission's action and authority as a responsible agency apply only to the mitigation measures and avoidance and minimization measures listed in Table F-1 below. The full text of each mitigation measure and avoidance and minimization measures, as set forth in the Minimization and/or Mitigation Summary prepared by the CEQA lead agency and listed in Table F-1, is incorporated by reference in this Exhibit F. Any mitigation measures and avoidance and minimization measures adopted by the Commission that differ substantially from those adopted by the lead agency are shown as follows:

- Additions to the text of the mitigation measure are underlined; and
- Deletions of the text of the mitigation measure are shown as ~~strikeout~~ or as otherwise noted.

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<sup>1</sup> The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

**Table F-1. Project Impacts and Applicable Mitigation Measures**

Potential Impact	Mitigation Measure (MM) and Avoidance and Minimization Measure (AMM) <sup>2</sup>	Difference Between CSLC MMs and Lead Agency MMs
Cultural Resources	MM CUL-1	See addition below
Visual/Aesthetics	AMM VIS-1	None
Water Quality and Storm Water Runoff	AMM WQ-1	None
Air Quality	AMM AIR-1	None
Construction Noise	AMM NOI-1	None
Paleontology	MM PALEO-1	See addition below
<b>Biological Resources:</b>		
Natural Communities	MM BIO-1, AMM BIO-1	None
Wetlands and Other Waters	MM BIO-2, AMM BIO-2	None
Desert Tortoise and Desert Tortoise Habitat	MM BIO-3, AMM BIO-8	None
Southern Willow Flycatcher and Western Yellow-billed Cuckoo.	MM BIO-4, AMM BIO-10	None
Invasive Species	AMM BIO-1	None
Migratory Birds	AMM BIO-3	None
Burrowing Owl	AMM BIO-4	None
Golden Eagle	AMM BIO-5	None
Other Species of Concern	AMM BIO-6	None
Threatened and Endangered Species	AMM BIO-7	None
Mojave Ground Squirrel	AMM BIO-9	None

**MM CUL-1 and MM PALEO-1:**

Addition to existing MM CUL-1 and MM PALEO-1:

California State Lands Commission (Commission) staff shall be notified of any California Register of Historic Resources or National Register of Historic Resources-eligible resources or paleontological specimens discovered on lands under the jurisdiction of the Commission. The final disposition of any artifacts or specimens including, but not limited to, those of an archaeological, cultural, historical, or paleontological nature from such lands must be approved by the Commission. Commission staff shall be notified of any human remains discovered on lands under the jurisdiction of the Commission so that the Commission may fulfill its responsibilities as the landowner.

<sup>2</sup> See Attachment F-1 for the full text of each MM and AMMs prepared by the CEQA lead agency.

# **ATTACHMENT F-1**

**Minimization and/or Mitigation Summary Prepared by**

**California Department of Transportation**

# Appendix E Minimization and/or Mitigation Summary

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This appendix is a summary of minimization and/or mitigation measures required.

## ***Potentially Significant Impacts***

### ***Cultural Resources***

The project would result in potentially significant impacts to cultural resources under California Environmental Quality Act. The following are proposed minimization and mitigation measures for these impacts.

Caltrans' design staff continue to work diligently with cultural resources staff and outside agencies and stakeholders to ensure every effort has been made to avoid known sites. All of the proposed project's build alternatives would also incorporate the following measures to minimize harm to cultural resources:

- Cultural resources that can be avoided during construction will be designated as Environmentally Sensitive Areas. An Environmentally Sensitive Area Action Plan will be implemented to protect eligible sites from construction impacts associated with this project.
- A project-specific Programmatic Agreement among the Federal Highway Administration, the Bureau of Land Management, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation was signed in July 2014. The project-specific Programmatic Agreement stipulates that Caltrans, on behalf of the Federal Highway Administration, will develop and implement a Historic Properties Treatment Plan that will complete the identification effort in the Area of Potential Effects, evaluate the potential properties for the National Register of Historic Places, and provide a resolution of adverse effects to historic properties.
- Specific aspects addressed will include, but will not be limited to (see Appendix K for a complete copy of the Programmatic Agreement), the following:
  - Frequent consultation with tribes and other consulting parties
  - Implementation of a tribal monitoring plan
  - Methods to eliminate to the extent possible the overlap of site boundaries
  - Implementation of a geomorphologic study to identify sensitivity for buried resources
  - Consultation with the State Historic Preservation Officer concerning the National Register of Historic Places eligibility of potential properties

MM CUL-1

MM CUL-1

- Methods to identify and protect properties that can reasonably be preserved in conjunction with development of project design details
- A research design or plan for the mitigation, analysis and sharing of study results for properties that cannot be avoided, including integration of those results into a synthesis that can inform ongoing management of cultural resources in the project area and surrounding region to address cumulative and indirect effects and public outreach efforts
- If additional cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find. If human remains are discovered, State Health and Safety Code Section 7050.5 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and the County Coroner contacted. Pursuant to Public Resources Code Section 5097.98, if the remains were thought to be Native American, the coroner would notify the Native American Heritage Commission, which would then notify the Most Likely Descendent. Further provisions of Public Resources Code Section 5097.98 are to be followed as applicable. Federal agencies, such as the U.S. Bureau of Land Management, have additional specific responsibilities under 43 Code of Federal Regulations 10 that must be met in the event human remains are discovered on land under their jurisdiction.

### ***Less than Significant Impacts with Mitigation and Less than Significant Impacts***

#### ***Utilities/Emergency Services***

##### ***Emergency Services***

During construction, a traffic management plan would be followed to accommodate local traffic patterns and reduce delay, congestion, and accidents. By building the project in construction phases, disruption to local and regional traffic would be minimized. Caltrans would also coordinate with ambulance, police, sheriff and fire departments prior to any construction to minimize effects on emergency services.

##### ***Utilities***

Caltrans would coordinate with the Los Angeles Department of Water and Power, Southern California Edison and Verizon companies to relocate utilities. Electric and telephone lines affected would be kept in operation during construction. All of the affected electrical and telephone poles, as well as underground cable lines, would be relocated on new utility easements when necessary.

##### ***Traffic and Transportation***

During construction, a traffic management plan would help reduce traffic delays, congestion, and accidents. Standard Caltrans construction practices include providing

information on roadway conditions, as well as using portable changeable message signs, lane and road closures, advance warning signs, alternate routes, reverse and alternate traffic control, and a traffic contingency plan for unforeseen circumstances and emergencies.

The Caltrans Public Affairs Office would keep the local media informed of construction progress and any delays, closures, and major changes in traffic patterns. The Resident Engineer would provide this information through both the Caltrans Transportation Management Center and Caltrans District 9's Traffic Branch.

### **Visual/Aesthetics**

The following measures would be taken to minimize the impacts to visual resources:

- All median and disturbed roadside areas will be revegetated with plant species found in the Creosote Brush scrubland. Replaced trees and shrubs would be strategically located to blend with and enhance the existing plant communities.
- Caltrans will replace any Fremont cottonwood trees or native species of willow trees that are 4 inches or greater in diameter (at breast height) at a ratio determined by the California Department of Fish and Wildlife. After the roadway is constructed, a portion of the Fremont cottonwood and willow trees will be planted onsite along the outer edge of the new right-of-way near the Olancha Creek crossing, wherever it is possible. Trees will also be planted at an offsite location as close to the project site as possible. All newly planted trees would be monitored for the period to be determined by the California Department of Fish and Wildlife. Watering may be required until the taproot is established.
- Revegetation and planting measures will commence prior to the end of project construction.
- When structures are added, types, materials, colors, and textures will be selected to blend with the adjacent natural landscape components (soil, vegetation, rock, etc.) to the greatest practical degree.
- Cut and fill slopes will be contour-graded to a non-uniform profile to blend with adjacent slopes. Slope grades will be built to make planting, erosion control, and maintenance as easy and efficient as possible, with increased slope rounding at the top and bottom of cuts and fills, and by creating liberal slope variances.
- Topsoil/duff will be collected and stored for placement on disturbed areas prior to replanting.

AMM VIS-1

AMM VIS-1

- The native seed mix, application rates, and planting methods will be determined by or approved in cooperation with a Caltrans landscape architecture representative.
- Existing native vegetation will be protected and preserved wherever possible.
- Scenic vista points are proposed for the Caltrans Preferred Alternative and would complement the scenic nature of U.S. Highway 395. The vista points would be constructed near the crossing of Olancha Creek at the high point of the new alignment above Olancha and would allow travelers to look at the Sierra Mountains to the west or over the Owens Dry Lake to the east.
- If used, the proposed material site would be restored by contour grading, replacing topsoil and revegetating the site with native plant or seeds. The material area would then be closed after the project is complete.

### **Water Quality and Storm Water Runoff**

By incorporating proper and accepted engineering practices and best management practices, the project will not produce substantial or lasting impacts to water quality during its construction or its operation. Most construction activity is short term and mitigated by construction timing, sequencing, water quality protection, revegetation, and erosion and sediment control practices.

