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California Department of Fish and Wildlife  
Bay Delta Region  
2825 CORDELIA ROAD, SUITE 100  
FAIRFIELD, CA 94534

California Endangered Species Act  
Incidental Take Permit No. 2081-2018-066-03

**WINTER ISLAND TIDAL HABITAT RESTORATION PROJECT**

**Authority:** This California Endangered Species Act (CESA) Incidental Take Permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code sections 1907 and 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, sections 786.9 and 783.0 et seq. CESA prohibits the take<sup>1</sup> of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species, and the Native Plant Protection Act prohibits the take of any rare plant.<sup>2</sup> CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

**Permittee:** Department of Water Resources

**Principal Officer:** Dan Riordan, Chief  
Fish Restoration Program

**Contact Person:** Joy Khamphanh, (916) 376-9824

**Mailing Address:** 3500 Industrial Boulevard  
West Sacramento, CA 95691

**Effective Date and Expiration Date of this ITP:**

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **December 31, 2025**.

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

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

<sup>2</sup>"The definition of an endangered, threatened, candidate, and rare species for purposes of CESA and NPPA are found in Fish and Game Code sections 2062, 2067, 2068, and 1901 respectively.

**Project Location:**

The Winter Island Tidal Habitat Restoration Project (Project) is located at the confluence of the Sacramento and San Joaquin rivers, in the Sacramento-San Joaquin Delta, north of the City of Pittsburg, in Contra Costa County, (See Figure 1). The Project is located at approximately 1.5 miles due south of Collinsville, at a latitude of North 38.041031° and a longitude of West 121.848082°. The Project site is bounded by the Sacramento River to the north, Broad Slough to the east, New York Slough to the south, and Middle Slough to the west.

**Project Description:**

The Project will restore and permanently protect approximately 544 acres of tidal wetlands on Winter Island. The Project will create tidal wetlands, associated high marsh, and riparian habitats on-site to benefit native fish species, including rearing salmon. Additionally, the greater tidal flows will result in increased availability of wetland-derived primary and secondary production to the surrounding areas. The Project is intended to help fulfill a portion of the 8,000-acre tidal habitat restoration obligations of the Department of Water Resources (DWR) contained within Reasonable and Prudent Alternative (RPA) of the U.S. Fish and Wildlife Service (USFWS) Delta Smelt Biological Opinion (BiOp) for long-term coordinated operations of the State Water Project (SWP) and the federal Central Valley Project (CVP). Because restoration of tidal habitat will provide access for salmonid rearing at Winter Island, the Project will also be consistent with RPA I.6.1 of the National Marine Fisheries Service (NMFS) Salmonid BiOp for SWP/CVP operations.

Project activities include breaching the southern and northern levees, removing existing water control structures and other debris, and widening of an eastern tidal channel. A barge mounted crane, barge and excavator, and/or amphibious excavator may be used during excavating activities as well as other equipment.

Breaching the Southern Levee: To help fully restore tidal connectivity to the site, the Permittee will remove the southern water control structure and bulkhead. The resulting breach will be widened to 100 feet and excavated to match the channel invert elevations on the site interior of 2 feet North American Vertical Datum of 1988 (NAVD88). Permittee will remove and dispose off-site an existing boat dock, shed, post piles, and other debris. Breaching the southern levee will permanently convert 0.01 acres of upland scrub habitat and 0.04 acres of wetland habitat to open water, and temporarily impact 0.19 acres of upland scrub habitat.

Widening of the Eastern Tidal Channel: An existing breach on the eastern side of the Project site is responsible for the muted tidal classification of Winter Island. Incoming water is diverted along the edge of the island interior via a toe ditch, which limits flows to the interior. Permittee will widen a narrow channel located just north of the eastern breach to increase tidal flows to the island interior. Excavation of the eastern tidal channel will permanently convert 0.15 acres of emergent marsh to open water habitat and temporarily impact 1.65 acres of emergent marsh.

Breaching the Northern Levee: Permittee will remove the northern water control structure (culvert and bulkhead), post piles, and other debris to allow tidal connectivity into the site. No further excavation or armoring will occur at this site; the northern breach will be allowed to evolve naturally over time. Removal of the culvert and bulkhead will permanently convert 0.01 acres of upland scrub to open water and temporarily impact 0.05 acres of upland scrub habitat.

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Mason's Lilaeopsis Surveys: If pre-construction surveys indicate Mason's lilaeopsis (*Lilaeopsis masonii*) will be impacted by construction-related activities or post-construction surveys indicate Mason's lilaeopsis will be impacted by unabated soil erosion at the northern breach, Permittee may attempt to salvage and transplant these plants. Additionally, Permittee may collect Mason's lilaeopsis seeds locally for propagation and planting on Winter Island.

Construction Timeline: It is anticipated that the Project will be completed in one work season, most likely in the fall of 2019. In-water work activities will begin September 1 and conclude by October 31.

Upon Project completion, the island's interior will be converted from a muted tidal wetland to a fully tidal wetland. Increased tide levels inside the island will convert 0.38 acres of upland habitat to 0.29 acres of emergent marsh and 0.09 acres of open water. Overall, the Project would convert 0.4 acres of upland scrub habitat to 0.1 acres of tidal emergent marsh habitat and 0.3 acres of tidal open water habitat, as well as, 0.15 acres of emergent marsh habitat to open water.

**Covered Species Subject to Take Authorization Provided by this ITP:**

This ITP covers the following species:

Name	CESA Status
1. Mason's lilaeopsis ( <i>Lilaeopsis masonii</i> )	Rare <sup>3</sup>

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

**Impacts of the Taking on Covered Species:**

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include excavation of levee soil and the collection, handling, and transplanting of Mason's lilaeopsis (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as habitat loss at the northern levee due to breaching and increased bank erosion and the handling, collection, and transplanting of Covered Species. The areas where authorized take of the Covered Species is expected to occur include the levees encompassing Winter Island (collectively, the Project Area).

