

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 3  
703 B STREET  
MARYSVILLE, CA 95901  
PHONE (530) 741-4239  
www.dot.ca.gov/dist3



*Making Conservation  
a California Way of Life*

June 18, 2019

California Department of Fish and Wildlife - Region 2  
Habitat Conservation Planning Branch, CESA Permitting  
Post Office Box 944209  
Sacramento, CA 94244-2090

Subject: Incidental Take Permit (ITP) for Bridge Scour Mitigation Project – Lagoon Creek (03-3F540): (2081-2018-071-02)

Dear California Department of Fish and Wildlife,

Enclosed is the signed original of the accepted ITP for the Bridge Scour Mitigation Lagoon Creek Project (2081-2018-071-02), for your files.

If you have any questions, please contact me at (530) 741-4239.

Sincerely,

A handwritten signature in blue ink that reads "Michele Lukkarila".

Michele Lukkarila, Project Biologist  
Caltrans Office of Environmental Management M-5

Enclosure(s)

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**JUN 21 2019**

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PLANNING BRANCH**



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HABITAT CONSERVATION  
PLANNING BRANCH

California Department of Fish and Wildlife  
North Central Region  
1701 NIMBUS ROAD  
RANCHO CORDOVA, CA 95670

California Endangered Species Act  
Incidental Take Permit No. 2081-2018-071-02

**BRIDGE SCOUR MITIGATION PROJECT – LAGOON CREEK**

**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 section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 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.<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).

<b>Permittee:</b>	<b>California Department of Transportation</b>
<b>Principal Officer:</b>	<b>Doug Lange, Caltrans District 3 Project Manager</b>
<b>Contact Person:</b>	<b>Michele Lukkarila, Caltrans Biologist, (530) 741-4239</b>
<b>Mailing Address:</b>	<b>703 B Street Marysville, CA 95901</b>

**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, 2022**.

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 7.8 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, and candidate species for purposes of CESA are found in Fish and Game Code sections 2062, 2067, and 2068, respectively.



**Project Location:**

The Bridge Scour Mitigation Project – Lagoon Creek (Project) is located on State Route (SR) 99 north and south bound bridge spans at postmiles (PM) 4.90, 4.98 and 5.05, within the County of Sacramento (Exhibit A). The Project is located immediately south of the Arno Road offramp, at approximately 38°18'39.772 latitude, -121°19'16.426" longitude.

**Project Description:**

The Project will replace three Lagoon Creek bridges; center, north, and south spans. The existing State Route (SR) 99 southbound (SB) Lagoon Creek Bridge center span is a reinforced concrete girder bridge supported by five bents comprised of four (4) 2 by 2-foot square concrete columns on 5 by 5 by 2-foot concrete spread footings. It is a two-lane bridge span with an overall total width of 37 feet, 8 inches. The existing SR 99 SB Lagoon Creek Bridge south span is a reinforced concrete girder bridge supported by two bents each comprised of five 2 by 2-foot square concrete columns on 5 by 5 by 2-foot concrete spread footings. The bridge is a two-lane span with an overall total width of approximately 38 feet. The existing SR 99 SB Lagoon Creek Bridge north span is a reinforced concrete girder bridge supported by two bents each comprised of five 2 by 2-foot square concrete columns on 5 by 5 by 2-foot concrete spread footings. It is a two-lane bridge span with an overall total width of approximately 38 feet.

Replacing the Lagoon Creek Bridges would raise SB SR 99 vertically to match the height of the SR 99 northbound bridges, providing for sufficient height during high-water events. The north and south spans are each located within 200' of the center span and share the same profile grades. Raising the center span Lagoon Creek Bridge would necessitate raising the profile grades of the adjacent north and south bridge spans.

The Project will completely remove the existing Lagoon Creek center span bridge superstructure and substructure and replace it with a reinforced concrete slab bridge supported on two new bents spaced approximately 60 feet apart. The existing bridge would be removed by saw cut and jackhammer and the twenty (20) existing square concrete columns would be removed by sawing/cutting or breaking the columns off at approximately 2 feet below the existing ground level. A total of twelve (12) new 24-inch diameter cast-in steel shell (CISS) piles would be driven to construct the new SR 99 SB Lagoon Creek center span bridge.

The north and south spans superstructure and substructure will be removed and replaced with reinforced concrete slab bridges, each supported on one new bent comprised of six (6) 24-inch diameter CISS piles. The existing bridges will be removed and the ten (10) existing square concrete columns cut off at approximately two feet below the existing ground level.

Construction methods for the Lagoon Creek bridges replacement will include excavations and fills, pile driving, erection of false-work, construction of retaining walls, temporary traffic detours in the median and/or onto northbound (NB) SR 99 using temporary bridges and K-Rail, placement of concrete, paving, and removal of existing structures by saw cut and jackhammer.