The following avoidance and minimization measures will be used:

AMM WQ-1

- A Stormwater Pollution Prevention Plan will be prepared by the contractor and implemented during construction to the satisfaction of the Resident Engineer. This plan will identify the sources of sediment and other pollutants that affect the quality of storm water discharges. The plan will also describe and ensure the implementation of best management practices to reduce or eliminate sediment and other pollutants in storm water as well as in non-storm water discharges.
- Best management practices protecting water quality will be implemented and include the following:
  - Installation of measures to control temporary erosion
  - Installation of measures to prevent debris from entering surface waters
  - Measures to be implemented in the case of an accidental spill of hazardous materials; at a minimum, a spill kit shall be kept onsite and an Emergency Response Plan shall be developed and implemented if a spill occurs
- Caltrans and the contractor for the project will address all potential water quality impacts that may occur during construction.

AMM WQ-1

- A dredge and fill permit will be required as outlined in Section 404 of the Clean Water Act. Caltrans will comply with all permit requirements.
- If used, the proposed material site would be restored by contour grading, replacing topsoil and revegetating the site with native plant or seeds. The material area would then be closed after the project is complete.

### **Geology/Soils/Seismic/Topography**

Caltrans will design and construct the structures in this project to seismic standards. Soil types and topography will be considered in the design and construction of the project.

### **Paleontology**

Caltrans will implement a well-designed paleontological resource mitigation plan following Caltrans guidelines to salvage fossil specimens during the construction excavation phase for this project. Implementing a well-designed paleontological resource mitigation plan will minimize any adverse impacts to paleontological resources.

Caltrans guidelines require monitoring by a qualified Principal Paleontologist. For the Olancha Cartago Four-Lane project, monitoring by a qualified Principal will be required in specified areas north of Cartago.

Paleontological mitigation for the project will include the following:

MM PALEO-1

- A standard special provision for paleontology mitigation will be included in the construction contract Special Provisions section to advise the construction contractor of the requirement to cooperate with the paleontological salvage.
- A qualified Principal Paleontologist or qualified Caltrans Paleontology Coordinator will prepare a detailed Paleontological Mitigation Plan prior to the start of construction. All geologic work will be performed under the supervision of a California Professional Geologist.
- The Principal Paleontologist or Caltrans Paleontology Coordinator will be present at pre-grading meetings to consult with grading and excavation contractors.
- Near the beginning of excavations, the Principal Paleontologist or Caltrans Paleontology Coordinator will conduct an employee environmental awareness training session for all persons involved in earth moving for the project.
- A qualified paleontology monitor under the direction of the Principal Paleontologist or Caltrans Paleontology Coordinator will be onsite to inspect cuts for fossils during original grading involving sensitive geologic formations.

MM PALEO-1

- When fossils are discovered, the paleontology monitor or Caltrans Paleontology Coordinator will recover them and contact a Principal Paleontologist for assistance. Construction work in these areas will be halted or diverted to allow recovery of fossil remains in a timely manner.
- Bulk sediment samples will be recovered from fossiliferous horizons and processed for microvertebrate remains as determined necessary by the Principal Paleontologist.
- Fossil remains collected during the monitoring and salvage portion of the mitigation program will be cleaned, repaired, sorted, and cataloged.
- Prepared fossils, along with copies of all pertinent field notes, photos, and maps, will then be deposited in a scientific institution with paleontological collections.
- A final report will be completed that outlines the results of the mitigation program and will be signed by the Caltrans Paleontology Coordinator or Principal Paleontologist and Professional Geologist.

### ***Hazardous Waste and Materials***

Caltrans will coordinate any necessary remediation with the appropriate local and state agencies. Standard Special Provisions would be developed for this project to ensure that hazardous waste/substances discovered during construction activities would be handled appropriately.

### ***Air Quality***

Most of the construction impacts to air quality are short term in duration and therefore will not result in adverse or long-term conditions. Implementation of the following measures will reduce any air quality impacts resulting from construction activities:

AMM AIR-1

- The construction contractor will comply with Caltrans' Standard Specifications Section 7-1.02C and Section 14-9 of Caltrans' Standard Specifications. Section 7, "Legal Relations and Responsibility," addresses the contractor's responsibility on many items of concern, such as air pollution; protection of lakes, streams, reservoirs, and other water bodies; use of pesticides; safety; sanitation; convenience of the public; and damage or injury to any person or property as a result of any construction operation. Section 14-9, Air Quality, includes provisions to control dust.
- Water or dust palliative will be applied to the site and equipment as frequently as necessary to control fugitive dust emissions.
- Soil binder will be spread on any unpaved roads used for construction purposes and on all parking areas for project construction.

AMM AIR-1

- Trucks will use stabilized construction entrances as they leave the right-of-way to control fugitive dust emissions.
- Construction equipment and vehicles will be properly tuned and maintained. Low sulfur fuel would be used in all construction equipment as provided in California Code of Regulations Title 17, Section 93114.
- A dust control plan addressing sprinkling, temporary paving, and speed limits will be developed to minimize construction impacts to existing communities.
- Equipment and materials storage sites will be located as far away from residences as practical. Construction areas would be kept clean and orderly.
- Track-out reduction measures such as gravel pads will be used at project access points to minimize dust and mud deposits on roads affected by construction traffic.
- To the extent feasible, all transported loads of soils will be covered and wet prior to transport, or adequate freeboard (space from the top of the material to the top of the truck) will be provided to reduce PM<sub>10</sub> and deposition of particulates during transportation.
- Dust and mud that are deposited on paved, public roads due to construction activity and traffic will be removed to reduce particulate matter.
- Mulch or plant vegetation will be installed as soon as practical after grading to reduce windblown particulates in the area.

### **Construction Noise**

No adverse noise impacts from construction are anticipated because construction would be conducted in accordance with Caltrans Standard Specifications Section 14-8.02, Noise and Vibration, and applicable local noise standards. Construction noise will be short term, intermittent, and overshadowed by local traffic noise.

Implementing the following measures will minimize the temporary noise impacts from construction:

AMM NOI-1

- All equipment will have sound-control devices that are no less effective than those provided on the original equipment. No equipment will have an un-muffled exhaust.
- As directed by Caltrans, the contractor will implement appropriate additional noise mitigation measures, including changing the location of stationary construction equipment, turning off idling equipment, rescheduling construction activity, notifying adjacent residents in advance of construction work, and installing acoustic barriers around stationary construction noise sources.

### **Natural Communities**

*Big Sagebrush Series, Bulrush Series, Creosote Bush Series, Greasewood Series, Mixed Saltbush Series, Mixed Willow Series, Rubber Rabbitbrush Series, Saltgrass Series, and Shadscale Series*

Impacts to habitat in the onsite natural communities have been minimized as much as possible for each of the proposed alternatives, while still allowing for construction of the project.

Species mortality will be avoided through the implementation of work windows, designed to avoid clearing and grubbing activities during the seasons when various species are nesting and rearing young. In addition, pre-construction clearance surveys will be completed to protect any species that may be present at the time when clearing and grubbing are scheduled to occur.

#### Compensatory Mitigation for Natural Communities

Impacts to any native species of trees in these habitats, such as willows, will be mitigated for as follows:

- Vegetation impacted by project activities with a cumulative diameter at breast height greater than 4 inches and less than 8 inches will be replaced using locally sourced plantings at a 3:1 replacement-to-impact ratio.
- Vegetation impacted by project activities with a cumulative diameter at breast height greater than 8 inches and less than 12 inches will be replaced using locally sourced plantings at a 5:1 replacement-to-impact ratio.
- Vegetation impacted by project activities with a cumulative diameter at breast height greater than 12 inches will be replaced using locally sourced plantings at a 5:1 replacement-to-impact ratio.

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Any tree replacement plantings will be planted on or as close to the project site as possible.

#### *Fremont Cottonwood Series*

Impacts to the Fremont Cottonwood Series habitat have been minimized as much as possible for each of the proposed alternatives, while still allowing for highway crossings at Olancho and Cartago Creeks.

Avoidance and minimization of impacts to this habitat will be further accomplished through the installation of Environmentally Sensitive Area (ESA) fencing or other form of demarcation, which will protect any neighboring Fremont Cottonwood habitat outside of the project from being impacted during construction.

The following additional measures will be used and included in the construction contract to avoid the spread of invasive species of plants:

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- All workers on the project site will attend a mandatory worker education training that will cover the invasive species of plants present on the project site and will include color photographs of the species, as well as the specific measures being implemented to avoid their spread.
- All construction equipment and vehicles will be sufficiently cleaned, using a chemical treatment, pressure washing, or other sufficient method, of vegetative contaminants prior to entering the project site.
- Areas subject to noxious weed disturbance will be replanted with fast-growing native grasses, or a native species erosion control seed mixture. If seeding is not feasible in any locations, another method to protect exposed soils will be used.

