

## **Special Award Condition**

### *Compliance with Environmental Protocols and Measures*

#### **Broadband Technology Opportunities Program Grant California Broadband Cooperative, Inc. Digital 395 Middle Mile Project**

**This BTOP Grant Special Award Condition establishes requirements applicable to implementation of the California Broadband Cooperative, Inc. (CBC), Digital 395 Middle Mile Project. The funding of the Grant is dependent on compliance with the provisions of this Special Award Condition.**

Post-award environmental reviews of the Project included consultation with regulatory agencies related to the protection of biological and historic and cultural resources. These consultations identified specific protocols or environmental protection measures. These protocols or protective measures may be either required or recommended to be included in the implementation of the Project to minimize potential impacts to biological resources and effects on historic and cultural resources. The protocols and measures are listed below.

Note that this Special Award Condition does not distinguish requirements identified during the consultations from recommendations that were also provided. CBC shall implement the identified protocols and measures without regard to this distinction and advise the Federal Project Officer (FPO) immediately if any issues arise related to the ability to comply fully with any requirement or recommendation listed below.

For each protocol or measure listed, CBC shall include the following information in its periodic report to the FPO administering the grant:

- a. Specifically where and when the protocol has been used or a measure has been implemented during the reporting period, and
- b. Whether full compliance with the protocol or measure was achieved.

The FPO may, if they determine necessary, require additional information to ensure compliance with the protocol or measure. If, at any time, CBC has questions or requires clarification regarding any of these protocols or measures, they shall notify the FPO, who will coordinate with the appropriate regulatory authority to provide the necessary information.

#### **Biological Resource Protection Protocols and Measures**

CBC consulted with the U.S. Fish and Wildlife Service (USFWS), California Desert District Bureau of Land Management (BLM), and the North Coast Branch Chief U.S. Army Corps of Engineers (USACE) regarding potential Project impacts on biological resources. These Endangered Species Act Section 7 consultations resulted in USFWS concurrence that the project would not likely adversely affect the federally endangered Carson wandering skipper (*Pseudocopaeodes eunus obscurus*), assuming that the following measures are implemented:

1. CBC will ensure construction occurs outside of the adult flight season;
2. CBC will ensure construction activities occur within areas devoid of vegetation or, if vegetated, CBC will ensure a project biologist surveys the area and determines it does not contain suitable habitat for the Carson wandering skipper; and
3. In areas that contain suitable habitat for the Carson wandering skipper (i.e., the Carson River Crossing), CBC will minimize disturbance to potential nectar sources and the larval host plant by attaching conduit to the bridge and/or using horizontal directional drilling.

Formal consultation regarding impacts to the federally threatened Mojave desert tortoise (*Gopherus agassizii*; desert tortoise) resulted in a Biological Opinion (BO). Consultation resulted in the identification of the following protective measures, terms, and conditions to minimize adverse effects to the desert tortoise:

1. CBC will employ authorized biologists, approved by the USFWS, and desert tortoise monitors to ensure compliance with protective measures for the desert tortoise. No construction activities will begin until authorized biologists are approved.
2. The duties of authorized biologists and biological monitors will follow the most up-to-date USFWS guidance and will be required for monitoring of any construction activities that may result in adverse effects to the desert tortoise.
3. An authorized biologist will be present with each construction team during construction activities within desert tortoise habitat without existing desert tortoise exclusion fencing. The authorized biologist will have the discretion of determining the appropriate level of protective measures required for the type of construction activity (e.g., plowing, trenching, splicing).
4. CBC will designate a lead authorized biologist responsible for ensuring the proper implementation of all desert tortoise protective measures, coordinating the other authorized biologists and biological monitors, and coordinating with the Federal and State agencies. The lead authorized biologist will be on-site during all project activities, and will have a copy of all stipulations when work is being conducted on the site. Prior to initiation of construction, an authorized biologist will conduct an environmental awareness training to all personnel who will be on-site, including CBC staff, contractors, workers/personnel, and engineering inspectors.
5. Other Federal agencies, such as the Navy, may require additional training while operating on their lands (i.e., within the boundaries of the Naval Air Weapons Station). Therefore, follow-up tailgate trainings for the desert tortoise will be conducted in the field by an authorized biologist immediately prior to construction activities.
6. Within 48 hours prior to starting construction in a given area, authorized biologists will survey the project right-of-way (i.e., the footprint or area of direct placement of the project features [conduit, nodes, towers] and other areas that will be disturbed by construction activities [boring, plowing, drilling, staging areas, pathway of construction related equipment]) and a 50-foot-wide area adjacent to the project right-of-way wherever desert tortoise habitat is present in that area. The authorized biologists will ensure that this entire area is surveyed, using 30-foot-wide linear transects; if dense

vegetation impedes visibility, the authorized biologists will decrease the width of the transect to ensure full coverage of the area.