The Project will replace South Lagoon Creek, Lagoon Creek, and North Lagoon Creek bridges with new structures to include two (2) mixed use lanes (12 feet each) plus 22-foot-wide

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK

shoulders on the left and standard 10-foot-wide shoulders on the right. The Project will take approximately 200 days to build and cost about \$3.7 million. The Project is expected to occur over two seasons beginning in July 2019. The work window within Giant Garter Snake (GGS) habitat is between May 1 and October 1 to limit impacts to GGS.

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

This ITP covers the following species:

<b>Name</b>	<b>CESA Status</b>
1. Giant garter snake ( <i>Thamnophis gigas</i> ) Threatened <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 are expected to result in incidental take of individuals of the Covered Species include demolition, removal and replacement of superstructure and substructures, construction of retaining walls, construction of work platforms, use of existing temporary access routes, excavation, fill, installation and removal of water diversion systems, contaminants, and sediment mobilization (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 exposure to suspended sediments, entrapment in temporary water diversion systems, crushing by heavy equipment, entombment by excavation and fill and contaminants released during demolition and construction. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species from exposure to suspended sediments, stranding in isolated pools, relocation from isolated pools, entrapment in temporary water diversion systems, crushing by heavy equipment, entombment by excavation and fill and contaminants released during demolition and construction. The areas where authorized take of the Covered Species is expected to occur include the bed, bank, channel and upland riparian habitat areas of north, center and south bridge spans over Lagoon Creeks (collectively, the Project Area).

Including staging and temporary impacts, the Project is expected to affect a total of 3.22 acres of channel and riparian habitat and will cause the permanent loss of aquatic and upland habitat (see Table 1).

The Project is expected to cause the permanent loss of 0.014 acres of GGS Covered Species habitat for the Covered Species, and temporary loss of 3.21 acres of habitat for the GGS Covered Species to occur over two construction seasons.

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<sup>3</sup>See Cal. Code Regs. tit. 14 § 670. 5, subd. (b)(4)(E).



Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include potential Covered Species mortality due to displacement from preferred habitat, entrainment through uptake of sediment and water by temporary diversion systems, increased vulnerability to predation, and the potential for impacts from inadvertent construction-related spills of pollutants (oils, gasoline, diesel, lubricants, etc.).

**Table 1: Estimated Impacts to GGS - Lagoon Creek**

Location	Habitat	Cause of Impact	Permanent (sq ft)	Temporary (sq ft)
Lagoon Creek	Upland – GGS	Construction access, equipment operation, vegetation trimming center, north and south spans	0	54,458 = 1.25 acres
Lagoon Creek – Center span	Aquatic – GGS	Temporary fill -Cofferdam for clear water diversion	0	736.54
		Temporary de-watered area, construction access and equipment operation	0	43,367.17
		Remove 20 existing 2'x2' square concrete piles and install 24 24" CISS piles	301.45	0
Lagoon Creek – North span	Aquatic – GGS	Construction access and equipment operation Cofferdam for clear water diversion	0	23,269.05
		Remove 10 existing 2'x2' square concrete piles and install 12 24" CISS piles	150.72	0
Lagoon Creek – South span	Aquatic – GGS	Construction access and equipment operation Cofferdam for clear water diversion	0	18,065.17
		Remove 10 existing 2'x2' square concrete piles and install 12 24" CISS piles	150.72	0
Totals			602.89 = 0.014 acre	139,827 = 3.21 acres (1.96 acres aquatic; 1.25 acres upland)

#### **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, 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

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION - LAGOON CREEK

Species, except 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 vehicular ingress and egress, staging and parking and noise and vibration generating activities that may cause take. 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 Initial Study with Mitigated Negative Declaration/Environmental Assessment with Finding of No Significant Impact (SCH No.: 2017072043) adopted by California Department of Transportation on February 2, 2018, 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. 1600-2018-0290-R2) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Endangered Species Act section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Bridge Scour Mitigation Project in Sacramento County, Project Number 03-3F540 for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
5. **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.
6. **General Provisions:**
  - 6.1. 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

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK



Designated Representative is selected or identified at any time during the term of this ITP.

- 6.2. 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, natural history, collecting and handling 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.
- 6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist, Biological Monitor or resident engineer 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. Permittee shall accommodate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP due to a conflict with Project construction, then the Designated Biologist shall notify the CDFW representative immediately.
- 6.4. Education Program. Permittee shall ensure that a CDFW-approved qualified biologist conducts an education program for all persons employed on the Project prior to performing Covered Activities. Instruction shall consist of a presentation by the designated qualified biologist that includes a discussion of the biology and general behavior of any sensitive species which may be in the area, how they may be encountered within the work area, and procedures to follow when they are encountered. The status of CESA-listed species including legal protection, penalties for violations and Project-specific protective management measures provided in this Agreement shall be discussed. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to on-site Project activity. Copies of the Agreement for this Project shall be maintained at the worksite with the Project supervisor. Permittee or designated biologist shall prepare and distribute wallet-sized cards or a factsheet handout containing this information for workers to carry on-site. Upon completion of the program, employees shall sign an affidavit stating they attended the program and understand all protection measures. The forms and education pamphlet shall be filed at the Permittee's office and submitted to CDFW prior to the completion of construction.
- 6.5. Construction Schedule. Permittee shall submit a final construction schedule to CDFW within 15 calendar days prior to the start of Project construction activities. The construction schedule shall identify the approximate beginning and completion date of Project activities. During the Project construction period, Permittee shall notify CDFW of

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Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK

any major changes in the construction schedule at least seven (7) days prior to the change being implemented.

