

State of California
Department of Fish and Wildlife



Memorandum

Date: June 22, 2020

To: Mr. Jeskrn Padda
California Department of Transportation
District 10
1976 E. Dr. Martin Luther King Jr. Boulevard
Stockton, CA 95205

DocuSigned by:

Gregg Erickson

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From: Mr. Gregg Erickson, Regional Manager
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: Incidental Take Permit for 2081-2019-064-03 San Joaquin Middle River Bridge Roadway
Realignment Project, EA 10-1F460 in San Joaquin County

Enclosed is the Incidental Take Permit for the above referenced project, which has been signed by the California Department of Fish and Wildlife (CDFW). Please read the permit carefully and sign the acknowledgement on the permit no later than 30 days from CDFW signature and prior to initiation of ground-disturbing activities to:

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

You are advised to keep a copy of the signed permit in a secure location and distribute copies to appropriate project staff responsible for ensuring compliance with the conditions of the permit. Note that you are required to comply with certain conditions of approval prior to initiation of ground-disturbing activities. Additionally, a copy of the permit must be maintained at the project work site and made available for inspection by CDFW staff when requested.

The permit will not take effect until the signed acknowledgment is received by CDFW. If you wish to discuss these instructions or have questions regarding the permit, please contact Mr. Robert Stanley, Senior Environmental Scientist (Specialist), at (707) 428-2093 or Robert.Stanley@wildlife.ca.gov; or Mr. Craig Weightman, Environmental Program Manager, at (707) 944-5577 or Craig.Weightman@wildlife.ca.gov.

Enclosures



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. 2081-2019-064-03

SAN JOAQUIN MIDDLE RIVER BRIDGE ROADWAY REALIGNMENT PROJECT; EA 10-1F460

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 take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² 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:	California Department of Transportation (Caltrans)
Principal Officer:	Jeskrn Padda
Contact Person:	Jason Meigs, (209) 932-2371
Mailing Address:	1976 E. Dr. Martin Luther King Jr. Boulevard Stockton, CA 95205

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, 2024**.

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 7.7 (Final Mitigation Report) of this ITP.

¹Pursuant 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"]).

²The 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 San Joaquin Middle River Bridge Roadway Realignment Project (Project) is located on the San Joaquin Middle River Bridge (Bridge No. 29-0045) along State Route 4 (SR-4) at the boundary of Contra Costa and San Joaquin Counties from PM 4.1-4.9 of SR-4 in San Joaquin County (Figure 1).

Project Description:

The Permittee is proposing to realign the curve roadway to increase safety (Figure 2). The Project is located at PM 4.1-4.9 of SR-4 in San Joaquin County at the San Joaquin Middle River Bridge at the approach curve for highway traffic along SR-4. The existing approached curve on the east side of the bridge will be realigned and the shoulders will also be widened. Work at road realignment will require ground disturbance, including clearing, grading, trenching, and paving. In order to retain runoff on-site, Caltrans may construct a ponding basin in the area between the existing road and the future road. The Project will also involve work off the paved roadway, utility relocation, and additional right of way acquisition.

The Project will realign the existing tight curve and enhance the sight distance at the east end of the bridge for the westbound and eastbound traffic, upgrade the existing safety devices, and repair the dolphin structure of the bridge. The need of the Project is to reduce the number and severity of collisions at this location and maintain the structural integrity of the bridge. The Biological Study Area (BSA) is 13.2 acres and incorporates all of the Caltrans right of way (ROW), as well as parts of private properties bordering the proposed work area that will be acquired and/or could be potentially affected. The Project includes construction activities that are associated with cut and fill of the road realignment construction, dolphin structure repair work, culvert installation, and temporary easements. Covered Activities shall occur within the 13.2-acre area that includes the permanent and temporary impacts to Swainson's hawk nesting tree(s) and foraging habitat.