7. Surveys will not be conducted in areas where existing exclusion fencing for desert tortoises precludes their entry into the project right-of-way unless the right-of-way fence has gaps that would allow passage by desert tortoises. In this case, the authorized biologists will implement the survey protocol described in the preceding paragraph for 200-feet on both sides of the gap.
8. During pre-construction surveys (as described in the previous measure), authorized biologists will also inspect the project right-of-way for desert tortoise burrows. Prior to collapsing burrows, the authorized biologists will inspect each burrow to determine if it is occupied. If an occupied desert tortoise burrow is found within the project right-of-way, and it cannot be avoided, the authorized biologists will follow guidance in the Desert Tortoise Field Manual on extracting, excavating, and relocating desert tortoises. If an occupied desert tortoise burrow is found on the edge of the project right-of-way, and if feasible, the authorized biologists will follow guidance in the Desert Tortoise Field Manual and temporarily pen the animal.
9. Encounters with desert tortoises will be immediately reported to the lead authorized biologist. The lead authorized biologist will maintain a record of desert tortoises encountered during construction activities.
10. All handling of desert tortoises will be conducted by or under the supervision of an authorized biologist in accordance with recommended protocol in the Desert Tortoise Field Manual.
11. The authorized biologists will handle a desert tortoise only when necessary. The authorized biologists will use new latex gloves when handling each desert tortoise to avoid transfers of infectious diseases between animals.
12. Desert tortoises will be moved the minimum distance possible within appropriate habitat to ensure their safety. Desert tortoises will not be moved in excess of 1,000 feet for adults or 300 feet for juveniles and hatchlings.
13. Any desert tortoise found aboveground that needs to be moved from harm's way will be placed in the shade of a shrub, facing the same direction that it was facing prior to moving it.
14. The authorized biologists will have the authority to halt all non-emergency project activities should danger to a desert tortoise arise. Work will proceed only after hazards to the desert tortoise are cleared or removed, the desert tortoise is no longer at risk, or an authorized biologist has moved the desert tortoise from harm's way.
15. Any desert tortoises found in areas that would be disturbed by project activities will be moved by an authorized biologist the appropriate distance to ensure that they do not move back into the construction area. Desert tortoises that are found in the 50-foot-wide area adjacent to the project right-of-way will either be moved as described in the previous sentence or confined to their burrows through the use of desert tortoise fencing as described in the Desert Tortoise Field Manual; the authorized biologists will use their judgment to determine the appropriate course of action and may consult with the USFWS or California Department of Fish and Game if necessary. Prior to the onset of work each day, the authorized biologists will survey the area to be disturbed that day to ensure that desert tortoises have not re-entered the site. For these daily surveys, the adjacent 50-foot-

wide area and areas enclosed by desert tortoise fencing need not be surveyed. If any desert tortoises are found, the authorized biologists will implement the measures described in the previous measure.