- 6.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs. Plastic water bottles and plastic bags shall be picked up and removed daily.
- 6.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.
- 6.8. Erosion Control. All erosion and sediment control measures shall be installed prior to earthmoving Covered Activities. Permittee shall utilize erosion control measures throughout all phases of the Project where sediment runoff from exposed slopes could leave the Project Area and/or enter a drainage, stream, or ponded area. No phase of the Project that may cause the introduction of sediments into a drainage, stream or ponded area may be started if that phase and its associated erosion control measures cannot be completed prior to the onset of a storm. Permittee shall consult 72-hour weather forecasts from the National Weather Service prior to the startup of any phase of the Project that may result in sediment runoff to a drainage, stream, or ponded area. The Designated Biologist shall monitor erosion control measures before, during, and after each storm event and Permittee shall repair and/or replace ineffective measures immediately. Following completion of the Project, Permittee shall implement erosion control measures for all disturbed areas, which may include reseeding using a noxious weed-free locally native seed mix, hydroseeding, jute matting, or tackifying agents to stabilize soils, dust control, and prevent erosion.
- 6.9. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species, such as plastic or mono-filament netting (erosion control matting) or similar material. Tightly woven silt fencing material or woven organic materials such as coir logs (without mono-filament netting) shall be permitted.
- 6.10. Firearms and Dogs. Permittee shall prohibit firearms and domestic dogs from the Project Area and site access routes during Covered Activities, except those in the possession of authorized security personnel or local, state, or federal law enforcement officials.
- 6.11. Delineation of Property Boundaries. Before starting Covered Activities along each part of the route in active construction, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing,



stakes, and flags until the completion of Covered Activities in that area. All fenced, staked, or flagged markers shall be removed upon completion of the Project.

- 6.12. Delineation of Habitat. Permittee shall clearly delineate habitat of the 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' habitat. If placing of markers is not feasible sensitive areas shall be discussed in the Training Session for Personnel. All fenced, staked, or flagged markers shall be removed upon completion of the Project.
- 6.13. Definition of "Temporary Impact". To be considered a temporary impact, an impact must meet the following criteria: (1) restoration activities (see definition in Condition of Approval 9.5) in each temporary impact area shall be completed by October 31 of the same year that the temporary impact occurs; and (2) temporary impact sites shall have achieved vegetation success within the time frames specified in the Restoration Plan. If these criteria are not met, the additional temporal impact area shall be mapped and documented in writing to CDFW. If impacts previously identified as "Temporary" no longer meet criteria listed above, the impacts shall be treated as permanent and mitigation requirements shall be increased proportionately consistent with Sections 9 and 10 below.
- 6.14. Project Access. Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.
- 6.15. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the off-site staging areas outside of sensitive habitat and covered species habitat. All Staging and storage areas for equipment, materials, fuels, lubricants and solvents, shall be located outside of the creek channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the creek shall be positioned over drip pans. Any equipment or vehicles driven and/or operated within or adjacent to the stream must be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area.
- 6.16. No Dumping. Permittee and all contractors, subcontractors, and employees shall not

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK

dump any litter or construction debris within the stream, or where it may pass into the stream.

- 6.17. Wash Water. Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.
- 6.18. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 6.19. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under the Permittee control and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.20. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.
- 6.21. Equipment Maintenance and Fueling. All equipment operated within the channel shall be checked and maintained daily to prevent leaks of materials that if introduced to the water could be deleterious to Covered Species. No equipment maintenance or fueling shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas unless the appropriate spill prevention measures are in place such as catch basins or drip pans, lined with an impermeable layer that has been placed under the equipment. When exchanging tanks over water or filling the vibratory extractor rig, drip pans shall be used. Fuel and other material stored on the barge shall be stored in a plastic tub to contain leaks or spills. Spill equipment such as booms, drip pans, and absorbent pads shall be on-site and be ready to deploy in case of spill.
- 6.22. Cleaning Equipment Prior to Entering Channel. All equipment that will be entering the active channel shall be cleaned of materials deleterious to aquatic life including oil, grease, hydraulic fluid, soil and other debris. Wash water containing mud or silt from washing or other operations shall not be allowed to enter the channel.
- 6.23. Prevention of Spread of Invasive Species. Permittee shall conduct Project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), from one Project site and/or waterbody to another. Prevention BMPs and guidelines for



invasive plants can be found on the Cal-IPC's website at: <http://www.cal-ipc.org/ip/prevention/index.php> and for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: <http://www.protectyourwaters.net/>.