If the northern breach severely erodes towards the west, the Project is expected to cause the permanent loss of 46.5 square feet of Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, the Project's incremental contribution to cumulative impacts (indirect impacts), and stress resulting from collection, handling, and transplanting.

**Incidental Take Authorization of Covered Species:**

This ITP authorizes incidental take of the Covered Species and only the Covered Species. With respect to incidental take of the Covered Species, CDFW authorizes the Permittee, its employees,

<sup>3</sup>See Cal. Code Regs. tit. 14 § 670.2, subd. (c)(3)(A).

contractors, and agents to take Covered Species incidentally in carrying out the Covered Activities, subject to the limitations described in this section and the Conditions of Approval identified below. This ITP does not authorize take of Covered Species from activities outside the scope of the Covered Activities, take of Covered Species outside of the Project Area, take of Covered Species resulting from violation of this ITP, or intentional take of Covered Species except for relocation of Covered Species as authorized by this ITP.

**Conditions of Approval:**

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

1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Mitigated Negative Declaration and Initial Study (SCH No. 2018082025) adopted by Department of Water Resources on January 10, 2019 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No. 1600-2018-0309-R3) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
5. **General Provisions:**
  - 5.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
  - 5.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW

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approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed.

- 5.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species in consultation with CDFW.
- 5.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.
- 5.5. Construction Monitoring Notebook. The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.
- 5.6. Debris and Waste Disposal. Permittee shall not dump any litter or construction debris within the Project area. Permittee shall pick up all debris and waste daily and properly dispose of the debris and waste at an appropriate site. Upon completion of operations and/or onset of wet weather, Permittee shall remove all construction material and/or debris from the Project work site to an area not subject to inundation. All removed vegetation and debris shall be disposed of according to State and local laws and ordinances. Riprap not reused onsite shall be disposed of offsite. Permittee shall remove any temporary flagging, fencing, and barriers upon completion of Project activities.
- 5.7. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 5.8. Staging Areas. Permittee shall confine all Project-related equipment storage on barges or in designated parking areas on disturbed soils on Winter Island. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall not use or cross Covered Species' habitat.

- 5.9. Hazardous Material Storage. Staging areas for equipment, materials, fuels, lubricants, solvents, or any material deleterious to the Covered Species shall be located on a barge or in a dry upland location following best management practices as required by the Storm Water Prevention Plan. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to water shall be positioned over drip pans. Permittee shall check and maintain daily any equipment or vehicles driven and/or operated within or adjacent to water to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Permittee shall move vehicles away from the channel prior to refueling and lubrication to the extent practicable. Spill equipment such as booms shall be on-site and be ready to deploy in case of spill.
- 5.10. Spill Response. All personnel involved in the use of hazardous materials shall be trained in emergency response and spill control. The permittee shall have spill clean-up equipment on-site during Covered Activities. In the event of a hazardous materials spill into water, Permittee shall immediately notify the California Office of Emergency Services State Warning Center by calling (800) 852-7550. Permittee shall take all reasonable measures to document the extent of the impacts and affected areas including photographic documentation of affected areas. Permittee shall meet with CDFW within ten days of the reported spill to develop a resolution including: site clean-up, remediation, and compensatory mitigation for the harm caused as a result of the spill. The Permittee shall be responsible for all spill clean-up, site remediation and compensatory mitigation costs. CDFW reserves the right to refer the matter to the District Attorney's Office if a resolution cannot be agreed upon and achieved within a specified timeframe, generally six months from the date of the incident.
- 5.11. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.

## **6. Monitoring Notification and Reporting Provisions:**

- 6.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 6.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.
- 6.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall



prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.

- 6.4. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Compliance Monitoring 6.3 into a Monthly Compliance Report and submit it to CDFW by the 5th of each month following the first month of Covered Activities. A copy of the MMRP table with notes showing the current implementation status of each mitigation measure shall be submitted as part of the report. Monthly Compliance Reports shall be submitted to the CDFW contact listed below via e-mail and hardcopy. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.
- 6.5. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Compliance Monitoring Reports for that year identified in Condition of Approval 6.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; and (7) information about other Project impacts on the Covered Species.
- 6.6. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 6.7. Final Mitigation Report. No later than [45] days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.

- 6.8. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Representative below. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

**7. Take Minimization Measures:**

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

- 7.1. Avoid and minimize impacts to Covered Species. A qualified biologist shall conduct pre-construction surveys for Covered Species prior to all construction activities. If Covered Species are identified in the Project Area, they shall be flagged and avoided. If any Covered Species cannot be avoided, an attempt shall be made to transplant the individuals to suitable habitat after consultation with CDFW.
- 7.2. Covered Species Delineation. Permittee shall clearly delineate Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species.

**8. Habitat Management Land Acquisition and Restoration:**

CDFW has determined that this restoration Project will directly benefit longfin smelt (*Spirinchus thaleichthys*), Delta smelt (*Hypomesus transpacificus*), spring-run Chinook salmon (*Oncorhynchus tshawytscha*), and winter-run Chinook salmon (*O. tshawytscha*), through the restoration and enhancement of 544 acres of tidal wetland habitat and 17 acres of transitional upland habitat. In addition, the enhancement of the existing muted tidal habitat and transitional upland will benefit the Covered Species by greatly reducing levee maintenance and hardscaping, and by restoring the natural ecological processes that occurs in the Covered Species preferred intertidal habitat. This determination is based on factors including an assessment of the importance of the habitat in the Project Area and the extent to which the Covered Activities will impact the habitat.

To fully mitigate Project-related impacts to the taking of Covered Species, the Permittee shall provide vegetation monitoring and management of Covered Species on Winter Island for a seven-year period and restore up to one acre of Habitat Management (HM) lands in an appropriate intertidal area on the exterior of Winter Island pursuant to Condition of Approval 8.2 below.