16. Trenches or holes left open overnight or over a weekend will be ramped at an angle so that animals can escape, or covered to prevent desert tortoises from becoming entrapped. Prior to backfilling trenches or holes, an authorized biologist will inspect them for desert tortoises.
17. Prior to moving project vehicles and equipment, all workers (e.g., contractors, crewmembers, engineering inspectors, and environmental compliance personnel) will inspect for desert tortoises resting in the shade under them. If a desert tortoise is observed underneath a project vehicle or equipment, an authorized biologist will be contacted. If possible, the desert tortoise will be left to move on its own; otherwise, the authorized biologist will capture and relocate the desert tortoise.
18. In areas with existing desert tortoise exclusion fence, an authorized biologist will inspect the fence prior to initiation of construction activities to ensure it is intact. The authorized biologist will document any observations of entrapped animals, repairs needed, and recommendations for supplies and equipment needed to complete repairs and maintenance.
19. Any damage to existing desert tortoise exclusion fencing will be immediately reported to the lead authorized biologist. Project-related damage to existing desert tortoise fencing will be repaired by the contractor immediately and under the supervision of an authorized biologist.
20. Project vehicles, equipment, and activities will be confined to the project right-of-way, approved access roads, and staging and laydown areas. Off-road or cross-country travel will be prohibited except in emergency situations. No additional dirt or paved roads will be created outside of the project right-of-way.
21. Where there is not a conflicting speed limit, project vehicles and equipment will not exceed speeds of 20 miles per hour while traveling on unpaved access roads in desert tortoise habitat.
22. Firearms and domestic dogs will be prohibited.
23. Trash and food items will be disposed of promptly in predator-proof containers with resealable lids. Trash containers will be inspected at the beginning and end of each workday to ensure that they are properly sealed. During non-work hours (i.e., end of the workday or over the weekend), these containers will either be removed from work areas or secured in a fashion that keeps wildlife from opening them.
24. Material that leaks, spills, or is otherwise released into habitat of the desert tortoise will be removed immediately. The authorized biologists will ensure the appropriate measures are implemented during the removal of the hazardous materials.
25. To the extent possible, surface-disturbing components of the project will be located in previously disturbed areas, immediately adjacent to previously disturbed areas, or where habitat quality is poor; disturbance of vegetation and soils will be minimized to the extent practicable.
26. Disturbance of vegetation and soils will be minimized to the extent practicable. Where possible, disturbance will be limited to crushing vegetation to minimize root damage.

27. Following construction activities, CBC will conduct surface stabilization and reclamation activities within the project right-of-way. These activities will include the removal of construction debris and returning the soil to its original grade.
28. If unforeseen circumstances require disturbing vegetation beyond the project right-of-way, CBC will notify the appropriate agencies immediately.
29. To minimize the spread of noxious weeds, a noxious weed plan will be prepared and implemented for each county that the project occurs in.
30. If sensitive plant species, such as Joshua trees (*Yucca brevifolia*), cacti, and succulents are within an impact area, a restoration specialist will remove and temporarily relocate these plant species to a “nursery area” until they can be returned to the immediate area where the sensitive plant species was originally found. The “nursery area” will be located outside of desert tortoise critical habitat. If the “nursery area” is located within desert tortoise suitable habitat, the “nursery area” will be located within a previously disturbed area or an area devoid of vegetation (i.e., laydown or staging areas).

The following measures will be implemented during operation and maintenance activities:

1. Operation and maintenance activities, vehicles, and equipment will be confined to the project right-of-way. No additional dirt or paved roads will be created off the project right-of-way during operation and maintenance activities. If unforeseen circumstances require disturbance beyond the project right-of-way, CBC will notify the USFWS immediately.
2. An authorized biologist will be present if operation and maintenance activities would disturb desert tortoise habitat.
3. For emergency maintenance activities resulting in the disturbance of desert tortoise habitat, CBC will notify the USFWS immediately. If desert tortoises must be handled, an authorized biologist will conduct these activities.
4. If operation and maintenance activities require laydown or staging areas, CBC will verify with the appropriate Federal agency that previously approved laydown or staging areas can be used. Leftover excavated material will not be left in place but will be disposed of in areas approved by the appropriate Federal agency.
5. Leaks, spills, or releases of fuel or other hazardous materials along access roads within desert tortoise habitat will be reported immediately to the appropriate Federal agency. Material that leaks, spills, or is otherwise released into desert tortoise habitat will be removed immediately. CBC will ensure the appropriate measures are implemented during the removal of the hazardous materials.
6. Where there is not a conflicting speed limit, project vehicles and equipment will not exceed speeds of 20 miles per hour while traveling on unpaved access roads in desert tortoise habitat.
7. Firearms and domestic dogs will be prohibited.
8. Trash and food items will be disposed of promptly in predator-proof containers with resealable lids. Trash containers will be removed at the end of each workday.

The following reasonable and prudent measures are necessary to minimize take of desert tortoises during project implementation.

1. The NTIA, Bureau, or ACOE, as appropriate, must minimize adverse effects associated with handling and movement of individual desert tortoises.
2. The NTIA, Bureau, or ACOE, as appropriate, must ensure CBC implements measures to reduce the take of desert tortoises within the action area.
3. The NTIA, Bureau, or ACOE, as appropriate, must ensure that the level of incidental take anticipated by the USFWS is commensurate with the analysis contained in the BO.