- 6.24. Spill Prevention. A spill response plan shall be submitted to CDFW for approval in writing at least 7 days prior to the initiation of construction. A designated inspector familiar with the utilized construction equipment shall be onsite during all Project activities in order to monitor equipment operations, prevent waterway contamination and respond to equipment malfunctions. The barge, boat, heavy equipment shall be regularly inspected for wear, leaks, and/or malfunction. Hazardous material leaks and spills shall be attended to immediately as outlined in the Spill Prevention and Response Plan. Prior to entering the work site, all field personnel shall know the location of spill kits and trained in their appropriate use.
- 6.25. Spill Containment. All activities performed in or near a river, stream, or lake shall have absorbent materials designated for spill containment and cleanup activities on-site for use in an accidental spill. The Permittee shall immediately notify the California Emergency Management Agency at 1-800-852-7550 and immediately initiate the cleanup activities. CDFW shall be notified by the Permittee and consulted regarding clean-up.

## **7. Monitoring, Notification and Reporting Provisions:**

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW 5 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. 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.
- 7.3. 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. The Designated Biologist shall conduct compliance inspections a minimum of twice per week during periods of inactivity and after clearing, grubbing, and grading are completed.

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK

- 7.4. 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.
- 7.5. Monthly Compliance Reports. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.4 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall detail approximate Project impacts in acres, separated into permanent, and temporary impacts. The reports shall: (1) identify and describe the temporary and permanent impacts to date; and (2) include all monitoring information required by the terms of this ITP. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is R2CESA@wildlife.ca.gov. 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.
- 7.6. 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 Monthly Compliance Reports for that year identified in Condition of Approval 7.5; (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; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species. ASRs shall be submitted to CDFW's Regional Office at the office listed in the Notices Section of this ITP.
- 7.7. 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.



7.8. Final Mitigation Report. No later than 30 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.

## **8. 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:

- 8.1. Dry Channel/Work Prohibition. No work within the active channel shall be initiated unless the appropriate avoidance and minimization measure have been installed within the Project Area as required by the terms of this ITP and verified in writing as functioning.
- 8.2. Conduct Work During Daylight Hours. Work is restricted to daylight hours (one hour after sunrise to sunset).
- 8.3. Work Period in Dry Weather Only. Permittee shall conduct work within the Project Area, during periods of dry weather. The Permittee shall monitor forecasted precipitation. When 1/2 inch or more of precipitation is forecasted to occur, the Permittee shall stop work before precipitation commences. No Project activities may be started if its associated erosion control measures cannot be completed prior to the onset of precipitation. After any storm event, the Permittee shall inspect all sites currently under construction and all sites scheduled to begin construction within the next 72 hours for erosion and sediment problems and take corrective action as needed. Seventy-two-hour weather forecasts from National Weather Service shall be consulted and work shall not start back up until runoff ceases.
- 8.4. Pile/Pier Removal. Any pile or pier or any sediment or attached debris on a pile or pier set for demolition shall not be removed in the active channel and must be stored in a containment system located outside of Covered Species habitat that is designed so runoff cannot enter the active channel.
- 8.5. De-Water Aquatic GGS Habitat. Permittee shall dewater suitable GGS aquatic habitat (e.g., wetlands, drainages, rice fields) prior to any construction within suitable GGS aquatic habitat. Permittee shall ensure the habitat remains dry for at least 15

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK

consecutive days after April 15 and prior to excavating or filling of aquatic habitat. Permittee shall limit dewatering to the immediate Project Area and shall ensure that alternative aquatic habitat is available.

8.6. Dewatering and Diversion. The Permittee shall implement the following during dewatering and diversion Covered Activities as applicable:

- a) Cofferdams shall be constructed of a non-erodible material which does not contain soil or fine sediment.
- b) Cofferdams and the stream diversion system shall remain in place and functional throughout the construction period. If, the cofferdams or stream diversion fail, Permittee shall repair them immediately.
- c) When the cofferdam or other artificial obstruction is being constructed, maintained, or placed in operation, sufficient water shall be allowed to pass downstream of the excavation to maintain aquatic life below the dam. Flow shall be of sufficient quality, quantity and temperature to support aquatic species both above and below the diversion.
- d) To minimize the potential for Covered Species to be entrained during de-watering activities, Permittee shall establish a Covered Species exclusion barrier and shall place the pump intakes away from complex vegetated banks that may contain habitat for Covered Species.
- e) Permittee shall select and install site exclusion methods to ensure that Covered Species cannot reenter the Project Area or become impinged on exclusion net. The Designated Biologist shall regularly monitor site exclusion.
- f) The Designated Biologist shall monitor dewatering at all times. The Designated Biologist shall reduce the rate of diversion as needed to avoid impacts to Covered Species.
- g) During excavation, Permittee shall install and maintain check-dams or equivalent sediment control methods as necessary to trap and control sediment-laden water.
- h) Reintroduction of stream flows shall be gradual to the isolated work area to prevent channel instability, or excessive scour.
- i) In the event that work must be phased, Permittee shall remove all cofferdam material prior to the onset of high flows.