Compensatory Mitigation

All impacts to the Fremont Cottonwood Series trees, as well as the other native species of trees in this habitat, will be mitigated for as follows:

MM BIO-1

- Vegetation impacted by project activities with a cumulative diameter at breast height greater than 4 inches and less than 8 inches will be replaced using locally sourced plantings at a 3:1 replacement-to-impact ratio.
- Vegetation impacted by project activities with a cumulative diameter at breast height greater than 8 inches and less than 12 inches will be replaced using locally sourced plantings at a 5:1 replacement-to-impact ratio.
- Vegetation impacted by project activities with a cumulative diameter at breast height greater than 12 inches will be replaced using locally sourced plantings at a 5:1 replacement-to-impact ratio.

At least a portion of the plantings that will be installed to mitigate for direct impacts to Fremont cottonwood habitat will be accomplished onsite along the outside edge of the new Caltrans right-of-way. The onsite plantings will also help to reduce indirect impacts over time; as the plantings mature, they will provide a buffer between the road and adjacent habitat, reducing noise, light and the visual presence of vehicles. Any mitigation plantings that are unable to be installed on the project site will be planted as close to the project vicinity as possible.

All plantings will be monitored for a five-year period to ensure their success. Based on Caltrans' current water conservation strategy, no mitigation plantings will be watered during periods of extreme drought, such as those experienced in 2015. Therefore, if the project is constructed during a period of extreme drought and Caltrans is still prohibiting watering on mitigation projects, a contingency measure to ensure that plants become successfully established will be included in the planting plan

### **Wetlands and Other Waters**

Impacts to wetlands, waters of the U.S. and non-jurisdictional waters were minimized as much as possible, while still allowing for construction of the project. Initially, it was thought that wetlands, waters of the U.S. and non-jurisdictional waters could be entirely avoided; however, it was later discovered that entirely avoiding impacts to these hydrologic resources would not be possible and that the impacts could be relatively substantial, depending on which alternative was being considered. Bypass Alternatives 3 and 4 were in part developed in an effort to avoid impacts to Wetland 3, located just north of Olancha. However, because impacts to Wetlands 1 and 2 were still relatively high, the Preferred Alternative was developed with design changes that included narrowing the highway shoulders and cut and fill slopes in the Willow Dip area, where Wetlands 1 and 2 are located. Therefore, each of the bypass alternatives (Alternatives 3, 4 and the Preferred) represent Caltrans' efforts at reducing impacts to wetlands.

Another measure, developed to avoid and minimize impacts to onsite hydrologic features, includes the installation of culverts in areas with existing surface water, or those prone to surface water runoff during seasonal or intermittent storms. The installation of culverts will be seasonally timed so perennial drainages are low and ephemeral and intermittent drainages are dry.

The following avoidance and minimization measures will also be used:

- Work in wetlands and waters of the U.S will be conducted outside of the rainy season when flows are absent or low to minimize temporary impacts.
- A Stormwater Pollution Prevention Plan will be prepared.
- Best management practices protecting water quality will be implemented and include:
  - Installation of measures to control temporary erosion
  - Installation of measures to prevent debris from entering surface waters
  - Measures to be implemented in the case of an accidental spill of hazardous materials; at a minimum, a spill kit shall be kept onsite and an emergency response plan shall be developed and implemented if a spill occurs
- Any portions of wetlands or waters of the U.S. that will not be permanently impacted will be protected with an Environmentally Sensitive Area (physical demarcation of a designated area to prevent construction equipment from entering the area), unless it is determined to be infeasible. The Environmentally Sensitive Areas will be identified on the project mapping and included in the Plans, Specifications, and Estimates section of the construction contract so they can be installed onsite prior to the start of construction. A qualified biologist would be onsite at the time of the Environmentally Sensitive Area installation.

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- A mandatory environmental education training would be provided for all construction personnel prior to the start of any ground-breaking activities to review the specific avoidance and minimization measures in place to eliminate unnecessary impacts to wetlands and waters of the U.S. on the project site.
- Any temporary impacts to wetlands or waters of the U.S. that are not treated as permanent impacts and for which mitigation is therefore not provided will be restored to pre-project conditions.

### Compensatory Mitigation

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Compensatory mitigation for all permanent impacts to jurisdictional wetlands and waters of the U.S., as well as non-jurisdictional waters, will be completed to ensure there is no net loss of wetland or waters habitat. The specific mitigation ratios will be determined at the time of permit acquisition. At this time, it has not been determined if the mitigation will be accomplished onsite or offsite. These details will be conveyed when the project permit applications are submitted. Mitigation for impacts to the onsite resources will be provided through the creation, enhancement, or preservation of like habitat, as approved by the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, and Regional Water Quality Control Board.

Mitigation for all temporary impact areas to these features will be either restored to pre-project conditions or mitigated for in kind as if they were permanent. Onsite restorative measures for temporary impacts may include re-contouring of soils, re-vegetation efforts using local native species, and/or weed removal efforts.

### **Plant Species**

*Inyo Onion, Inyo County Star Tulip, Kern County Clarkia, Short-Pedicelled Cleomella, Desert Bird's-Beak, Clustered-Flower Cryptantha, Winged Cryptantha, Sanicle Cymopterus, Pine Creek Evening Primrose, Booth's Evening Primrose, Death Valley Sandmat, Limestone Monkeyflower, Depressed Standing-Cypress, Coso Mountains Lupine, Creamy Blazing Star, Crowned Muilla, Nevada Oryctes, Inyo Phacelia, and Charlotte's Phacelia*

Because these species were not seen in the project area, no avoidance, minimization, and/or mitigation measures are proposed. During the final design phase, additional botanical surveys will be conducted and these species will be targeted during those surveys.

### **White Pygmy-Poppy**

For construction of the Preferred Alternative, an Environmentally Sensitive Area (ESA) will be established for any portions of the mapped population that are located within the new Caltrans right-of-way that can be effectively avoided. Likewise, if Alternative 3 were to be constructed, an Environmentally Sensitive Area would be

established along the eastern edge of the mapped population so this species could be avoided.

No compensatory mitigation is proposed.

*Parish's Popcornflower*

During construction, an Environmentally Sensitive Area fence will be installed along the edge of the Caltrans right-of-way at the locations where the offsite population was mapped during the 2002 surveys. In addition, once a project alternative has been selected and approved, Caltrans will complete additional botanical surveys and this species will be targeted during the surveys.

No compensatory mitigation is proposed at this time. However, if this species is observed on the project site during the botanical surveys to be completed once an alternative has been finalized, the topsoil in the location where plants are observed will be collected and stockpiled before construction. Once construction is complete, the stockpiled soils will be reapplied with the intention that any seeds in the salvaged soils would germinate during a year with favorable hydrologic conditions.

***Animal Species***

*Pallid Bat, Townsend's Big-eared Bat and Spotted Bat*

No avoidance or minimization measures are specifically proposed for these species because these bats are not expected to roost on the project site. However, pre-construction bat surveys will be conducted at the appropriate season during the year prior to any disturbance of possible roosting habitat. Therefore, if these species are found to be roosting on the project site, it would be detected at that time and protective exclusionary measures would be implemented after consultation and approval from the California Department of Fish and Wildlife.

*Compensatory Mitigation*

No compensatory mitigation is proposed for impacts to these species, but mitigation for habitat for the southwestern willow flycatcher is expected to also benefit these species.

*Silver-haired Bat, Long-legged Myotis, Yuma Myotis, Western Small-footed Myotis, Fringed Myotis and Long-eared Myotis*

There is a potential for bat species to roost or have nursery colonies in the trees along Olancha Creek or in abandoned buildings. Therefore, the portion of riparian habitat that will be impacted by the project will be covered during the pre-construction bat surveys, to be conducted during the appropriate season the year prior to any disturbance of possible roosting habitat. If this species is found to be roosting in the habitat along Olancha Creek, protective exclusionary measures would be implemented after consultation and approval from the California Department of Fish and Wildlife.

### Compensatory Mitigation

Although no compensatory mitigation is proposed for impacts to these species, mitigation for impacts to potential southwestern willow flycatcher migratory riparian habitat along Olancha Creek is expected to also benefit these species.

Bats will be covered by pre-construction clearance surveys, to be completed between 1 and 1 ½ years prior to any clearing and grubbing activities. If evidence of roosting bats is discovered at the time of the survey, California Department of Fish and Wildlife will be consulted to determine the most suitable method for excluding the species at the subject location. Exclusionary methods will only be installed during the volant (when young are able to fly) season, generally September through March, during the year prior to construction. All exclusion measures shall be removed upon completion of construction.

- Some examples of methods used for bat exclusion are the following:
  - Netting, foam, or other device that can be installed to prohibit entry to potential roosting habitat.
  - One-way doors that allow roosting bats to exit but not re-enter roosting habitat.