These reasonable and prudent measures will be implemented by the following terms and conditions:

1. CBC must provide USFWS with the credentials of authorized biologists who it wishes to conduct these duties at least 30 days prior to the time they must be in the field. The authorized biologists approved by USFWS, in coordination with the consulting agency, will be responsible for selecting additional biological monitors to ensure that the proposed protective measures and terms and conditions USFWS requires are fully implemented. The authorized biologist will assign appropriate tasks to any additional desert tortoise monitors, based on their experience.
2. CBC must follow the identified appropriate roles and responsibilities for authorized biologists and desert tortoise monitors at the following website:  
[http://www.fws.gov/ventura/speciesinfo/protocols\\_guidelines/docs/dt/DT%20Auth%20Bio%20qualifications%20statement%2010\\_20\\_08.pdf](http://www.fws.gov/ventura/speciesinfo/protocols_guidelines/docs/dt/DT%20Auth%20Bio%20qualifications%20statement%2010_20_08.pdf).
3. In order to ensure the protective measures are effective and are being properly implemented, CBC must contact the USFWS immediately if it becomes aware that a desert tortoise has been killed or injured by project activities. At that time, the USFWS and the appropriate agency will review the circumstances surrounding the incident to determine whether additional protective measures are required. Project activities may continue pending the outcome of the review, provided that the proposed protective measures and any appropriate terms and conditions of this biological opinion have been and continue to be fully implemented.
4. If four desert tortoises are killed or injured by project activities during construction of the proposed action, CBC must re-initiate formal consultation with the USFWS.
5. If two desert tortoises are injured or killed as a result of operation and maintenance of the project in any calendar year, CBC must re-initiate formal consultation with the USFWS.

CBC must provide annual reports to the USFWS by January 31 of each year detailing the effects of the Project on the desert tortoise, including information on any instances where tortoises were killed, injured, or handled; the circumstances of such instances; and actions undertaken to prevent similar instances from occurring in the future. Furthermore, within 60 days of the completion of construction, CBC must submit a final report to USFWS.

Within three days of locating a dead or injured desert tortoise, CBC must notify the Ventura Fish and Wildlife Office by telephone (805-644-1766) and in writing (2493 Portola Road, Suite B, Ventura, California 93003). The report must include the date, time, and location of the carcass, a photograph, cause of death, if known, and any other pertinent information.

Injured desert tortoises must be taken to a qualified veterinarian for treatment. If any injured desert tortoises survive, the USFWS must be contacted regarding their final disposition.

CBC must reinitiate consultation with USFWS in instances:

- Where the amount or extent of incidental takes are exceeded;
- If new information reveals effects not previously considered;
- If the Project is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the BO; or
- If a new species is listed or critical habitat designated that may be affected by the Project.

CBC will provide a financial donation to the Desert Tortoise Council to use in protecting the desert tortoise. The Desert Tortoise Council will supply desert tortoise monitors that are approved by USFWS to ensure the desert tortoise is not overly impacted by the project.

### ***INCIDENTAL TAKE STATEMENT***

Section 9 of the Endangered Species Act (hereinafter, the Act) and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the USFWS to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the USFWS as intentional or negligent actions that create the likelihood of injury to listed species by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of an incidental take statement.

The measures described in this incidental take statement are non-discretionary; these terms and conditions are binding conditions of any authorization provided to CBC.

CBC does not need formal consultation with USFWS for the handling of desert tortoises to move them from harm's way, as this action is not likely to result in injury or mortality, as long as CBC abides by the protective measures listed above.

State or Federal-listed threatened or endangered plants, and plants listed by BLM or USDA-FS as sensitive plant species, have a potential to occur onsite. The Project may temporarily affect wildlife, including migratory birds. Should active bird nests be identified along the Project route, a biological monitor will be present during times of construction in areas containing active bird nests, and a protective buffer will be established around the nest. Additional protective measures will also be implemented to avoid potential impacts to USDA-FS sensitive species, including the greater sage-grouse, northern goshawk, burrowing owl, least Bell's vireo, southwestern willow flycatcher, Sierra Nevada red fox, pygmy rabbit, and Sierra Nevada bighorn

sheep, and BLM sensitive species, including the pygmy rabbit, several bat species, and Sierra Nevada bighorn sheep. CBC will conduct a pre-construction survey for special-status plant species and document the locations of identified plants to plan for avoidance by re-routing the fiber alignment or by using HDD methods of installation. In addition, on BLM lands CBC will salvage and transplant cactus, yucca, and other succulents out of harm's way, but still within the right-of-way when avoidance is not possible.