8.7. Work Period. All Covered Activities within GGS habitat, including activity within 200 feet of aquatic habitat shall only occur from May 1 to October 1.

8.8. GGS Environmental Sensitive Areas. Permittee shall establish Environmentally Sensitive Areas (ESAs) in the Project Area to minimize the disturbance of GGS habitat as necessary from construction-related activities. Permittee shall employ the least impactful method to identify sensitive areas in consultation with the Designated Biologist(s). The Designated Biologist(s) shall identify and flag all potential small mammal burrows within the Project Area as ESAs. In addition, all potential GGS habitat that can be reasonably avoided during construction activities shall be identified as ESAs and shall be marked by the Designated Biologist(s). All construction personnel shall avoid ESAs during all



phases of construction. Permittee shall avoid ESAs when siting all staging areas, spoils disposal areas, borrow pits, and construction equipment access routes. Permittee shall not use plastic mono-filament netting on the Project site for ESA fencing, erosion control, or any other purpose to avoid entanglement of GGS. The Designated Biologist(s) shall inspect the ESA before the start of each workday and the Permittee shall maintain the ESA until the completion of the Project. Permittee shall remove all ESA material upon completion of the Project. Permittee shall post and maintain signs identifying the ESAs every 50 feet along the edge of the ESAs, and ensure they are clearly visible and recognizable to construction personnel.

- 8.9. GGs Wildlife Exclusion Fencing (WEF). Permittee shall maintain fencing throughout all construction activities. The Designated Biologist(s) shall inspect the area prior to installation. The Designated Biologist(s) shall inspect the barrier daily and during and after storm events (rainfall exceeding 0.5 inches during a 24-hour period). The Permittee shall maintain and repair the barrier immediately to ensure that it is functional and without defects, that fencing material is taught and that the bottom edge of the fencing material remains buried. Permittee shall maintain vegetation within one meter on the side of the fence away from the Project at a maximum height of four inches. Fencing shall consist of taught silt fencing supported by wooden stakes on the Project side only. Fencing shall be buried a minimum of six inches below ground and soil shall be compacted against both sides of the fence for its entire length to prevent Covered Species from passing under the fence. Fencing shall extend 12 to 18 inches above the ground. At any access opening in the fence, the fence shall turn 180 degrees away from the access point for a length of approximately 10 feet and at a minimum width of one foot from the original fence. The Permittee shall avoid damage to small burrows to the maximum extent possible during installation of the exclusion fencing. When the Permittee cannot avoid burrows, burrows shall be hand excavated by the Designated Biologist(s) prior to trenching activities. GGS found during excavation shall be relocated (See Relocation Conditions). Following excavation, the Designated Biologist(s) shall block holes or burrows which appear to extend under the fencing to minimize GGS movement into the Project Area. Permittee shall remove fencing and all fencing materials upon completion of construction.

8.9.1 WEF Area Refuge Opportunities. The Permittee shall also provide refuge opportunities, such as cover boards (three-foot x three-foot plywood), along the exclusion, at the discretion of the Designated Biologist, at minimum six boards shall be placed. The Designated Biologist (or other trained staff) shall inspect refuge areas each morning during and after rain events. Covered Species within the interior fence shall be relocated as specified in Condition of Approval 8.20 by the Designated Biologist. All Covered Species found shall be recorded and identified as specified in Condition of Approval 8.21. All other wildlife shall be moved a minimum of 300 feet outside the Project area.

8.9.2 GGs WEF Vegetation Management. As applicable if WEF is installed, all vegetation on the Project side of the WEF area and within five feet of the outside



of the WEF shall have the vegetation cleared to the ground using hand tools. Roots shall not be disturbed. The vegetation shall be maintained at ground level until all Covered Activities are complete and the WEF has been removed in its entirety. All vegetation removals shall be monitored by the Designated Biologist or Biological Monitor.