### *Migratory Birds*

All of the project build alternatives will include the removal of surface vegetation, shrubs, and trees that provide potential nesting habitat for migratory birds protected by the Migratory Bird Treaty Act of 1918. Therefore, Section 14 Special Provisions for bird protection will be included in the construction contract and will include the following avoidance and minimization measures:

- Clearing and grubbing will be completed outside of the nesting season, unless deemed unfeasible to avoid unnecessary impacts to migratory birds.
- Migratory bird clearance surveys will be completed 3 days prior to the start of construction if commencement occurs during the nesting season, or prior to any clearing and grubbing during the nesting season.
- The migratory bird clearance survey will include clearing all vegetative substrate as well as bare ground.
- A mandatory environmental education will be provided for all construction personnel prior to the start of any clearing, grubbing or ground-breaking activities to review the importance of avoiding impacts to nesting migratory birds observed in the project area.

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- Any nests discovered during the pre-construction surveys will be Environmentally Sensitive Area-protected with an appropriate construction buffer determined in consultation with California Department of Fish and Wildlife to avoid impacts to young birds until they are able to fledge from the nest.
- The land used to mitigate for desert tortoise habitat is also expected to benefit migratory birds.

### *Mule Deer*

Caltrans initially proposed a large multi-use wildlife and livestock undercrossing to be located just south of Olancha Creek, which in part was planned to allow for deer movement. However, based on the collision data discussed above, no avoidance and minimization measures are being proposed for this species.

Compensatory mitigation for impacts to desert tortoise habitat are expected to benefit the mule deer as well.

### *Owens Valley Vole*

Impacts to this species' habitat (wetlands) were minimized as much as possible during development of the project, including through the introduction of the bypass alternatives. However, entirely avoiding impacts to wetlands is not feasible, while still allowing for the new highway.

Other avoidance and minimization measures that will be included in the construction contract to avoid the spread of invasive species will be implemented as outlined for the Fremont cottonwood series above.

Compensation for impacts to wetlands will benefit the Owens Valley vole, as long as the mitigation is accomplished within Owens Valley.

### *Burrowing Owl*

Because burrowing owls were seen within the project site during the 2012 desert tortoise surveys, the following avoidance and minimization measures will be used to protect this species both during and after construction.

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1. Prior to construction, protocol-level surveys will be conducted well in advance of construction to determine the potential presence of individual burrowing owls as well as the location of any burrows within the project site. The surveys will follow the 2014 *Staff Report on Burrowing Owl Mitigation*. These surveys will cover the entire right-of-way as well as adjacent undeveloped lands located approximately 500 feet beyond the new right-of-way (in areas where Caltrans has permission to enter).
2. If any burrowing owls and/or active burrows are discovered on or in the immediate vicinity of the new right-of-way, Caltrans will consult with the

California Department of Fish and Wildlife to determine which measures will be employed to protect the owls from project-related disturbance.

Some examples of the potential measures that may be used (in coordination with the California Department of Fish and Wildlife) if burrowing owls are found on or in close proximity to the right-of-way include the following:

- a. Trap and relocate individual owls and collapse burrows to prevent the owls from reentering the project site (outside the nesting season).
- b. Establish a protective Environmentally Sensitive Area (ESA) with an appropriate construction buffer, for any active burrows that contain owlets (during the nesting season, approximately April 15 to July 15) to remain in place until the owlets fledge.
- c. Construction activities in proximity to an Environmentally Sensitive Area-fenced burrow will be monitored on a weekly basis by a project biologist. Weekly monitoring will be continued until:
  - The owlets have fledged, or
  - Construction has been completed in the area, or
  - The biologist, in consultation with the California Department of Fish and Wildlife, determines that monitoring is no longer needed in that location.

3. Prior to the onset of any ground-disturbing activities associated with the project, a biologist, will provide all construction personnel who will be present on the work site (within or adjacent to the right-of-way) with a mandatory worker education training, which will include the following information:
  - A detailed description of the burrowing owl and its life history, including color photographs of the species as well as its scat and burrows.
  - A description of the protection the burrowing owl receives from the California Department of Fish and Wildlife and possible legal action that may be incurred for violation of the protection this species receives.
  - The Contractor, Caltrans Resident Engineer (RE) and all workers will be advised that all trash (which could attract predators of burrowing owls) will be removed from work sites, or completely secured at the end of the day.

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- The Contractor, Caltrans Resident Engineer (RE) and all workers will be advised that equipment and vehicles must remain within the designated work areas, to be provided and approved by a biologist, or the monitor, prior to the onset of construction.

### Compensatory Mitigation

No compensatory mitigation is being specifically proposed for this species, aside from the avoidance and minimization measures listed above. However, the habitat obtained and preserved to mitigate for impacts to desert tortoise habitat (Section 2.3.5) are expected to benefit the burrowing owl as well.

### *Golden Eagle*

Although no nests or specific foraging behaviors have been observed on the project site, the following avoidance and minimization measures are being proposed to avoid take of this species:

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1. All tree and vegetation removal will be completed from approximately September to February, which is outside the nesting season, unless deemed infeasible and subsequently pre-authorized by the project biologist.
2. Pre-construction migratory bird clearance surveys will be completed within 3 days before the start of any clearing and grubbing and/or prior to the start of construction, if these activities do not occur concurrently.
3. If any golden eagles attempt to build a nest on the project site between now and the start of construction, a protective Environmentally Sensitive Area with a California Department of Fish and Wildlife-approved construction buffer will be established around the nest prior to any clearing and grubbing. A qualified project biologist will be present to monitor the nest during all construction activities in the vicinity of the nest, and the Environmentally Sensitive Area will be maintained until the young have fledged.
4. An environmental Worker Education Training will be provided to all workers who enter the project site, to discuss the golden eagle. In addition to providing a description of the protection the golden eagle receives, the training will also inform workers that if any eagles are observed on the site, construction activities will be halted until the individual leaves the site on its own accord.

Because a project biologist will be present at the project site at least once per week throughout the duration of construction, golden eagles will be watched for, even if no birds are observed on the project site between now and the start of construction.

Compensatory Mitigation

No compensatory mitigation is being specifically proposed for the golden eagle; however, the offsite land that will be purchased to mitigate for impacts to desert tortoise habitat is expected to benefit the golden eagle as well through the preservation of foraging habitat.

*Loggerhead Shrike*

Tree and vegetation removal has been proposed to occur between approximately September and February, outside of the nesting season, unless deemed infeasible and subsequently pre-authorized by the project biologist. Pre-construction migratory bird clearance surveys will be completed within 3 days before the start of any clearing and grubbing, and prior to the start of construction, if these activities do not occur concurrently. If any nesting loggerhead shrikes are discovered within the project site, an Environmentally Sensitive Area and construction buffer will be established around the nest until the young have fledged. The mitigation proposed for the desert tortoise will benefit the loggerhead shrike as well (see Threatened and Endangered Species, Section 2.3.5).

*Le Conte's Thrasher*

Species mortality will be avoided through the proposed implementation of work windows (from September to February), designed to avoid clearing and grubbing activities during the seasons when various species are nesting and rearing young. In addition, pre-construction migratory bird clearance surveys will be completed within 3 days before the start of any ground-disturbing activities, including clearing and grubbing. If any nesting Le Conte's thrashers are discovered within the project site, an Environmentally Sensitive Area and construction buffer will be established around the nest until the young have fledged.

The mitigation proposed for the desert tortoise will benefit the Le Conte's thrasher as well (see Threatened and Endangered Species, Section 2.3.5).

*Northern Sagebrush Lizard*

Pre-construction surveys will include this species. If individual northern sagebrush lizards are observed during, their location will be recorded and any suitable-sized burrows found will be avoided as feasible.

Compensatory Mitigation

No compensatory mitigation is being specifically proposed for this species; however, Caltrans anticipates that the mitigation habitat that is used to compensate for impacts to desert tortoise habitat will also benefit the northern sagebrush lizard.

*Mountain Plover*

Pre-construction migratory bird clearance surveys will be completed on the project site within 3 days before the start of any ground-disturbing activities, such as clearing and grubbing, which will allow project biologists to determine the potential presence of any species of wildlife, including the mountain plover.

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Compensatory Mitigation

No impacts to this species are anticipated; therefore, no compensatory mitigation is proposed. However, the offsite land that will be purchased to mitigate for impacts to desert tortoise habitat is expected to also benefit this species through the preservation of potential wintering habitat.

*Yellow-Breasted Chat*

Because this species is not expected to occur on the project site, no avoidance or minimization measures specific to this species are proposed. However, migratory bird work windows (September to February) and pre-construction migratory bird surveys (completed within 3 days before the start of any ground-disturbing activities) will already be in place. If this species is found nesting in the project site during the pre-construction surveys, a protective Environmentally Sensitive Area will be established to protect the nest and young until the young are able to fledge.