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



- 8.1.1. Land acquisition costs for HM lands identified in Condition of Approval 8.2.1 below, estimated at \$3,000/acre for one acre: **\$3,000**. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;
- 8.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 8.2.4 below, estimated at **\$53,000**;
- 8.1.3. Interim management period funding as described in Condition of Approval 8.2.5 below, estimated at **\$50,000**;
- 8.1.4. Long-term management funding as described in Condition of Approval 8.3 below of **\$2,000** annually in perpetuity for one acre. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 8.1.5. Mason's lilaeopsis vegetation monitoring and management funding as described in Condition of Approval 8.2.6 below, estimated at **\$200,000**.
- 8.1.6. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW, estimated at **\$3,000**.
- 8.2. Habitat Protection, Management and Monitoring. To provide for the perpetual protection and management of HM lands, the Permittee shall:
  - 8.2.1. Fee Title/Conservation Easement. Maintain ownership of the HM lands, up to one acre intertidal area on the exterior of Winter Island, in fee title and shall convey a conservation easement to CDFW over the HM lands. Any transfer of fee title ownership shall be pursuant to terms approved in writing by CDFW and in compliance with state law. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e);
  - 8.2.2. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A). All documents conveying a conservation easement over the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;
  - 8.2.3. Land Manager. Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term

land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change;

- 8.2.4. Start-up Activities. Provide for the implementation and funding of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval no later than August 1, 2019 (see <https://www.wildlife.ca.gov/Conservation/Planning/Banking>); (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;
- 8.2.5. Interim Management (Initial and Capital). Enhancement of the HM lands shall begin in 2019 with the grading and site preparation related to enhancing the site for tidal restoration and development of the transitional upland habitat. The Permittee shall fund and ensure implementation of the interim management on the HM lands. The interim management period shall be a minimum of three years from the date that the Permittee begins the Covered Activities. Interim management period activities shall be those defined as necessary to manage the land and shall include fence repair, trash removal, site monitoring, vegetation and invasive species management, tree maintenance and replanting; mowing, and overall site maintenance.
- 8.2.6. Covered Species Monitoring and Management. To mitigate habitat impacts associated with Covered Activities, Permittee shall survey and monitor the status of all occurrences of Mason's lilaeopsis on Winter Island levees that are owned by DWR. Permittee shall develop a monitoring and management plan to benefit Covered Species using management funds as described in Condition of Approval 8.3 and subject to Condition of Approval 8.4.
- 8.2.6.1. Within three months of issuance of this ITP, Permittee shall prepare and submit to CDFW for approval a Mason's Lilaeopsis Monitoring and Management Plan (MLMMP), including a baseline assessment, to facilitate management and monitoring of Covered Species on Winter Island. The MLMMP shall include detail adequate to allow efficient implementation by vegetation management contractors under the direction of the Designated Biologist. Management activities may include, but not limited to, invasive species control and biotechnical bank stabilization measures to abate Project-related erosion of Covered Species habitat.
- 8.2.6.2. As part of the MLMMP, Permittee shall include a translocation plan for the Mason's Lilaeopsis occurrence near the northern levee breach. This plan shall describe: (1) the location and patch size of the existing occurrence to be transplanted; (2) the conditions under which the patch would be transplanted; (3) locations and existing habitat conditions of all possible translocation sites; (4) transplanting methods and techniques; (5) a monitoring and maintenance plan for the transplanted occurrence; (6) success criteria for any transplanted patches; and (7) identify the section of the Winter Island levee to be restored, if needed, as the



Habitat Management Lands. The monitoring and maintenance plan reporting can be incorporated into the Annual Winter Island Mason's Lilaepsis Monitoring Report (Annual Report) as described below in Condition of Approval 8.2.6.4. The translocation plan would only be implemented if conditions at the northern breach causes eminent danger to the continued existence of Covered Species and after Permittee consults with and receives written approval from CDFW.

- 8.2.6.3. Permittee shall ensure that the approved MLMMP is fully implemented over a seven-year term beginning from the issuance date of this ITP.
- 8.2.6.4. Permittee shall provide CDFW an Annual Report on the status of Mason's lilaepsis located on the levees of Winter Island, excluding the levee section not owned by Permittee, no later than January 31 of every year beginning with issuance of this ITP and continuing for seven years. Each annual report shall include, at a minimum: (1) names and titles of each survey crew member; (2) survey methods and dates; (3) the size and location of each Mason's Lilaepsis occurrence; (4) the relative habitat condition of each occurrence; and (5) a brief analysis of the status of Mason's lilaepsis located near the northern breach relative to the other occurrences on Winter Island. If the northern breach occurrence decreases by greater than 25% relative to the other on-island occurrences, then Permittee shall immediately notify CDFW for possible additional measures to protect the occurrence or translocation if the habitat is eroding away. Each Annual Report shall also include a summary of any Covered Species management that occurred during the year.
- 8.2.6.5. If after initiating management activities, Permittee or CDFW personnel deem that an alternative management approach, the costs of which would not exceed the cost estimate described under Condition of Approval 8.1.5, would be more successful in controlling invasive vegetation and/or abate erosion of Covered Species habitat, the MLMMP shall be revised accordingly. All revisions of the MLMMP shall be approved by CDFW personnel one month prior to conducting new or modified activities.
- 8.2.6.6. If at any time the Covered Species is taken as a result of Project-related activities or translocated individuals of the Covered Species are unsuccessful, implementation of the Habitat Management lands will be required in an amount up to one acre as determined by CDFW in a location approved by CDFW as part of the MLMMP.
- 8.2.6.7. Following completion of the seven-year monitoring period, Permittee shall prepare a summary report describing the success of the Covered Species as determined by the MLMMP. The report shall detail Mason's lilaepsis monitoring and management approaches used on Winter Island, any management adaptations attempted, the percent invasive species cover in each management area at the end of each management year, a description of the response of Mason's lilaepsis to management activities over the management period, and any other information that would inform future monitoring and management activities on Winer Island. The report shall be submitted to CDFW staff for review.