- 8.10. GGs Daily Species Checks. Workers shall inspect daily under vehicles and equipment for GGS before the vehicles and equipment are moved. If a GGS is present, the worker shall notify the Designated Biologist(s). Covered Activities with potential to take the GGS shall cease until the animal moves away from Covered Activities on its own or the Designated Biologist(s) moves the animal to a safe location nearby as determined by Condition of Approval 8.20. If the individual is found within the fenced Project site, the Designated Biologist(s) shall move the individual outside of the area of construction as specified in Condition of Approval 8.20.
- 8.11. Inspection of Pipes and Culverts. All construction pipes, culverts, or similar structures that are stored in the Project Area for one or more overnight periods shall be either securely capped prior to storage or thoroughly inspected by the Designated Biologist(s), and/or the resident engineer for the Covered Species or other animals before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a Covered Species is found, activity shall cease. The Covered Species shall not be handled, approached or harassed, but shall be allowed to passively move away from the work area.
- 8.12. Excavated Pits. To prevent inadvertent entrapment of the Covered Species during construction, the Designated Biologist(s) and/or construction foreman/manager shall ensure all excavated, steep-walled holes or trenches more than six inches deep are provided with one or more escape ramps constructed of earthen fill or wooden planks and inspected by the Designated Biologist(s) prior to sunrise each morning. Before such holes or trenches are filled, they shall be thoroughly inspected for trapped animals by the Designated Biologist(s) and/or construction foreman/manager.
- 8.13. Disposal of Debris. Permittee shall use one, but not both, of the following methods to handle natural debris (debris composed of on-site vegetation, usually removed from waterways. Debris does not include spoils from dredging):
1. Debris shall be placed in piles 200 feet or more from aquatic habitat. Debris piles shall be placed within wildlife exclusionary fencing areas and shall not be disturbed or removed once placed.
  2. Debris shall be immediately hauled off-site for disposal.
- 8.14. Speed Limit. Vehicle speeds shall not exceed 20 miles per hour, except on county roads and state and federal highways, in order to avoid GGS on or traversing the roads. If a GGS is found on or traversing a roadway, workers shall immediately notify the Designated Biologist(s). Workers shall allow the animal to safely move off the road on its own or the Designated Biologist(s) may move the animal to a safe location



nearby. If the individual is found within the fenced Project site, the Designated Biologist(s) shall move the individual outside of the area of construction as specified in Condition of Approval 8.20. If construction of new egress and ingress routes of travel will be required, Permittee shall contact CDFW prior to carrying out such activity. CDFW may require an Amendment to this ITP if additional take of GGS may result from Project modification including but not limited to alternative egress and ingress routes.

- 8.15. Confine Clearing, Scraping and Digging. Permittee shall confine clearing of vegetation and scraping or digging of soil to the minimal area necessary to facilitate construction activities, to the maximum extent feasible.
- 8.16. Rodenticide, Pesticide, Herbicide Restriction. Permittee shall not use herbicides, pesticides, or rodenticides within or adjacent to Project Area unless approved in advance, in writing by CDFW.
- 8.17. Trenching and Mowing Restriction. Permittee will not disk or till upland vegetation. Permittee shall limit mowing to July 1 to September 30. Permittee shall raise mower blades to a minimum of six inches to avoid injuring GGS and to retain grassy cover. The Designated Biologist(s) will perform clearance surveys within the area that the Permittee will clear immediately prior to mowing and will be on-site during all mowing and trenching. Permittee shall start mowing farthest from the water in order to force GGS toward the water when mowing fields near streams or canals. By cutting the swath along the water last, GGS will be allowed to maintain cover and escape. Permittee shall limit mowing on banks to one side of the channel per year to maintain cover for GGS. Permittee shall avoid mowing emergent vegetation (i.e., tules, cattail, sedge, rush) to the maximum extent feasible.
- 8.18. GGS Capture and Handling. GGS may only be captured and handled by the Designated Biologist(s). The Designated Biologist(s) shall determine whether the animal should be captured and handled. The Designated Biologist(s) shall minimize capture and handling to the extent feasible as most reptiles experience stress in response to capture and short-term confinement.
- 8.19. Reinitiating. If Covered Species take of 2 (two) GGS occurs, Permittee shall immediately reinitiate consultation with CDFW to ensure that all prudent and feasible measures have been implemented to minimize and fully mitigate the take that has occurred or may continue to occur. Permittee shall notify the CDFW Regional Representative at [R2CESA@wildlife.ca.gov](mailto:R2CESA@wildlife.ca.gov) to request re-initiation.
- 8.20. GGS Relocation Plan. The Permittee shall submit a GGS relocation plan for CDFW review and approval that includes the following criteria no less than 30 days prior to the initiation of Project initiation:
- GGS encountered in the active construction area shall be allowed to leave on their own volition and construction activities may not start back up until the GGS has safely

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK

moved out of harms way.

- The Designated Biologist shall only relocate GGS if the animal is directly threatened by immediate Covered Activities and the animal is unable to move to a safe area on its own.
- The Designated Biologist shall only relocate GGS to an area adjacent and outside of the construction area to appropriate habitat type as pre-determined by the Designated Biologist.
- Relocated Animals shall be released as soon as possible upon capture and not allowed to sit for a period of more than 30 minutes.
- Notification to CDFW shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location, and circumstances of the incident.
- All occurrences or findings should be recorded and all specimens photographed and submitted to CDFW as well as included in the monthly compliance reports, annual reports and final construction report.