### **Historic and Cultural Resource Protection Protocols and Measures**

CBC consulted with the California and Nevada State Historic Preservation Officers (SHPO) and Tribal Historic Preservation Officers (THPOs) for the Big Pine Band of Owens Valley - Owens Valley Paiute, the Bishop Paiute Tribe, and the Washoe Tribe of Nevada and California. Through the Tower Construction Notification System (TCNS), NTIA also provided information on the Project to 32 tribes. Furthermore, NTIA notified tribes identified through the California Native American Heritage Commission (NAHC) of the undertaking, provided Project descriptions and maps, and invited the tribes to comment on the Project. Formal consultation was initiated with 28 tribes. Project stipulations resulting from these consultations include:

1. CBC shall complete all stipulations and conditions as described in the Programmatic Agreement. See attached PROGRAMMATIC AGREEMENT AMONG THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, CALIFORNIA SHPO, NEVADA SHPO, THE BENTON PAIUTE RESERVATION, THE BIG PINE BAND OF OWENS VALLEY - OWENS VALLEY PAIUTE, THE BISHOP PAIUTE TRIBE - PAIUTE, SHOSHONE, THE BRIDGEPORT PAIUTE INDIAN COLONY, THE FORT INDEPENDENCE COMMUNITY OF PAIUTE, THE LONE PINE PAIUTE -SHOSHONE RESERVATION, THE WASHOE TRIBE OF NEVADA AND CALIFORNIA, THE CALIFORNIA PUBLIC UTILITIES COMMISSION, THE CALIFORNIA DEPARTMENT OF TRANSPORTATION, THE NEVADA DEPARTMENT OF TRANSPORTATION, U.S. FOREST SERVICE, INYO NATIONAL FOREST, U.S. FOREST SERVICE, HUMBOLDT-TOIYABE NATIONAL FOREST, THE BUREAU OF LAND MANAGEMENT, AND CBC (8/26/2011).

### **Additional Protection Protocols and Measures**

1. CBC will continue working with the California Department of the Interior (DOI) Bureau of Land Management (BLM), USDA-FS, and Department of Defense (DoD) on the ROW permitting process for fiber installation activities on Federal land.
2. CBC will follow permitting and regulatory requirements outlined and required by the USFWS, BLM, USDA-FS, DoD, California Department of Fish and Game (DFG), and other applicable state agencies for all Project activities.
3. CBC will continue working with the U.S. Army Corps of Engineers (USACE) on the ongoing permitting process pursuant Section 404 of the Clean Water Act, including providing evidence of Section 401 Water Quality Certification by the State of California. CBC must receive concurrence from the USACE before construction activities may begin

within the vicinity of regulated wetlands and waterways (e.g. streams, rivers, floodplains).

4. CBC will adhere to all mitigation monitoring and reporting program protection measures related to air quality in the EA, Appendix B, Air Quality APM-AQ-1 – APM-AQ-2.
5. CBC will adhere to all mitigation monitoring and reporting program protection measures related to noise in the EA, Appendix B, Noise APM-N-1 and MM-N-1.
6. CBC will adhere to all mitigation monitoring and reporting program protection measures related to water resources in the EA, Appendix B, Water Resources APM-W-1 – APM-W-3 and MM-W-1 – MM-W-2.
7. CBC will adhere to all mitigation monitoring and reporting program protection measures related to biological resources in the EA, Appendix B, Biological Resources APM-Bio-1 – APM-Bio-20 and MM-Bio-1 – MM-Bio-26.
8. CBC will adhere to all mitigation monitoring and reporting program protection measures related to cultural resources in the EA, Appendix B, Cultural Resources APM-CR-1 – APM-CR-8 and MM-CR-1 – MM-CR-4.
9. CBC will adhere to all mitigation monitoring and reporting program protection measures related to aesthetic and visual resources in the EA, Appendix B, Aesthetic and Visual Resources APM-AVR-1 and MM-AVR.
10. CBC will adhere to all mitigation monitoring and reporting program protection measures related to land use in the EA, Appendix B, Land Use APM-LU-1.
11. CBC will adhere to all mitigation monitoring and reporting program protection measures related to infrastructure in the EA, Appendix B, Infrastructure APM-I-1 – APM-I-3.
12. CBC will adhere to all mitigation monitoring and reporting program protection measures related to human health and safety in the EA, Appendix B, Human Health/Safety APM-HHS-1 – APM-HHS-2.

**Additional mitigation measures identified in the Environmental Assessment as being required to avoid potential significant environmental impacts:**

None.