- 8.3. In-Perpetuity Management Funding. The Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. Permittee shall provide long-term management funding for the perpetual management of the HM lands by using revenues derived from the SWP as defined in the October 18, 2010, *Agreement between the Department of Water Resources and the Department of Fish and Game (now Department of Fish and Wildlife) Regarding Implementation of a Fish Restoration Program in Satisfaction of Federal Biological Opinions for State Water Project Delta Operations; Section "H. Property Transfer and Management Costs"* of the agreed upon conditions.

The permittee will set forth a Project-specific agreement which will include assurances for sufficient funding through DWR's SWP operations and maintenance budget for perpetual operations and maintenance (O&M) of the restoration project in perpetuity and adjusted for inflation. If funding is no longer available from SWP charges to the State Water Contractors, Permittee shall annually fund in-perpetuity management activities through another funding source, until Permittee has established and fully funded an endowment. If another funding source is required, it shall be established within six months of identifying that the previous funding source will no longer be available. Additionally, if funding from SWP charges to the State Water Contractors is no longer available, Permittee shall fund an endowment amount sufficient to fund these activities in perpetuity as established through the Property Analysis Record (PAR) prepared for this Project pursuant to Condition 8.3.2 of this ITP. Permittee shall fund the Endowment by contributing a minimum of ten percent of the amount required by the PAR (adjusted for present value) annually, commencing the fiscal year that SWP charges to the State Water Contractors funding is no longer available, to a mutually agreed upon account, until the endowment is fully funded, after which time the activities under the management plan will be funded from interest generated from the endowment principal.

The Endowment as used in this ITP is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 8.2.4. The Endowment shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended. After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded as described above.

- 8.3.1. Identify an Endowment Manager. If Endowment establishment is triggered, per Condition of Approval 8.3, the Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended. Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit



organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). Within thirty days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(4) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(4).

8.3.2. Calculate the Endowment Funds Deposit. Permittee has prepared a PAR or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of **\$200,000** as necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Endowment shall be established assuming spending will not occur for the first three years after full funding. For all large capital expenses to occur periodically but not annually, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.

8.3.3. Transfer Long-term Endowment Funds. If Endowment establishment is triggered, per Condition of Approval 8.3, the Permittee shall fund the Endowment Deposit Amount over a 10-year period, in annual amount of 10% of the total Endowment Deposit Amount, adjusted for inflation, as approved by CDFW in writing. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

8.4. Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable expenses incurred by CDFW such as transaction fees, account set-up fees, administrative fees, and expenses incurred from other state agency reviews. Permittee shall also reimburse CDFW for any unmet mitigation required in this ITP.

## 9. Performance Security

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

- 9.1. Security Amount. The Security shall be in the amount of **\$311,000**. This amount is based on the cost estimates identified in Condition of Approval 8.1 above.
- 9.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office

of the General Counsel.

- 9.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.
- 9.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 9.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.
- 9.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.
- 9.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:
  - Written documentation of the acquisition of HM lands;
  - Copies of all executed and recorded conservation easements; and
  - Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the first year of required vegetation monitoring and management on Winter Island no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional vegetation monitoring and management and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

**Amendment:**

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable law. This ITP may be amended without the concurrence of the Permittee as required by law, including if CDFW determines that continued implementation of the Project as authorized under this ITP would jeopardize the continued existence of the Covered Species or where Project changes or changed biological conditions necessitate an ITP amendment to ensure that all Project-related impacts of the taking to the Covered Species are minimized and fully mitigated.

**Stop-Work Order:**

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 days to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 25 additional days. Suspension and revocation of this ITP shall be governed by California Code of

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Regulations, Title 14, section 783.7, and any other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

**Compliance with Other Laws:**

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

**Notices:**

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

Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program  
Post Office Box 944209  
Sacramento, CA 94244-2090

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2018-066-03) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Gregg Erickson, Regional Manager  
California Department of Fish and Wildlife  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
Telephone (707) 428-2002

and a copy to:

Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program  
Post Office Box 944209  
Sacramento, CA 94244-2090

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

Andy Rockriver  
California Department of Fish and Wildlife  
2109 Arch Airport Road, Suite 100  
Stockton, CA 95206  
Telephone (209) 234-3433, Email [Andy.Rockriver@wildlife.ca.gov](mailto:Andy.Rockriver@wildlife.ca.gov)

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**Compliance with CEQA:**

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, DWR. (See generally Pub. Resources Code, §§ 21067, 21069). The lead agency's prior environmental review of the Project is set forth in the Winter Island Tidal Habitat Restoration Project Mitigated Negative Declaration and Initial Study, (SCH No.: 2018082025) dated January 9, 2019 that the DWR adopted for the Winter Island Tidal Habitat Restoration Project on January 10, 2019. At the time the lead agency adopted the Mitigated Negative Declaration and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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

**Findings Pursuant to CESA:**

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

CDFW finds based on substantial evidence in the ITP application, Winter Island Tidal Habitat Restoration Project Initial Study/Mitigated Negative Declaration, the results of site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) implementation of a vegetation monitoring and management plan; (2) establishment of avoidance zones; (3) worker education; and (4) Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the habitat vegetation monitoring and management at Winter Island over a period of seven years, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

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- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

**Attachments:**

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

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 5/16/19 .



Gregg Erickson, Regional Manager  
BAY DELTA REGION

**ACKNOWLEDGMENT**

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

By: Daniel R. Riordan

Date: 06/11/2019

Printed Name: Daniel R. Riordan

Title: Senior Env. Scientist

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Figure 1. Location of Winter Island Tidal Habitat Restoration Project, near the confluence of the Sacramento and San Joaquin Rivers, Contra Costa County, California.