Compensatory Mitigation

No compensatory mitigation is currently proposed for this species. However, the offsite land that will be purchased to mitigate for impacts to potential southwestern willow flycatcher migratory habitat is expected to also benefit this species through the preservation of potential nesting habitat.

*American Badger*

Because the badger is not expected to occur on the project site, no avoidance or minimization measures are proposed. However, if any badgers (or their sign) are detected during any of the remaining surveys that will be completed once an alternative has been finalized, measures to protect them from impact will be implemented on the project and consultation with the California Department of Fish and Wildlife will be initiated.

Compensatory Mitigation

No compensatory mitigation is proposed for this species; however, the compensatory mitigation that will be completed for impacts to desert tortoise habitat is expected to benefit the American badger as well.

*Desert Kit Fox*

At the time when burrowing owl surveys are completed prior to construction, the locations of any potential desert kit fox dens will also be noted. Later, a tracking medium and camera stations will be placed at the recorded locations of potential dens to determine the presence or absence of the desert kit fox, as well as the approximate number of individuals inhabiting the project site. If individual desert kit foxes are found to be living on the project site, passive relocation measures will be implemented during the time when females are not pregnant or raising dependent young, as approved by the California Department of Fish and Wildlife.

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Compensatory Mitigation

Compensatory mitigation that will be completed for impacts to desert tortoise habitat is expected to benefit the desert kit fox as well

**Threatened and Endangered Species**

*Owens Valley Checkerbloom*

During construction, an Environmentally Sensitive Area fence will be installed along the edge of the Caltrans right-of-way at locations where the offsite population was mapped during the 2002 surveys.

Compensatory Mitigation

No compensatory mitigation is proposed at this time. However, if this species is observed on the project site during the botanical surveys to be completed prior to construction, the topsoil in the location where plants are observed will be collected and stockpiled before construction. Once construction is complete, the stockpiled soils will be reapplied with the intention that any seeds in the salvaged soils would germinate during a year with favorable hydrologic conditions.

*Mojave Tarplant*

The Mojave tarplant is not expected to occur within the project site; therefore, no avoidance or minimization measures are being proposed.

Compensatory Mitigation

No compensatory mitigation is proposed at this time; however, if this species is observed on the project site during the botanical surveys to be completed prior to construction, the topsoil in the location where plants are observed will be collected and stockpiled before construction. Once construction is complete, the stockpiled soils will be reapplied with the intention that any seeds in the salvaged soils would germinate during a year with favorable hydrologic conditions.

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*Western Snowy Plover (Inland Population)*

Pre-construction migratory bird clearance surveys will be completed within 3 days before the start of any ground-disturbing activities, such as clearing and grubbing. This would allow biologists to determine the potential presence of any species of wildlife, including the western snowy plover. If nesting snowy plovers are found during the pre-construction surveys, a protective Environmentally Sensitive Area will be established to protect the nest and young until the young are able to fledge.

Compensatory Mitigation

No impacts to this species or its habitat are expected to occur from the project, so no compensatory mitigation is proposed.

*Least Bell's Vireo*

Work windows (from September to February), designed to avoid clearing and grubbing activities during the seasons when various species are nesting and rearing

young, are proposed for this project. In addition, pre-construction migratory bird clearance surveys will be completed within 3 days before the start of any ground-disturbing activities, including clearing and grubbing, to protect any individual birds that may be nesting at the time when clearing and grubbing are scheduled to occur. These measures will ensure that no impacts could occur to this species, if the birds were discovered on the project site.

Compensatory Mitigation

No compensatory mitigation is proposed.

*Swainson's Hawk*

The project has been designed to avoid the unnecessary removal of trees as much as possible; however, some tree removal is unavoidable. To ensure this species is protected from construction of the project, the following avoidance and minimization measures will be implemented:

1. Protocol surveys for the Swainson's hawk will be completed on the selected alternative during the year prior to the start of construction.
2. All tree and vegetation removal will be completed from approximately September to February, which is outside the nesting season, unless deemed infeasible and subsequently pre-authorized by the project biologist.
3. Pre-construction migratory bird clearance will be completed within 3 days before the start of any clearing and grubbing and prior to the start of construction, if these activities do not occur concurrently.
4. If any Swainson's hawks attempt to build a nest on the project site between now and the start of construction, a protective Environmentally Sensitive Area with a California Department of Fish and Wildlife-approved construction buffer will be established around the nest prior to any clearing and grubbing. A qualified project biologist will be present to monitor the nest during all construction activities in the vicinity of the nest, and the Environmentally Sensitive Area will be maintained until the young have fledged.
5. An environmental Worker Education Training, discussing the Swainson's hawk and the protection the hawk receives under the State Endangered Species Act, will be provided to all workers who enter the project site.

Because a project biologist will be present at the project site at least once per week throughout the duration of construction, Swainson's hawks will be watched for, even if no birds are observed on the project site between now and the start of construction.

Compensatory Mitigation

No compensatory mitigation is being specifically proposed for the Swainson's hawk, but the offsite land that will be purchased to mitigate for impacts to desert tortoise habitat is expected to benefit this species as well through the preservation of foraging

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habitat. Likewise, the portion of offsite mitigation that will be completed for the southwestern willow flycatcher is expected to benefit the Swainson's hawk as well through the protection of potential nesting habitat.

### *Desert Tortoise*

A Biological Opinion was issued for Caltrans Preferred Alternative. The U.S. Fish and Wildlife Service concluded that although the project may affect and is likely to adversely affect the desert tortoise, the project is not likely to jeopardize the tortoise's continued existence.

The following avoidance and minimization measures will be included in the project to provide protection to this species:

1. Prior to construction, a U.S. Fish and Wildlife Service-authorized Biological Monitor(s) will conduct focused clearance surveys for the desert tortoise, following the most recent U.S. Fish and Wildlife Service desert tortoise survey protocol. The surveys will cover the entire right-of-way well as any adjacent undeveloped lands located between the existing highway and new alignment. Furthermore, the areas located between the new alignment and the aqueduct will also be surveyed for tortoises.

2. The U.S. Fish and Wildlife Service-authorized Biological Monitor will be referred to as "the Monitor" hereafter. The Monitor(s) will determine if any tortoises are present on or in the vicinity of the project site and if any tortoises need to be relocated and/or any burrows collapsed, to prevent isolating individuals from the rest of the population. Upon discovery of a tortoise or active tortoise burrow, the following avoidance measures will be implemented:

a. An on-call U.S. Fish and Wildlife Service-authorized Desert Tortoise Biologist will be contacted to collapse any recent (Class 1 or 2) tortoise burrows and/or to relocate any live tortoises found in the PIA, new right-of-way, or areas located between the existing and new alignments where the potential exists for individuals to become isolated from the rest of the population.

b. The U.S. Fish and Wildlife Service-authorized Desert Tortoise Biologist will be referred to as "the Biologist" hereafter. In some cases, the Biologist may choose to contact the U.S. Fish and Wildlife Service to determine if the collapsing of a particular burrow and/or the relocation of an individual is appropriate, based on its proximity to the new alignment. If it is deemed unnecessary to collapse a burrow, the U.S. Fish and Wildlife Service will be notified and a GPS point will be taken at the burrow to record its location. In addition, the Monitors will establish a demarcated Environmentally Sensitive Area around the burrow to provide a buffer from construction activities in its proximity. At the onset of construction, activities in proximity to an Environmentally Sensitive Area-fenced burrow would be monitored by the Monitor, who would be present until construction has been completed in the

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area, or until the Monitor, in consultation with the U.S. Fish and Wildlife Service, deems that monitoring is no longer needed in that location.

3. Prior to the onset of any ground-disturbing activities associated with the project, the Monitor shall provide all construction personnel who will be present on the work site (within or adjacent to the right of way) with a mandatory worker education training that will include the following information:

a. A detailed description of the desert tortoise and its life history, including color photographs of the species as well as its scat and burrows.

b. A description of the protection the desert tortoise receives under the Federal and State Endangered Species Acts and possible legal action that may be incurred for violation of the acts, including discussion of the definition of “take.”

c. A list of the protective measures being implemented on the project to protect the desert tortoise that will include the following:

i. “Look Before You Move”- all employees and contractors at the project shall look under all vehicles and equipment for the presence of desert tortoises before moving the vehicle or equipment. If a desert tortoise is observed, no vehicles or equipment would be moved until the animal has left voluntarily or is removed by the on-call Biologist.

ii. An emphasis on the “Do Not Touch” policy will apply to all workers on the project.

iii. All trash that may attract predators of desert tortoise (mainly ravens) will be removed from work sites, or completely secured at the end of the day.

iv. All workers will be advised that equipment and vehicles must remain within the designated work areas, which are to be provided and approved by the Monitor prior to the onset of construction.

v. Avoidance measures to prevent the spread of invasive species, such as those outlined for the Fremont cottonwood habitat above, shall be implemented and included in the construction contract.

d. A point of contact in case a desert tortoise is observed and the Monitor is not in the immediate vicinity of the observation.