Curve Realignment and Safety Work

The existing approached curve on the east side of the bridge will be realigned and the shoulders will also be widened as specified in Figure 2. Work for road realignment will require ground disturbance including clearing, grading, trenching, and paving. In order to retain runoff on-site, a ponding basin may be constructed in the area between the existing road and the future road. The Project will also involve work off the paved roadway and utility relocation. In addition to the curve realignment work, end blocks will be constructed at the corners of bridge, bridge approach rails will be attached to protect corners and close gaps with the Midwest Guardrail System (MGS). Metal beam guardrails will be replaced with MGS. A concrete barrier at northeast corner may also be reconstructed.

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Old Dolphin Removal and Replacement Dolphin Install

Project activities will also include in-water work for repairing the damaged dolphin structure at Pier 5. Work at the dolphin structure will involve underwater vibratory pile driving. The six existing damaged timber dolphin piles will attempt to be extracted entirely or removed to the mudline. The existing steel center pile will be retained. Six new 75-foot polymeric piles with reinforced recycled plastic lumber) blocking between 1-2 feet in diameter will be installed. Pile driving will be done from a barge. The six new pilings will be installed around the existing center steel pile in between the existing removed timber piles using a vibratory pile driver. The new piles will then be attached to the existing center steel pile with wire rope, blocking, and bolts. The size of the new piles will be the same as the old ones and the width span of the dolphin structure will not change. The barge will also be used to install the fiber optics and the electrical conduits on the underside of the bridge.

The majority of Project activities will occur during daylight hours, with limited night work occurring. The staging area will be located within Caltrans newly acquired ROW, within the species exclusionary fence, and outside designated Environmentally Sensitive Areas.

Project Lighting Installations

The Project will install four 40-foot mast 250-Watt LED overhead light systems on the east side of the Middle River Bridge and two (40-foot mast 250-Watt LED overhead light systems on the west side of the Middle River Bridge. A total of four flashing beacon systems, two on the west side and two on the east side of the Middle River Bridge, will be installed.

Storm Drain Outfalls

Drainage System 1 (DS-1) will carry flows from the west side to the east side of the new highway fill prism. The outfall concrete flared end section and rock slope protection occurring at the toe of the new embankment on the east side of re-aligned SR-4, east of the Middle River. DS-2 and DS-3 will drain stormwater to a common point in an area located between the new highway fill and the old highway fill and associated marina facility. DS-2 would cross the marina driveway connector road and DS-3 consists of a drop inlet on the east side of the new highway fill. Exhibit A shows the proposed outfall concrete flared end section and rock slope protection occurring at the toe of the proposed new embankment on the west side of re-aligned SR-4, east of the Middle River. DS-4 is an over-side drainage. A drop inlet will be installed in the easternmost shoulder of the new roadway and will discharge stormwater to a culvert installed along eastern embankment slope. Exhibit A shows the proposed outfall concrete flared end section and rock slope protection occurring at the toe of the proposed new embankment on the east side of re-aligned SR-4, east of the Middle River.

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Other Associated Work

The Permittee will need to do remedial work to mitigate for Project impacts on properties outside of the Permittee's Right of Way. The work will involve removing building structures on a farm, realigning and paving existing driveways, realigning the agricultural, and relocating leach lines for a restaurant septic system.

Covered Activities are scheduled to begin at the earliest on October 2020 or in May 2021 and will take at least 350 working days to complete. Construction is expected to end on December 2022. Night work may occur, but most construction is expected to take place during daylight hours. Project activities include grubbing and grading of the entire Project site, materials transport, laydown, and storage, trench digging and backfilling, new road construction, fencing installation, tree removal, dolphin replacement via barge mounted vibratory pile driver, excavation of storm water drainage channels, rip rap placement, and other activities.

Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

Name	CESA Status
1. Swainson's hawk (<i>Buteo swainsoni</i>)	Threatened ³

These species and only these species are 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 initial site setup, equipment and material delivery, clearing and grubbing, site preparation, exclusionary fencing installations, environmentally sensitive area fencing installations, pavement and concrete removal, pile removal activities, vibratory pile driving installations, bridge maintenance and repair, soil excavation, soil compaction, grading work, pavement installation, heavy equipment operation, trenching, construction vehicle traffic, general vehicle traffic and personnel on foot (collectively, 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; excessive noise from the operation of heavy equipment, encroachment from individuals on foot into Covered Species nesting areas that results in nest abandonment and the loss of Covered Species eggs or juvenile Covered Species. Incidental take of individuals of the Covered Species may also occur from the

³See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(3)(G).

Covered Activities in the form of capture of the Covered Species from transport of injured Covered Species to care facilities. The areas where authorized take of the Covered Species is expected to occur include: The 13.2 acres that incorporates all of the Caltrans ROW, as well as parts of private properties bordering the ROW (collectively, the Project Area) as identified in Figure 1.

The Project is expected to cause the permanent loss of 2.18 acres of foraging habitat for the Covered Species and the temporary loss of 0.72 acres of foraging habitat for the Covered Species (Figure 3). The Project will also result in the removal of approximately 55 of the 80 trees on the east side of the Project Area. This Project is expected to cause the potential loss of one (1) known nesting occurrence within 150 feet of the eastern side of the Project Area. Impacts to more than one (1) nest site will require an amendment to this ITP. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses of foraging habitat, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise and vibrations from heavy equipment operation, long-term effects due to foraging habitat degradation, displacement from preferred habitat, increased competition for food and space, and long-term effects due to increased anthropogenic activities.

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 Species except for capture and 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 vehicular ingress and egress, staging 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.

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2. **California Environmental Quality Act 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 for the Middle River Bridge Roadway Realignment (SCH No.: 2018082014) certified by the California Department of Transportation on December 3, 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 (Notification No. 1600-2019-0449-R3) 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 Informal Consultation from the National Marine Fisheries Service (NMFS) on the Middle River Bridge Roadway Realignment Project, San Joaquin County, California (Official NMFS No. WCR-2018-10417) dated September 28, 2018, and the Informal Consultation from the U.S. Fish and Wildlife Service (USFWS) on the Middle River Bridge Roadway Realignment Project, San Joaquin County, California (Official USFWS File No. 08FBDT00-2018-I-0320) dated August 15, 2018, 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 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 shall have authority to immediately stop any activity, in consultation with the Resident Engineer, 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.
- 6.3.1. 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 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. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.
- 6.5. 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.

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- 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.
- 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 Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting), filter-fabric, geo-textile fabric or similar material, in potential Covered Species' habitat. Four instances of outfalls associated with drainage systems 1 – 4 are authorized to employ filter fabric under the terms of this ITP.
- 6.9. Delineation of Habitat. Before the initiation of Covered Activities, the Permittee shall clearly delineate habitat of the Covered Species within the Project Area beyond those areas within the immediate Project construction footprint with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' nesting activities.
- 6.10. Project Access. If Covered Activities are determined to be necessary to occur outside the Project Area, the Permittee shall contact the CDFW representative for written approval before carrying out such 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. Permittee shall ensure that vehicle speeds do not exceed 15 miles per hour to avoid Covered Species on or traversing the roads.
- 6.11. 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.
- 6.12. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.

- 6.13. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill 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.

7. Monitoring, Notification and Reporting Provisions:

- 7.1. 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.
- 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 required on-site during Covered Activities, refer to condition of approval 8.2 for guidance in regards to compliance monitoring schedule requirements. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species, as feasible; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) Establish and maintain nest buffer zones, as applicable (see Condition of Approval 8.3); (5) ensure that signs, stakes, and fencing are intact, and (6) capture photos of Project Area conditions and Covered Activities and to ensure that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare written observation and inspection records as specified in Condition of Approval 8.3; summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.
- 7.4. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.3 (Compliance Monitoring) into a Monthly Compliance Reports 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 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

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Regional Representative is Robert Stanley (Robert.Stanley@wildlife.ca.gov) and Headquarters CESA Program email is CESA@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.