## Attachment 1

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

**INCIDENTAL TAKE PERMIT NO. 2081-2018-066-03**

**PERMITTEE:** Department of Water Resources

**PROJECT:** Winter Island Tidal Habitat Restoration Project

#### **PURPOSE OF THE MMRP**

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

#### **OBLIGATIONS OF PERMITTEE**

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

#### **VERIFICATION OF COMPLIANCE, EFFECTIVENESS**

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

#### **TABLE OF MITIGATION MEASURES**

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



	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
<b>BEFORE DISTURBING SOIL OR VEGETATION</b>					
1	<u>Designated Representative</u> . Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with the ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of the ITP.	ITP Condition # 5.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	<u>Designated Biologist</u> . Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed.	ITP Condition # 5.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
3	<u>Designated Biologist Authority</u> . To ensure compliance with the Conditions of Approval of the ITP, the Designated Biologist shall have authority to immediately stop any activity that does not comply with the ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species in consultation with CDFW.	ITP Condition # 5.3	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
4	<u>Education Program</u> . Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in the ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided for any new workers before their performing work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.	ITP Condition # 5.4	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
5	<u>Spill Response</u> . All personnel involved in the use of hazardous materials shall be trained in emergency response and spill control. The permittee shall have spill clean-up equipment onsite during Covered Activities. In the event of a hazardous materials spill into water, Permittee shall immediately notify the California Office of Emergency Services State Warning Center by calling (800) 852-7550. Permittee shall take all reasonable measures to document the extent of the impacts and affected areas including photographic documentation of affected areas. Permittee shall meet with CDFW within ten days of the reported spill to develop a resolution including: site clean-up, remediation, and compensatory mitigation for the harm caused as a result of the spill. The Permittee shall be responsible for all spill clean-up, site remediation and compensatory mitigation costs. CDFW reserves the right to refer the matter to the District Attorney's Office if a resolution cannot be agreed upon and achieved within a specified timeframe, generally six months from the date of the incident.	ITP Condition # 5.10	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	

6	<u>CDFW Access</u> . Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.	ITP Condition # 5.11	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
7	<u>Notification Before Commencement</u> . The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.	ITP Condition # 6.1	Before commencing ground- or vegetation-disturbing activities	Permittee	
8	<u>Avoid and minimize impacts to Covered Species</u> . A qualified biologist shall conduct preconstruction surveys for Covered Species prior to all construction activities. If Covered Species are identified in the Project Area, they shall be flagged and avoided. If any Covered Species cannot be avoided, an attempt shall be made to transplant the individuals to suitable habitat after consultation with CDFW.	ITP Condition # 7.1	Before commencing ground- or vegetation-disturbing activities	Permittee	
9	<u>Covered Species Delineation</u> . Permittee shall clearly delineate Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species.	ITP Condition # 7.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
10	<p><u>Cost Estimates</u>. CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands and restoration of temporarily disturbed habitat as follows:</p> <ul style="list-style-type: none"> <li>i) Land acquisition costs for HM lands identified in Condition of Approval 8.2.1 below, estimated at \$3,000.00/acre for one acre: <b>\$3,000</b>. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;</li> <li>ii) Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 8.2.4 below, estimated at <b>\$53,000</b>;</li> <li>iii) Interim management period funding as described in Condition of Approval 8.2.5 below, estimated at <b>\$50,000</b>;</li> <li>iv) Long-term management funding as described in Condition of Approval 8.3 below of <b>\$2,000</b> annually in perpetuity for one acre. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.</li> <li>v) Mason's Lilaeopsis vegetation monitoring and management funding as described in Condition of Approval 8.2.6 below, estimated at <b>\$200,000</b>.</li> <li>vi) Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW, estimated at <b>\$3,000.00</b>.</li> </ul>	ITP Condition # 8.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
11	<u>Fee Title/Conservation Easement</u> . Maintain ownership of the HM lands, up to one acre intertidal area on the exterior of Winter Island, in fee title and shall convey a conservation easement to CDFW over the HM lands. Any transfer of fee title ownership shall be pursuant to terms approved in writing by CDFW and in compliance with state law. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e);	ITP Condition # 8.2.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	



12	<u>HM Lands Documentation</u> . Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A). All documents conveying a conservation easement over the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;	ITP Condition # 8.2.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
13	<u>Land Manager</u> . Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change;	ITP Condition # 8.2.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
14	<u>Start-up Activities</u> . Provide for the implementation and funding of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval no later than August 1, 2019 (see <a href="https://www.wildlife.ca.gov/Conservation/Planning/Banking">https://www.wildlife.ca.gov/Conservation/Planning/Banking</a> ); (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;	ITP Condition # 8.2.4	Before commencing ground- or vegetation-disturbing activities or by August 1, 2019	Permittee	
15	<u>Interim Management (Initial and Capital)</u> . Enhancement of the HM lands shall begin in 2019 with the grading and site preparation related to enhancing the site for tidal restoration and development of the transitional upland habitat. The Permittee shall fund and ensure implementation of the interim management on the HM lands. The interim management period shall be a minimum of three years from the date that the Permittee begins the Covered Activities. Interim management period activities shall be those defined as necessary to manage the land and shall include fence repair, trash removal, site monitoring, vegetation and invasive species management, tree maintenance and replanting; mowing, and overall site maintenance.	ITP Condition # 8.2.5	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
16	<u>Covered Species Monitoring and Management</u> . Within three months of issuance of this ITP, Permittee shall prepare and submit to CDFW for approval a Mason's Lilaopsis Monitoring and Management Plan (MLMMP), including a baseline assessment, to facilitate management and monitoring of Covered Species on Winter Island. The MLMMP shall include detail adequate to allow efficient implementation by vegetation management contractors under the direction of the Designated Biologist. Management activities may include, but not limited to, invasive species control and biotechnical bank stabilization measures to abate Project-related erosion of Covered Species habitat.	ITP Condition # 8.2.6.1	Within three (3) months of issuance of the ITP	Permittee	