4. The first order of construction would be to install permanent desert tortoise exclusionary fencing. The fencing will be installed in areas that have already been surveyed and cleared by the Monitor.

5. The Monitor will be onsite daily to monitor any new project-associated ground-disturbing activities occurring in areas where the ground was previously undisturbed. If no live desert tortoises are observed once the ground-disturbing

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activities are completed, the Monitor will be present on the project site at least one working day within a two-week period to monitor the ongoing construction activities until the completion of construction.

6. The Caltrans Resident Engineer (RE) will be present on the project site throughout the duration of construction. The RE, in consultation with the Monitor, shall have the authority to stop any and/or all activities that might result in the “take” of a tortoise.

7. If at any time during construction a desert tortoise is found in an area that has been fenced to exclude the species, activities will cease until the RE, in consultation with the Monitor, has indicated that work may resume.

8. If a desert tortoise is found adjacent to the permanently fenced construction area, work in the area will cease until the Monitor is present, or until the Monitor in consultation with U.S. Fish and Wildlife Service, has determined whether additional avoidance or minimization measures are needed prior to continuing construction in the area.

9. The U.S. Fish and Wildlife Service-authorized desert tortoise biologist may choose to contact the U.S. Fish and Wildlife Service to determine if the collapsing of a particular burrow and/or the relocation of an individual is appropriate. If it is deemed unnecessary to collapse a burrow, the biological monitor(s) will establish an Environmentally Sensitive Area around the burrow. Any Environmentally Sensitive Area burrow will be monitored by the designated biological monitor(s) at the onset of construction activities in the proximity. The biological monitor(s) will be present until construction has been completed in the area, or until the biological monitor(s), in consultation with the U.S. Fish and Wildlife Service, deems that monitoring is no longer needed in that location.

AMM BIO-8

### Compensatory Mitigation for the Desert Tortoise

On-site mitigation will be implemented through:

1. Installation of permanent exclusionary desert tortoise fencing to prevent tortoises from entering the new highway.

2. Installation of approximately 13 tortoise undercrossings, to be appropriately sized and installed in locations where new culverts are specified. Tortoise-safe cattle guards at public access roads, to prevent tortoises from entering the highway in areas with gaps in the permanent exclusion fencing. An on-call U.S. Fish and Wildlife Service-authorized desert tortoise biologist will be contacted to collapse any recent tortoise burrows and/or to relocate any live tortoises.

3. The cattle guards will be constructed to include cement tortoise escape ramps so individuals do not become entrapped. The specific details and locations of the permanent tortoise fencing, undercrossings and cattle guards are still being

MM BIO-3

developed. During final design, the locations and design specifications of the undercrossings will be confirmed and provided to the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife.

These onsite mitigation measures will help to protect individual tortoises living on or around the project site by:

- Eliminating the potential for mortalities on the new segment of highway.
- Providing safe passage for tortoises under the new highway so individuals have access to habitat on both sides, thus reducing habitat fragmentation and maintaining some habitat connectivity.

MM BIO-3

The project site is not located within designated desert tortoise Critical Habitat and due to the above onsite mitigation efforts, the impacted lands will be compensated for off-site at a lower ratio, as approved by the California Department of Fish and Wildlife. The offsite mitigation will be compensated for through either the purchase of mitigation bank credits, or suitable desert tortoise habitat to be preserved in perpetuity, as approved by the California Department of Fish and Wildlife. The areas of permanent and temporary impacts to desert tortoise habitat that will be compensated for offsite are shown in Table 2-31 above.

#### *Mohave Ground Squirrel*

Mohave ground squirrel experts believe that exclusionary fencing will not keep the Mohave ground squirrel away from the construction site due to the squirrel's ability to climb over and burrow under fencing. Therefore, Caltrans will implement the following avoidance and minimization measures:

1. Conduct project activities on the portions of this species' range during the species' active season (March-July), and avoid working in its range during its period of dormancy (August-February). This will allow animals to escape from project equipment and activities. Caltrans also plans to obtain an Incidental Take Permit from the California Department of Fish and Wildlife to cover the potential for any injuries or mortalities to this species during construction activities.
2. A mandatory worker education training will be provided to all workers on the project and will include the following:
  - a. A detailed description of the Mohave ground squirrel and its life history, including color photographs of the species as well as its burrows.
  - b. A description of the protection this species receives under the State Endangered Species Act, and possible legal action that may be incurred for violation of the act, including discussion of the definition of "take."

AMM BIO-9

AMM BIO-9

- c. A list of the avoidance measures being implemented on the project to protect this species, which will include the following:
  - i. If a Mohave ground squirrel is observed on the project when construction activities are in process, no vehicles or equipment will be moved until the animal has left voluntarily or is removed by an authorized biologist.
  - ii. All trash will be removed from work sites or completely secured at the end of the day to avoid attracting predators.
  - iii. All workers will be advised that equipment and vehicles must remain within the designated work areas, to be provided and approved by the monitor prior to the onset of construction.
3. An authorized biologist will be onsite daily to monitor any new project-associated ground-disturbing activities occurring in Mohave ground squirrel habitat. If no squirrels have been observed during the ongoing ground-disturbing activities, once they are complete, the authorized biologist will be present on the project site at least one working day a week to monitor ongoing construction activities until the completion of construction.
4. The Caltrans Resident Engineer (RE) will be present on the project site throughout the duration of construction. The Resident Engineer, in consultation with the authorized biologist, will have the authority to stop any and/or all activities that may result in the “take” of a Mohave ground squirrel.

Caltrans will coordinate with the California Department of Fish and Wildlife during the Incidental Take Permit process to determine what if any additional avoidance and minimization measures need to be implemented to protect the Mohave ground squirrel.

Compensatory Mitigation

The compensatory mitigation for impacts to desert tortoise habitat will also benefit the Mohave ground squirrel.

*Southwestern Willow Flycatcher and Western Yellow-billed Cuckoo*

The Biological Opinion issued for the Caltrans Preferred Alternative found that the project may affect, but is not likely to adversely affect these species. Per the Biological Opinion, the following avoidance and minimization measures will be implemented:

AMM BIO-10

1. Any clearing and grubbing along Olancha Creek will be completed prior to or after the southwestern willow flycatcher migratory season (approximately May through June and mid-August to September), or if this is determined to

be infeasible, a biologist(s) with demonstrated experience in the identification of the southwestern willow flycatcher and western yellow-billed cuckoo will conduct focused clearance surveys in both the direct and indirect impact areas within 3 days before the onset of clearing and grubbing.

If conducted, the surveys will follow the most current U.S. Fish and Wildlife Service southwestern willow flycatcher and western yellow-billed cuckoo survey protocols. If any southwestern willow flycatchers are observed in direct or indirect impact areas during the clearance surveys, the following additional avoidance measures will be implemented:

- a. The U.S. Fish and Wildlife Service and California Department of Fish and Wildlife will be consulted to determine the best way to avoid disturbance to this species during construction.
  - b. A biologist will be present to monitor any subsequent project-related activities along Olancha Creek that occur during the migratory season.
  - c. The Caltrans RE, upon request by the monitor, will have the authority to stop any and/or all project activities until appropriate corrective measures have been completed. Therefore, if a southwestern willow flycatcher or western yellow-billed cuckoo is observed during construction, the monitor will ask the RE to halt the construction activities in the vicinity of Olancha Creek until the monitor indicates that work may resume.
2. Prior to the onset of any construction-related activities, the monitor will provide all personnel who will be present on the work site with a mandatory worker education training, which will include the following information:
- a. A description of the southwestern willow flycatcher and western yellow-billed cuckoo and their habitat preferences.
  - b. Color photographs of the bird as well as an audio sample of the bird's calls.
  - c. A description of the protection the southwestern willow flycatcher receives under the Federal and State Endangered Species Acts and possible legal action that may be incurred for violation of the acts as well as a discussion on the definition of take.
3. Riparian habitat adjacent to the new right-of-way will be fenced in a manner that prevents equipment and vehicles from straying from the designated work area and into the adjacent habitat. The monitor will assist in determining the boundaries of the area to be fenced and will be present when the protective fencing is installed. All workers will be advised that equipment and vehicles must remain within the fenced work areas.

AMM BIO-10

4. All trash that may attract predators of the southwestern willow flycatcher and western yellow-billed cuckoo will be removed from work sites or completely secured at the end of each work day to avoid attracting predators of this species.

The measures outlined above will be implemented to avoid “take” of the southwestern willow flycatcher and western yellow-billed cuckoo. In addition, the following measure will also be employed to minimize impacts from the constructed project to the southwestern willow flycatcher and western yellow-billed cuckoo:

5. Following construction, native Fremont cottonwood and willow (red willow, narrow-leaf willow, and Goodding’s black willow) plantings will be installed along the outer portions of the new Caltrans right-of-way that borders Olancha Creek. The plantings will be installed along the edge of the right-of-way and the adjacent undisturbed riparian habitat located just beyond the right-of-way. Over time, the installed plantings will grow to provide an increased visual and auditory buffer between highway traffic and the potential migratory habitat located upstream and downstream of the new Caltrans right-of-way, thus minimizing indirect impacts to this species habitat.