- 8.21. GGG Injury or Death. The Permittee shall immediately notify the Designated Biologist(s) if a GGS is injured or killed by a Project-related activity, or if a GGS is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist(s) shall immediately take the injured GGS to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility 30 days prior to starting Covered Activities. The Designated Biologist(s) shall provide initial notification to CDFW by calling the Regional Office. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured, the name of the facility where the animal was taken, and reference ITP #2081-2018-071-03. 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.

If the Covered Species is found recently deceased, the carcass shall be immediately bagged, labeled, and preserved in a freezer. The label shall include time and date, GPS location, circumstances surrounding death (if known), and ITP tracking number 2081-2018- 071-02. Specimens shall be delivered to the CDFW Wildlife Investigations Lab, Attention:

Deana Clifford, 1701 Nimbus Road, Suite D, Rancho Cordova, CA 95670 within two calendar days of the discovery.

## **9. Habitat Management Land Acquisition and Restoration:**

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on 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

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK



provide for adequate compensation.

To meet this requirement, the Permittee shall either purchase 1.65 acres of GGS habitat credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2), **OR** shall provide for both the permanent protection and management of a minimum of 1.65 acres of Habitat Management (HM) lands pursuant to Condition of Approval 9 below and the calculation and deposit of the management funds pursuant to Condition of Approval 10 below. If multiple species credits are available, the credits can be stacked. If the HM land supports multiple Covered Species the HM land can be stacked.

Compensatory habitat shall be acquired on an in-kind basis to include in-water, floodplain, upland riparian and terrestrial habitat for GGS as appropriate through preservation, restoration, enhancement, and/or creation of habitat that is the same or better quality as the in-kind in-water, floodplain, upland riparian and terrestrial habitat that will be impacted as appropriate. Permittee shall consult with CDFW on the appropriate habitat types acquired for GGS mitigation prior to credit acquisition. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations. The Permittee shall also restore on-site 3.21 acres of temporarily impacted Covered Species Habitat pursuant to Condition of Approval 9.5 below.

9.1. 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:

- 9.1.1. Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$42,500.00 per acre; for 1.65 acres: **\$70,125.00**. Land acquisition costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;
- 9.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at **\$22,873.00**;
- 9.1.3. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at **\$4,988.00**;
- 9.1.4. Long-term management funding as described in Condition of Approval 9.3 below, estimated at \$39,137.00 per acre; for 1.65 acres: **\$64,576.00**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 9.1.5. 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

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK

transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at **\$3,000.00**.

- 9.1.6. Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.5, calculated at \$2,175.00 per acre; for 3.21 acres: **\$6,982.00**.

- 9.2. Covered Species Credits. Permittee shall purchase 1.65 acres of Giant Garter Snake habitat (1.02 acre aquatic; 0.63 acre upland) credits from a CDFW-approved mitigation or conservation bank with known Covered Species occurrences prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP, if Security is provided pursuant to Condition of Approval 10 below.

OR: See Conditions of Approval 9.3-9.5.

### ***HM Land Process***

- 9.3. Habitat Acquisition and Protection. To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:
- 9.3.1. Fee Title/Conservation Easement. Transfer fee title to the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW does not hold the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. 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);
- 9.3.2. HM Lands Approval. Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, a formal Proposed Lands for Acquisition Form (see Attachment 2) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;



- 9.3.3. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A). All documents conveying 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;
- 9.3.4. 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. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified.
- 9.3.5. Start-up Activities. Provide for the implementation 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 (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;
- 9.3.6. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, vegetation and invasive species management, annual protocol-level Covered Species surveys, and rangeland monitoring. Permittee shall either (1) provide a security to CDFW for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense, (2) establish an escrow account with written instructions approved in advance in writing by CDFW to pay the land manager annually in advance, or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager.

- 9.3.7. Endowment Fund. If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 9.3, 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. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment 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 9.3.6. Endowment as used in this ITP 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 through the Endowment.

- 9.3.8. Identify an Endowment Manager. 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).



- 9.3.9. Calculate the Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.
- 9.3.9.1. Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the PAR and adjust for any additional administrative, periodic, or annual fees.
- 9.3.9.2. Endowment Buffers/Assumptions. Permittee shall include in PAR assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment: 10 Percent Contingency.
- 9.3.9.3. 10 Percent Contingency. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.
- 9.3.9.4. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
- 9.3.9.5. Non-annualized Expenses. For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.
- 9.3.10. Transfer Long-term Endowment Funds. Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above. 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.
- 9.4. Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable expenses incurred by CDFW such as transaction fees, 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.