17	<u>Covered Species Monitoring and Management</u> . As part of the MLMMP, Permittee shall include a translocation plan for the Mason's Lilaeopsis occurrence near the northern levee breach. This plan shall describe: (1) the location and patch size of the existing occurrence to be transplanted; (2) the conditions under which the patch would be transplanted; (3) locations and existing habitat conditions of all possible translocation sites; (4) transplanting methods and techniques; (5) a monitoring and maintenance plan for the transplanted occurrence; (6) success criteria for any transplanted patches; and (7) identify the section of the Winter Island levee to be restored, if needed, as the Habitat Management Lands. The monitoring and maintenance plan reporting can be incorporated into the Annual Winter Island Mason's Lilaeopsis Monitoring Report (Annual Report) as described below in Condition of Approval 8.2.6.4. The translocation plan would only be implemented if conditions at the northern breach causes eminent danger to the continued existence of Covered Species and after Permittee consults with and receives written approval from CDFW.	ITP Condition # 8.2.6.2	Within three (3) months of issuance of the ITP	Permittee	
18	<u>Covered Species Monitoring and Management</u> . Permittee shall ensure that the approved MLMMP is fully implemented over a seven-year term beginning from the issuance date of this ITP.	ITP Condition # 8.2.6.3	Before commencing ground- or vegetation-disturbing activities	Permittee	



19	<p><b>In-Perpetuity Management Funding.</b> The Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. Permittee shall provide long-term management funding for the perpetual management of the HM lands by using revenues derived from the State Water Project (SWP) as defined in the October 18, 2010, <i>Agreement between the Department of Water Resources and the Department of Fish and Game (now Department of Fish and Wildlife) Regarding Implementation of a Fish Restoration Program in Satisfaction of Federal Biological Opinions for State Water Project Delta Operations; Section "H. Property Transfer and Management Costs"</i> of the agreed upon conditions.</p> <p>The permittee will set forth a project-specific agreement which will include assurances for sufficient funding through DWR's SWP operations and maintenance budget for perpetual operations and maintenance (O&amp;M) of the restoration project in perpetuity and adjusted for inflation. If funding is no longer available from SWP charges to the State Water Contractors, Permittee shall annually fund in-perpetuity management activities through another funding source, until Permittee has established and fully funded an endowment. If another funding source is required, it shall be established within six months of identifying that the previous funding source will no longer be available. Additionally, if funding from SWP charges to the State Water Contractors is no longer available, Permittee shall fund an endowment amount sufficient to fund these activities in perpetuity as established through the Property Analysis Record (PAR) prepared for this Project pursuant to Condition 8.3.2 of this ITP. Permittee shall fund the Endowment by contributing a minimum of ten percent of the amount required by the PAR (adjusted for present value) annually, commencing the fiscal year that SWP charges to the State Water Contractors funding is no longer available, to a mutually agreed upon account, until the endowment is fully funded, after which time the activities under the management plan will be funded from interest generated from the endowment principal.</p> <p>The Endowment as used in this ITP is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 8.2.4. The Endowment shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended. After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded as described above.</p>	ITP Condition # 8.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
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20	<u>Identify an Endowment Manager.</u> If Endowment establishment is triggered, per Condition of Approval 8.3, the Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended. Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). Within thirty days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(4) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(4).	ITP Condition # 8.3.1	If Endowment establishment is triggered, per Condition of Approval 8.3	Permittee	
21	<u>Calculate the Endowment Funds Deposit.</u> Permittee has prepared a PAR or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of \$200,000 as necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Endowment shall be established assuming spending will not occur for the first three years after full funding. For all large capital expenses to occur periodically but not annually, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.	ITP Conditions # 8.3.2	If Endowment establishment is triggered, per Condition of Approval 8.3	Permittee	
22	<u>Transfer Long-term Endowment Funds.</u> If Endowment establishment is triggered, per Condition of Approval 8.3, the Permittee shall fund the Endowment Deposit Amount over a 10-year period, in annual amount of 10% of the total Endowment Deposit Amount, adjusted for inflation, as approved by CDFW in writing. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.	ITP Conditions # 8.3.3	If Endowment establishment is triggered, per Condition of Approval 8.3	Permittee	
23	<u>Reimburse CDFW.</u> Permittee shall reimburse CDFW for all reasonable expenses incurred by CDFW such as transaction fees, account set-up fees, administrative fees, and expenses incurred from other state agency reviews. Permittee shall also reimburse CDFW for any unmet mitigation required in the ITP.	ITP Conditions # 8.4	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	



24	<p><b>Performance Security.</b> The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 8 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:</p> <p>a) <b>Security Amount.</b> The Security shall be in the amount of \$311,000. This amount is based on the cost estimates identified in Condition of Approval 8.1 above.</p> <p>b) <b>Security Form.</b> The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.</p> <p>c) <b>Security Timeline.</b> The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.</p> <p>d) <b>Security Holder.</b> The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.</p> <p>e) <b>Security Transmittal.</b> If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.</p> <p>f) <b>Security Drawing.</b> The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.</p> <p>g) <b>Security Release.</b> The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:</p> <ul style="list-style-type: none"> <li>• Written documentation of the acquisition of HM lands;</li> <li>• Copies of all executed and recorded conservation easements; and</li> <li>• Timely submission of all required reports.</li> </ul> <p>Even if Security is provided, the Permittee must complete the first year of required vegetation monitoring and management on Winter Island no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional vegetation monitoring and management and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.</p>	ITP Condition # 9	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
<b>DURING CONSTRUCTION</b>					
25	<p><b>Construction Monitoring Notebook.</b> The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.</p>	ITP Condition # 5.5	During Construction/ Entire Project	Permittee	