#### Compensatory Mitigation

The project site is not located within designated southwestern willow flycatcher or western yellow-billed cuckoo Critical Habitat, and it has been determined that potential nesting habitat does not exist along Olancha Creek. Therefore, mitigation for potential southwestern willow flycatcher and western yellow-billed cuckoo migratory habitat will be used to compensate for all areas of direct impact and indirect impact to potential habitat for this species. Mitigation for all impacts will be accomplished at a 2:1 ratio through the enhancement, restoration, or preservation of riparian habitat that benefits the southwestern willow flycatcher and western yellow-billed cuckoo, as approved by the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife. See Table 2-34, which outlines the mitigation areas based on the total impacts that would occur, by project alternative.

#### **Invasive Species**

In compliance with the Executive Order on Invasive Species, Executive Order 13112, and subsequent guidance from the Federal Highway Administration, the landscaping and erosion control included in the project will not use species listed as noxious weeds. Specific precautions will be taken to prevent the spread or introduction on invasive species on the project. These include the inspection and cleaning of construction equipment and eradication strategies to be implemented for existing populations, or those that could occur in the future. Other measures that will be taken are commitments to ensure the use of invasive-free mulches, topsoils, seed mixes.

AMM BIO-10

MM BIO-4

Caltrans will map the locations of invasive species populations on the project site and will at minimum implement the measures identified under the Fremont Cottonwood Series Avoidance and Minimization Measures for preventing the spread of invasive species. Other measures for control of invasive species may be included in the special provisions of the construction contract.

# EXHIBIT G – CALIFORNIA DEPARTMENT OF TRANSPORTATION OLANCHA/CARTAGO FOUR-LANE PROJECT

## CALIFORNIA STATE LANDS COMMISSION STATEMENT OF FINDINGS

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### 1.0 INTRODUCTION

The California State Lands Commission (Commission), acting as a responsible agency under the California Environmental Quality Act (CEQA), makes these findings to comply with CEQA as part of its discretionary approval to authorize issuance of a Public Agency Permit and a General Lease – Public Agency Use, to the California Department of Transportation (Caltrans), for the proposed Olancha/Cartago Four-Lane Project (Project). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines, § 15381.)<sup>1</sup>). The findings apply to two separate applications (A2114 [Public Agency Permit] and A2115 [General Lease – Public Agency Use]) being considered at the December 6, 2019, Commission meeting. The Commission has authority over all sovereign lands in the state and is the trustee of all State-owned school lands. Therefore, the Commission monitors all projects that could directly or indirectly impact these lands. The Commission is a responsible agency under CEQA for the Project because the Commission must approve the sale of property and a lease for the Project to go forward and because Caltrans, as the CEQA lead agency, has the principal responsibility for approving the Project and has completed its environmental review under CEQA.

Caltrans analyzed the environmental impacts associated with the Project in a Final Environmental Impact Report (EIR) (State Clearinghouse [SCH] No. 2010091023) and, on June 28, 2017, certified the EIR. A Mitigation Monitoring Program (MMP) was not prepared for the Project, but Mitigation Measures (MMs) and Avoidance and Minimization Measures (AMMs) were identified as measures to mitigate/reduce impacts to resources within the identified alignment and footprint of the Project.

The Commission is a responsible agency under CEQA for the Project because the Commission must approve: (1) a Public Agency lease for a portion of the Project located on school lands; (2) the sale of school land and issuance of an archeological permit for school land; and (3) right-of-way maps and a Public Agency Permit for the portion of the Project on sovereign land for the Project to go forward. Additionally, Caltrans, as the CEQA lead agency, has the principal responsibility for approving the Project and has completed its environmental review under CEQA. The EIR analyzed the environmental impacts associated with the Project in a Final EIR and, in June 2017, certified the EIR, made mitigation measures a condition of project approval, and made Findings.

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<sup>1</sup> CEQA is codified in Public Resources Code section 21000 et seq. The State CEQA Guidelines are found in California Code of Regulations, title 14, section 15000 et seq.

The Project involves widening US Highway 395 from two lanes to four lanes near the communities of Olancha and Cartago, by constructing a controlled-access, four-lane divided expressway. The purpose of the Project is to accommodate increased traffic demands by improving levels of service, enhance safety by allowing faster traffic to pass slower vehicles and by separating opposing lanes of traffic, and to provide route continuity.

Caltrans determined that the Project could have significant environmental effects on the following environmental resources:

- Cultural Resources
- Paleontology
- Biological Resources

Project components within the Commission’s jurisdiction could have significant environmental effects on all three environmental resources noted above.

In certifying the Final EIR and approving the Project, Caltrans imposed various mitigation measures for Project-related significant effects on the environment as conditions of Project approval and concluded that Project-related impacts would be substantially lessened with implementation of these mitigation measures such that the impacts would be less than significant within the Project areas.

As a responsible agency, the Commission complies with CEQA by considering the Final EIR and reaching its own conclusions on whether, how, and with what conditions to approve a project. In doing so, the Commission may require changes in a project to lessen or avoid the effects, either direct or indirect, of that part of the project which the Commission will be called on to carry out or approve. In order to ensure the identified mitigation measures and/or Project revisions are implemented, the Commission adopts an MMP as set forth in Exhibit F as part of its Project approval.

## **2.0 ADMINISTRATIVE RECORD OF PROCEEDINGS AND CUSTODIAN OF THE RECORD**

These Findings are supported by substantial evidence contained in the EIR and other relevant information provided to the Commission or existing in its files, all of which is contained in the administrative record. The administrative record is located at the California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825. The custodian for the administrative record is the California State Lands Commission Division of Environmental Planning and Management.

## **3.0 FINDINGS**

The Commission’s role as a responsible agency affects the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each “public agency” that approves a project for which an EIR has been certified that identifies one or more significant impacts on the environment (Pub. Resources Code, §

21081, subd. (a); State CEQA Guidelines, § 15091, subd. (a).) Because the EIR certified by Caltrans for the Project identifies potentially significant impacts that fall within the scope of the Commission’s approval, the Commission makes the Findings set forth below as a responsible agency under CEQA. (State CEQA Guidelines, § 15096, subd. (h); *Riverwatch v. Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186, 1202, 1207.

While the Commission must consider the environmental impacts of the Project as set forth in the EIR, the Commission’s obligation to mitigate or avoid the direct or indirect environmental impacts of the Project is limited to those parts which it decides to carry out, finance, or approve (Pub. Resources Code, § 21002.1, subd. (d); State CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because the Commission’s exercise of discretion involves only issuing a General Lease – Public Agency Use and a Public Agency Permit, issuing an archeological permit, selling school lands, and approving right-of-way maps for this Project, the Commission is responsible for considering only the environmental impacts related to lands or resources subject to the Commission’s jurisdiction. The segments of the Project area within the Commission’s jurisdiction include a right-of-way lease for access to the construction area as depicted in Exhibit D of the staff report. With respect to all other impacts associated with implementation of the Project, the Commission is bound by the legal presumption that the EIR fully complies with CEQA.

The Commission has reviewed and considered the information contained in the Project EIR. All significant adverse impacts of the Project identified in the EIR relating to the Commission’s approval of a General Lease – Public Agency Use and a Public Agency Permit associated with the proposed Olancha/Cartago Four-Lane Project are included herein and organized according to the resources affected.

These Findings, which reflect the independent judgment of the Commission, are intended to comply with CEQA’s mandate that no public agency shall approve or carry out a project for which an EIR has been certified that identifies one or more significant environmental effects unless the agency makes written findings for each of those significant effects. Possible findings on each significant effect are:

- (1) Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the Commission. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.<sup>2</sup>

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<sup>2</sup> See Public Resources Code section 21081, subdivision (a) and State CEQA Guidelines section 15091,

A discussion of supporting facts follows each Finding.

- Whenever Finding (1) occurs, the mitigation measures that lessen the significant environmental impact are identified in the facts supporting the Finding.
- Whenever Finding (2) occurs, the agencies with jurisdiction are specified. These agencies, within their respective spheres of influence, have the responsibility to adopt, implement, and enforce the mitigation discussed.

The mitigation measures are briefly described in these Findings; more detail on the mitigation measures is included in Exhibit F.