9.5. **On-Site Restoration for Temporary Impacts.** Prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP, if Security is provided pursuant to Condition of Approval 10, the Plan shall be prepared by a Qualified Biologist or Stream Restoration Specialist, and address recovery or enhancement of at least 3.21 acres of Covered Species Habitat. The Plan shall include a Giant Garter Snake Habitat Improvement Plan (GGSHIP) as specified below. The On-Site Habitat Restoration/Habitat Enhancement Plan for temporary impacts shall also include success criteria, a monitoring and reporting schedule, and corrective actions to be taken if mitigation measures do not meet the approved success criteria. All plantings shall be derived from locally available genotypes. The Permittee shall monitor the survival and vigor of onsite plantings for a period of five years to ensure attainment of a 75% survivorship after five years, with the final two years occurring without supplemental watering, if success criteria are not achieved within 5 years, additional years of enhancement and monitoring shall be required until the criteria is met. Removal of invasive plant species rated as "High" by California Invasive Plant Council (Cal-IPC) to a 10% or less ground cover within the restoration area shall also be incorporated into the plan over a period of 5 years, additional management actions occurring over additional years may be required until the 10% ground cover criteria is met.

The GGSHIP Plan shall include the following:

- a) A fresh-water aquatic component that plants protective herbaceous vegetation that will allow foraging. The emergent vegetation shall be planted along the top of bank over a minimum length of 200 linear feet (100 feet on the side of each bank) and shall be subject to a 75% success criteria over 5 years, with the final two years occurring without supplemental watering, if success criteria are not achieved within 5 years, additional years of enhancement and monitoring shall be required until the criteria is met. The Permittee shall also remove invasive plant species rated as "High" by Cal-IPC to a 10% or less ground cover over a period of 5 years, additional management actions over additional years may be required until the 10% criteria is met. Emergent native wetland plants consistent with existing conditions are recommended for reestablishment.
- b) An upland component near the aquatic habitat that can be used for thermoregulation and for summer shelter in burrows. This shall be accomplished through the development of bankside cracks, crevices, holes in vegetated rock slope protection or the preservation of existing small mammal burrows on-site and the preservation and planting of native plant species.
- c) An upland Refugia component that will service as winter hibernacula. This can also be accomplished through the pre-Project identification, protection and preservation of small mammal burrows on-site or through the development of bankside cracks, crevices and holes in vegetated rock slope protection. Upland native vegetation shall be planted and subject to a 75% success criteria over 5 years, with the final two years occurring without supplemental watering, if success criteria are not

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK



achieved within 5 years, additional years of enhancement and monitoring shall be required until the criteria is met. As well as removal of invasive plant species rated as "High" by Cal-IPC to a 10% or less ground cover over a period of 5 years, additional management actions over additional years may be required until the 10% criteria is met.

#### **10. 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 9 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

- 10.1. Security Amount. The Security shall be in the amount of **\$172,544**. This amount is based on the cost estimates identified in Condition of Approval 9 above.
- 10.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 2) or another form of Security such as a Separate Expense Authorization (SEA), approved in advance in writing by CDFW's Office of the General Counsel.
- 10.3. 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.
- 10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 10.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 3) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.
- 10.6. 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.
- 10.7. 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 the HM lands
  - Copies of all executed and recorded conservation easements
  - Written confirmation from the approved Endowment Manager of its receipt of the full Endowment
  - Timely submission of all required reports

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK

later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands 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 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 (2081-2018-071-02) in a cover letter and on any other associated documents.

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK



Original cover with attachment(s) to:

Kevin Thomas, Regional Manager  
c/o CESA Desk  
California Department of Fish and Wildlife  
North Central Region]  
1701 Nimbus Road  
Rancho Cordova, CA 95670  
Telephone (916) 358-2930  
Fax (916) 358-2912

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:

CESA Desk  
1701 Nimbus Road  
Rancho Cordova, CA 95670  
Telephone (916) 358-2930  
Fax (916) 358-2912

**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, California Department of Transportation. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Initial Study with Mitigated Negative Declaration/Environmental Assessment with Finding of No Significant Impact (SCH No.: 2017072043) dated January 2018 that the California Department of Transportation adopted for the Bridge Scour Mitigation Project on February 2, 2018. At the time the lead agency adopted the Mitigated Negative Declaration 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

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Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK

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 & G. 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, Lagoon Creek Bridge and American River Bridge Scour Repair Project Initial Study with Mitigated Negative Declaration/Environmental Assessment with Finding of No Significant Impact, additional impacts analysis submitted to CDFW on April 18, 2019, 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) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly 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 protection and management in perpetuity of 1.65 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, 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;
- (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;

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Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK



- (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	Location Map
FIGURE 2	Project area
FIGURE 3	GGIS Impact Map
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Irrevocable Letter of Credit Form
ATTACHMENT 3	Mitigation Payment Transmittal Form

**ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

on 6/17/2019

  
Kevin Thomas, Regional Manager  
NORTH CENTRAL 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:  Date: 6/18/19

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION - LAGOON CREEK

Printed Name: DOUGLAS H. LANGO Title: CT. PROJECT MANAGER

Incidental Take Permit  
No. 2081-2018-071-02  
CALTRANS DISTRICT 3  
BRIDGE SCOUR MITIGATION – LAGOON CREEK