- 7.5. 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 Monthly Compliance Reports for that year identified in Condition of Approval 7.4 (Monthly Compliance Report); (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.
- 7.6. 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 Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 7.7. Final Mitigation Report. No later than 90 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 Quarterly 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.

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- 7.8. 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 Office at (707) 428-2002. 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.

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:

Covered Species Avoidance and Minimization

- 8.1. Pre-Construction Surveys. Prior to initiating Covered Activities, the Designated Biologist(s) shall conduct reconnaissance surveys to identify all potential nesting habitat within 0.25 miles of the Project Area and identify and potential Covered Species active nests. Surveys shall follow methods outlined in the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>). The survey shall include all potential staging areas, storage areas, stockpile areas, and vehicle access routes. All results shall be submitted to CDFW a minimum of 7 days prior to initiating Covered Activities.
- 8.2. Daily Construction Surveys. A Designated Biologist(s) shall be on-site daily for all Covered Activities occurring during the Covered Species nesting season from March 15 to September 15. If a Covered Species nest within 0.25 miles of the Project Area is active beyond the nesting season, monitoring shall continue each day until the young have fledged. Outside of the Covered Species nesting season, if no nests are active within a 0.25 mile, the Designated Biologist may develop an alternate monitoring schedule in coordination with the CDFW representative. Surveys shall follow methods outlined in the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>). Survey requirements and buffer limits may be modified with written request to and approval from CDFW approval. If a lapse in Covered Activities of 7 days or longer occurs, additional surveys shall be performed prior to resuming Covered Activities

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during the nesting season (March 15 to September 15) and the results sent to CDFW 48 hours prior to the re-initiation of work. All daily construction survey results should be submitted weekly to CDFW when an active nest is present and monthly when no active nest is present.

- 8.3. Active Nest Buffer Zones. If active Covered Species nests are found, no Covered Activities shall occur within 600 feet of an active Covered Species nest (Figure 4). If Covered Species do not exhibit signs of disturbance, as specified in Condition of Approval 8.4, the buffer distance can be incrementally reduced based on monitoring the response of Covered Species to Covered Activities. The Designated Biologist(s) may increase, reduce or remove the buffer in consultation with CDFW; in the form of written permission to and written acceptance from CDFW based on the monitoring responses of Covered Species.

The Permittee shall clearly delineate the buffer zone around an active nest within the Project Area with posted signs demarcating the area to avoid and using stakes, fencing, flags, and/or rope or cord to minimize the disturbance of Covered Species nesting behaviors. All construction personnel shall be notified of the existence and location of the known active Covered Species nest site and any active Covered Species nest sites detected during pre-construction surveys. Construction Personnel shall be instructed to minimize disturbances to these sites to the maximum extent feasible during nesting season. Trees or other features containing active nests shall be flagged or otherwise marked in the field. The marking should be readily visible at a distance of at least 600 feet. If a nest is located on an off-site property, signage and/or flagging shall be placed at the property boundary near where the nest is located. The sign shall indicate the direction and approximate distance of the nest from the property line.

- 8.4. Stop Work for Abnormal Nesting Behavior. A Designated Biologist(s), who is experienced in raptor behavior and approved by CDFW, shall be assigned to monitor the behavior of actively nesting Covered Species within the Project Area or within 0.25 miles of the Project Area. The Designated Biologist(s) shall have the authority to stop all Covered Activity determined to cause abnormal nesting behavior in Covered Species, which may cause nest abandonment and loss of eggs/young. Abnormal nesting behaviors include, but are not limited to, swooping/stooping excessive vocalization (distress calls), agitation, standing up from a brooding position, failure to remain on the nest, and failure to deliver prey items for an extended time-period. Project activities resulting in abnormal nesting behavior shall not resume until the Designated Biologist(s) has consulted with CDFW and both the Designated Biologist and CDFW confirm that the bird's behavior has normalized, or the young have left the nest. On a weekly basis, the Designated Biologist shall report directly to CDFW the status of each Covered Species active nest. Reports shall include observations of abnormal nesting

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behaviors and any significant changes in ambient conditions due to Covered Activities. Significant changes would include noise levels and visual conditions such as an increase in the number of personnel walking around the Project Area or mobilization of large equipment into the Project Area.