## **A. SUMMARY OF FINDINGS**

Based on public scoping, the proposed Project will have No Impact on the following environmental issue areas:

- Coastal Zone
- Wild and Scenic Rivers
- Parks and Recreation
- Farmland/Timberlands
- Fisheries
- Hydrology and Floodplain

The EIR subsequently identified the following impacts as Less Than Significant:

- Existing and Future Land Use
- Consistency with State, Regional and Local Plans and Programs
- Growth
- Community Character and Cohesion
- Environmental Justice
- Utilities and Emergency Services
- Traffic and Transportation/Pedestrian and Bicycle Facilities
- Wilderness Characteristics
- Visual/Aesthetics
- Water Quality and Storm Runoff
- Geology, Soils, Seismicity, Topography
- Hazardous Waste
- Air Quality
- Noise
- Invasive Species
- Cumulative Impacts

For the remaining potentially significant effects, the Findings are organized by

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subdivision (a).

significant impacts within the EIR issue areas as presented below.

**B. POTENTIALLY SIGNIFICANT IMPACTS**

The impacts identified in Table 1 were determined in the Final EIR to be potentially significant absent mitigation. After application of mitigation, however, all impacts were determined to be less than significant (LTSM). For the full text of each MM, please refer to Exhibit F, Attachment F-1.

**Table 1 – Potentially Significant Impacts by Issue Area (LTSM)**

<b>Environmental Issue Area</b>	<b>Mitigation Measures</b>
Cultural Resources	CUL-1
Paleontology	PALEO-1
Biological Resources	BIO-1, BIO-2, BIO-3, and BIO-4

**C. IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION (LTSM)**

**1. CULTURAL RESOURCES**

<p><b>CEQA FINDING NO. CUL-1</b></p> <p>Impact: <b>Impacts to Cultural Resources during Construction.</b></p> <p>Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.</p>
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**FACTS SUPPORTING THE FINDING(S)**

Activities proposed as part of the Project have the potential to directly or indirectly affect Cultural Resources within the Project area. Construction of the new U.S. Highway 395 alignment will directly impact known historic properties, resulting in the destruction of portions of those properties. The Project cannot be redesigned in a way that reduces the extent of impacts to historic properties.

Adverse effects would be mitigated through development and implementation of a Historic Properties Treatment Plan under a project specific Programmatic Agreement (PA) among the Federal Highway Administration (FHWA), the U.S. Bureau of Land Management (BLM) and the State Historic Preservation Officer (SHPO), and developed in consultation with Tribes and other consulting parties (MM CUL-1). The plan will outline the methods and timing Caltrans will use to insure a complete inventory, evaluation and treatment of historic properties within the Area of Potential Effect. Specific aspects addressed will include, but won't be limited to, frequent consultation with Tribes and other consulting parties, implementation of a tribal monitoring plan, methods to eliminate to the extent possible the overlap of site boundaries,

implementation of a geomorphologic study to identify sensitivity for buried resources, consultation with the SHPO concerning the National Register of Historic Places eligibility of potential properties, methods to identify and protect properties that can reasonably be preserved in conjunction with development of project design details, and a research design or plan for the mitigation, analysis and sharing of study results for properties which cannot be avoided, including integration of those results into a synthesis that can inform ongoing management of cultural resources in the Project area and surrounding region to address cumulative and indirect effects.

Implementation of MM CUL-1 has been incorporated into the Project to reduce this impact to a less than significant level.

**MM CUL-1 Avoidance and Minimization, Consultation, and Mitigation for Cultural Resources during Construction.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**2. PALEONTOLOGY**

**CEQA FINDING NO. PALEO-1**

Impact: **Impacts to Paleontological Resources during Construction.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Activities proposed as part of the Project have the potential to directly or indirectly affect paleontological resources during construction. Implementation of a paleontological resource mitigation plan following Caltrans guidelines to salvage fossil specimens during the construction excavation phase for this project (MM PALEO-1). Implementing a well-designed paleontological resource mitigation plan will minimize any adverse impacts to paleontological resources.

Implementation of MM PALEO-1 has been incorporated into the Project to reduce this impact to a less than significant level.

**MM PALEO-1 Avoidance and Minimization, Consultation, and Mitigation for Paleontological Resources during Construction.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

### 3. BIOLOGICAL RESOURCES

#### **CEQA FINDING NO. BIO-1**

**Impact: Impacts to Natural Communities during Construction.**

**Finding(s):** (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the proposed Project could affect natural communities. Impacts to habitat in the onsite natural communities have been minimized as much as possible for each of the proposed alternatives. Species mortality will be avoided through the implementation of work windows, designed to avoid clearing and grubbing activities during the seasons when various species are nesting and rearing young. In addition, pre-construction clearance surveys will be completed to protect any species that may be present at the time when clearing and grubbing are scheduled to occur. MM BIO-1 includes compensatory mitigation to mitigate direct impacts to natural communities.

Implementation of MM BIO-1 has been incorporated into the Project to reduce this impact to a less than significant level.

#### **MM BIO-1 Compensatory Mitigation for Native Tree Species**

**LEVEL OF SIGNIFICANCE AFTER MITIGATION.** With the mitigation described above, this impact is reduced to a less than significant level.

#### **CEQA FINDING NO. BIO-2**

**Impact: Impacts to Wetlands and Other Water Resources during Construction.**

**Finding(s):** (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project could affect construction and fill within Wetlands and other Water Resources. Impacts to wetlands, waters of the U.S. and non-jurisdictional waters were minimized as much as possible. Initially, it was thought that wetlands, waters of the U.S. and non-jurisdictional waters could be entirely avoided; however, it was later discovered that entirely avoiding impacts to these hydrologic resources would not be possible and that the impacts could be relatively substantial. Another measure, developed to avoid and minimize impacts to onsite hydrologic features, includes the installation of culverts in areas with existing surface water, or those prone to surface water runoff during seasonal or intermittent storms. The installation of culverts will be seasonally timed so perennial drainages are low and

ephemeral and intermittent drainages are dry. Compensatory mitigation for all permanent impacts to jurisdictional wetlands and waters of the U.S., as well as non-jurisdictional waters, will be completed to ensure there is no net loss of wetland or waters habitat.

Implementation of MM BIO-2 have been incorporated into the Project to reduce this impact to a less than significant level.

**MM BIO-2 Compensatory Mitigation for Wetlands and Water Resources.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. BIO-3**

Impact: **Impact to Desert Tortoise and Desert Tortoise Habitat during Construction.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Activities proposed as part of the Project could affect desert tortoise and desert tortoise habitat during construction. The U.S. Fish and Wildlife issued a Biological Opinion for the Project that outlines avoidance and minimization measures and compensatory mitigation for the Project (MM BIO-3).

Implementation of MM BIO-3 has been incorporated into the Project to reduce this impact to a less than significant level.

**MM BIO-3 Compensatory Mitigation and Avoidance and Minimization Measures for Desert Tortoise and Desert Tortoise Habitat during construction.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. BIO-4**

Impact: **Impacts to Southwestern Willow Flycatcher and Western Yellow-billed Cuckoo.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

## FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project construction could result in impacts to southwestern willow flycatcher and western yellow-billed cuckoo. The U.S. Fish and Wildlife issued a Biological Opinion for the Project that outlines avoidance and minimization measures and compensatory mitigation for the Project (MM BIO-4).

Implementation of MM BIO-4 has been incorporated into the Project to reduce this impact to a less than significant level.

### **MM BIO-4 Compensatory Mitigation and Avoidance and Minimization Measures for Southwestern Willow Flycatcher and Western Yellow-billed Cuckoo.**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

## **D. FINDINGS ON ALTERNATIVES**

As explained in *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1000:

*When it comes time to decide on project approval, the public agency's decisionmaking body evaluates whether the alternatives [analyzed in the EIR] are actually feasible.... At this final stage of project approval, the agency considers whether [s]pecific economic, legal, social, technological, or other considerations...make infeasible the mitigation measures or alternatives identified in the environmental impact report.' Broader considerations of policy thus come into play when the decisionmaking body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives [citations omitted].*

The seven alternatives analyzed in the EIR represent a reasonable range of potentially feasible alternatives that could reduce one or more significant impacts of the Project. These alternatives include:

- 1) Alternative 1
- 2) Alternative 2
- 3) Alternative 2A
- 4) Alternative 3
- 5) Alternative 4
- 6) Preferred Alternative (Combined Alternatives 3 and 4)
- 7) No-Build (No-Action) Alternative

As presented in the EIR, the alternatives were described and compared with each other. Caltrans' independently reviewed and considered the information on alternatives provided in the EIR and in the record. The EIR reflects Caltrans's independent judgment as to alternatives. Caltrans found that the Project (Preferred Alternative [Combined

Alternatives 3 and 4] provides the best balance between the Project purpose and need and the environmental impacts. The six other alternatives proposed and evaluated in the EIR were rejected as being infeasible for reasons provided in the EIR, Section 1.6 (pg. 31).

Based upon the Project purpose and need identified in the Final EIR and the detailed mitigation measures imposed upon the Project, the Commission has determined that the Project should be approved, subject to such mitigation measures identified in Exhibit F (Mitigation Monitoring Program).