26	<u>Debris and Waste Disposal</u> . Permittee shall not dump any litter or construction debris within the Project area. Permittee shall pick up all debris and waste daily and properly dispose of the debris and waste at an appropriate site. Upon completion of operations and/or onset of wet weather, Permittee shall remove all construction material and/or debris from the Project work site to an area not subject to inundation. All removed vegetation and debris shall be disposed of according to State and local laws and ordinances. Riprap not reused onsite shall be disposed of offsite. Permittee shall remove any temporary flagging, fencing, and barriers upon completion of Project activities.	ITP Condition # 5.6	During Construction/ Entire Project	Permittee	
27	<u>Erosion Control Materials</u> . Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.	ITP Condition # 5.7	During Construction/ Entire Project	Permittee	
28	<u>Staging Areas</u> . Permittee shall confine all Project-related equipment storage on barges or in designated parking areas on disturbed soils on Winter Island. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall not use or cross Covered Species' habitat.	ITP Condition # 5.8	During Construction/ Entire Project	Permittee	
29	<u>Hazardous Material Storage</u> . Staging areas for equipment, materials, fuels, lubricants, solvents, or any material deleterious to the Covered Species shall be located on a barge or in a dry upland location- following best management practices as required by the Storm Water Prevention Plan. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to water shall be positioned over drip pans. Permittee shall check and maintain daily any equipment or vehicles driven and/or operated within or adjacent to water to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Permittee shall move vehicles away from the channel prior to refueling and lubrication to the extent practicable. Spill equipment such as booms shall be on site and be ready to deploy in case of spill.	ITP Condition # 5.9	During Construction/ Entire Project	Permittee	
30	<u>Notification of Non-compliance</u> . The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of the ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in the ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.	ITP Condition # 6.2	During Construction/ Entire Project	Permittee	
31	<u>Compliance Monitoring</u> . The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of the ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by the ITP.	ITP Condition # 6.3	During Construction/ Entire Project	Permittee	



32	<u>Monthly Compliance Report.</u> The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Reporting Provision 6.3 into a Monthly Compliance Report and submit it to CDFW by the 5th of each month following the first month of Covered Activities. A copy of the MMRP table with notes showing the current implementation status of each mitigation measure shall be submitted as part of the report. Monthly Compliance Reports shall be submitted to the CDFW contact listed below via e-mail and hardcopy. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.	ITP Condition # 6.4	During Construction/ Entire Project	Permittee	
33	<u>Annual Status Report.</u> Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Compliance Monitoring Reports for that year identified in Condition of Approval 6.3; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; and (7) information about other Project impacts on the Covered Species.	ITP Condition # 6.5	During Construction/ Entire Project	Permittee	
34	<u>CNDDDB Observations.</u> The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.	ITP Condition # 6.6	During Construction/ Entire Project	Permittee	
35	<u>Notification of Take or Injury.</u> Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Representative below. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.	ITP Condition # 6.8	During Construction/ Entire Project	Permittee	
36	<u>Covered Species Monitoring and Management.</u> Permittee shall provide CDFW an Annual Report on the status of Mason's Ilaeopsis located on the levees of Winter Island, excluding the levee section not owned by Permittee, no later than January 31 of every year beginning with issuance of this ITP and continuing for seven (7) years. Each annual report shall include, at a minimum: (1) names and titles of each survey crew member; (2) survey methods and dates; (3) the size and location of each Mason's Ilaeopsis occurrence; (4) the relative habitat condition of each occurrence; and (5) a brief analysis of the status of Mason's Ilaeopsis located near the northern breach relative to the other occurrences on Winter Island. If the northern breach occurrence decreases by greater than 25% relative to the other on-island occurrences, then Permittee shall immediately notify CDFW for possible additional measures to protect the occurrence or translocation if the habitat is eroding away. Each Annual Report shall also include a summary of any Covered Species management that occurred during the year.	ITP Condition # 8.2.6.4	During Construction/ Entire Project	Permittee	

37	<u>Covered Species Monitoring and Management</u> . If at any time the Covered Species is taken as a result of Project-related activities or translocated individuals of the Covered Species are unsuccessful, implementation of the Habitat Management lands will be required in an amount up to one acre as determined by CDFW in a location approved by CDFW as part of the MLMMP	ITP Condition # 8.2.6.6	During Construction and Post-construction	Permittee	
<b>POST-CONSTRUCTION</b>					
38	<u>Final Mitigation Report</u> . No later than [45] days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.	ITP Condition # 6.7	Post-construction and after completion of mitigation	Permittee	
39	<u>Covered Species Monitoring and Management</u> . If after initiating management activities, Permittee or CDFW personnel deem that an alternative management approach, the costs of which would not exceed the cost estimate described under Condition of Approval 8.1.5, would be more successful in controlling invasive vegetation and/or abate erosion of Covered Species habitat, the MLMMP shall be revised accordingly. All revisions of the MLMMP shall be approved by CDFW personnel one month prior to conducting new or modified activities.	ITP Condition # 8.2.6.5	Post-construction	Permittee	
40	<u>Covered Species Monitoring and Management</u> . Following completion of the seven-year monitoring period, Permittee shall prepare a summary report describing the success of the Covered Species as determined by the MLMMP. The report shall detail Mason's lilaeopsis monitoring and management approaches used on Winter Island, any management adaptations attempted, the percent invasive species cover in each management area at the end of each management year, a description of the response of Mason's lilaeopsis to management activities over the management period, and any other information that would inform future monitoring and management activities on Winer Island. The report shall be submitted to CDFW staff for review.	ITP Condition # 8.2.6.7	Post-construction and after completion of mitigation	Permittee	
41	CDFW accepts the Final Mitigation Report as complete.	ITP Condition # 6.7	Post-construction	CDFW	



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

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

To: \_\_\_\_\_  
Regional Manager, Region Name

From: \_\_\_\_\_  
Project Applicant

Phone: \_\_\_\_\_

Tracking #: \_\_\_\_\_  
CDFW assigned permit or agreement #

Project Name: \_\_\_\_\_

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

Documents in this package include:

- ☐ Fully executed, approved as to form Conservation Easement Deed or Grant Deed with legal description stamped by a licensed surveyor. Date executed: \_\_\_\_\_
- ☐ Proposed Lands for Acquisition Form (PLFAF)
- ☐ Phase I Environmental Site Assessment Report Date on report: \_\_\_\_\_  
(An existing report may be used, but it must be less than two years old.)
- ☐ Preliminary Title Report(s) for subject property is enclosed and has been reviewed for Encumbrances, including severed mineral estates, and other easements. The title report must be less than six months old when final processing is conducted.

Included are additional documents:

- ☐ document(s) to support title exceptions
- ☐ document(s) to explain title encumbrances
- ☐ a plot or map of easements/encumbrances on the property
- ☐ Policy of Title Insurance (an existing title policy is not acceptable)
- ☐ County Assessor Parcel Map(s) for subject property
- ☐ Site Location Map (Site location with property boundaries outline on a USGS 1:24,000 scale topo)
- ☐ Final Permit or Agreement (or other appropriate instrument)
  - Type of agreement: ☐ Bank Agreement ☐ Mitigation Agreement
  - ☐ Permit \_\_\_\_\_ Other: \_\_\_\_\_  
(write in type of permit)
- ☐ Final Management Plan (if required prior to finalizing permit or agreement or if this package is for a Grant Deed)
- ☐ Biological Resources Report
- ☐ Draft Summary of Transactions ☐ hard copy ☐ electronic copy (both are required)

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

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Issue Date: [**date**]

Beneficiary:

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

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

Expiry: [**Date**] at our counters

Dear Sirs:

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



7. Upon presentation of a duly executed Certificate as above provided, payment shall be made to the CDFW, or to the account of the CDFW, in immediately available funds, as the CDFW shall specify.
8. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give the CDFW prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Credit, state the reasons therefore, and await further instruction.
9. Upon being notified that the demand for payment was not effected in conformity with the Credit, the CDFW may correct any such non-conforming demand for payment under the terms and conditions stated herein.
10. All drawings under this Credit shall be paid with our funds. Each drawing honored by us hereunder shall reduce, *pro tanto*, the Principal Sum. By paying to the CDFW an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.
11. This Credit will be cancelled upon receipt by us of Certificate of Cancellation, which:  
(i) shall be in the form of Attachment B, which is attached hereto, and (ii) shall be completed and signed by an Authorized Representative of the CDFW, as defined in paragraph 12 below.
12. An "Authorized Representative" shall mean either the Director of the Department of Fish and Wildlife, the General Counsel of the Department of Fish and Wildlife, or a Regional Manager of the Department of Fish and Wildlife.
13. This Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof, unless at least sixty (60) days prior to any such date, we notify the CDFW in writing by registered mail, return receipt requested, or by overnight courier that we elect not to consider this Credit extended for any such period.
14. Communications with respect to this Credit shall be in writing and addressed to us at **[name and address of financial institution]**, specifically referring upon such writing to this credit by number. The address for notices with respect to this Credit shall be:  
(i) for the CDFW: Department of Fish and Wildlife, Habitat Conservation Planning Branch, 1416 Ninth Street, 12th Floor, Sacramento, California 95814-2090 Attn: HCPB Mitigation Account Coordinator; and (ii) for the Applicant: **[name and address of applicant]**.
15. This Credit may not be transferred.
16. This Credit is subject to the International Standby Practices 1998 ("ISP 98"). As to matters not covered by the ISP 98 and to the extent not inconsistent with the ISP 98,

this credit shall be governed by and construed in accordance with the Uniform Commercial Code, Article 5 of the State of California.

17. This Credit shall, if not canceled, expire on [**expiration date**], or any extended expiration date.
18. We hereby agree with the CDFW that documents presented in compliance with the terms of this Credit will be duly honored upon presentation, as specified herein.
19. This Credit sets forth in full the terms of our undertaking. Such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which this Credit is referred to or to which this Credit relates and any such reference shall not be deemed to incorporate herein by reference any document or instrument.

**[Name of financial institution]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



ATTACHMENT A

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

To:

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

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

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

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

Therefore, the CDFW has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: \_\_\_\_\_

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

ATTACHMENT B

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

To:

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

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

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

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

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

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: \_\_\_\_\_

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



State of California - Department of Fish and Wildlife  
**MITIGATION PAYMENT TRANSMITTAL FORM**  
DFW 1057 (NEW 07/28/17)

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

<b>1. DATE:</b> _____  <b>TO:</b> _____ Regional Manager  _____ Region Office Address	<b>2. FROM:</b> _____ Name  _____ Mailing Address  _____ City, State, Zip  _____ Telephone Number/FAX Number
<b>3. RE:</b> _____ Project Name as appears on permit/agreement	

<b>4. AGREEMENT/ACCOUNT INFORMATION:</b> (check the applicable type)  <input type="checkbox"/> 2081 Permit <input type="checkbox"/> Conservation Bank <input type="checkbox"/> 2835 NCCP <input type="checkbox"/> 1802 Agreement <input type="checkbox"/> 1600 Agreement <input type="checkbox"/> Other _____  _____ Project Tracking Number
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**5. PAYMENT TYPE** (One check per form only): The following funds are being remitted in connection with the above referenced project:

Check information:

Total \$ \_\_\_\_\_ Check No. \_\_\_\_\_  
Account No. \_\_\_\_\_ Bank Routing No. \_\_\_\_\_

- |  |                   |
|--|-------------------|
| a. Endowment: for Long-Term Management | Subtotal \$ _____ |
| b. Habitat Enhancement                 | Subtotal \$ _____ |
| c. Security:                           |                   |
| 1. Cash Refundable Security Deposit    | Subtotal \$ _____ |
| 2. Letter of Credit                    | Subtotal \$ _____ |
| 1. Financial Institution: _____        |                   |
| 2. Letter of Credit Number: _____      |                   |
| 3. Date of Expiration: _____           |                   |

<b>ACCOUNTING OFFICE USE ONLY</b>	
Description	FI\$Cal Coding
Speedchart (Project, Program, Reference, Fund)	
Reporting Structure	
Category	
Date Established: _____ By: _____	