- 8.5. Nest Abandonment and Hacking. If the Project results in nest abandonment and nestling(s) are still alive, the Designated Biologist(s) shall recover the hatchling(s) or egg(s) and immediately take it to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall bear any cost associated with recovery of nestling(s) and hacking (controlled release of captive reared young) of the nestling(s).
- 8.6. Removal of Nest Trees. No active nest trees, or trees known to have active nests in the last five years, are authorized for removal under the conditions of this ITP.
- 8.7. Project Access and Staging. The Permittee shall establish all Project Areas, Staging Areas and Access Routes as specified in Figure 2. Staging Areas should not occur within the active nest buffer as specified in Condition of Approval 8.3.
- 8.8. Signs and Fence Post Restrictions. Any fencing posts or signposts installed temporarily or permanently throughout the course of the Project will prevent the entrapment of wildlife, specifically birds of prey. If open-ended pipes or bollards are used for posts, they shall be capped. If metal posts with post holes are used (including, but not limited to U-channel posts and T-posts), the posts shall have the top three post holes or any post holes above an affixed sign capped, covered, or filled. The Designated Biologist will be responsible for ensuring compliance with this measure throughout the course of the Project and will inspect each post for compliance when at the Project Site.
- 8.9. Temporary Lighting Restrictions. Work is restricted to daylight hours (30 minutes before sunrise to 30 minutes before sunset). CDFW approval shall be required in writing before any nightwork may proceed. Any temporary Project lighting will be shut down upon the completion of work each day and not used as security lighting overnight.
- 8.10. Permanent Lighting Restrictions. All light emitters or bulb types for permanent use in all lighting systems within the Project site will be submitted to CDFW 30 days prior to the initiation of construction for approval. All permanent lighting will be required to produce light emissions of 2700K or less. All permanent lighting will be directed towards the surface of the road and not into areas outside the road surface to prevent additional light pollution into natural lands. Baffles and shielding devices will be required on all lighting systems within the Project limits including flashing beacons. Permanent lighting shall also be directed and shielded away from areas of potential nest trees to prevent disruption of nocturnal raptor behavior.

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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 provide for adequate compensation.

To meet this requirement, the Permittee shall purchase one Covered Species credit for suitable nesting habitat from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) to cover the potential loss or abandonment of one Covered Species nest. The Permittee shall also purchase 2.18 acres of Covered Species credit for suitable foraging habitat from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of 2.18 acres of Habitat Management (HM) lands, pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. Compensatory habitat shall include upland foraging and dispersal habitat for Covered Species through preservation, restoration, enhancement, and/or creation of habitat that is the same or better quality as upland habitat that will be impacted. 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 9 below for all uncompleted obligations. The Permittee shall also restore on-site 0.72 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 purchasing credits from a from a CDFW-approved mitigation or conservation bank and restoration of temporarily disturbed habitat as follows:

9.1.1. Purchase of one Covered Species nesting habitat credit identified in Condition of Approval 9, estimated at **\$160,000.00**;

9.1.2. Purchase of 2.18 credits of Covered Species foraging habitat credit identified in Condition of Approval 9, estimated at \$127,690.00/acre; **\$278,364.00**;

9.1.3. Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.5 (Habitat Restoration), calculated at \$30,339.00/acre for 0.72 acres: **\$21,844.00**.

9.2. Habitat Acquisition and Protection. To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:

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- 9.2.1. 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);
- 9.2.2. 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 2B) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;
- 9.2.3. 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;
- 9.2.4. 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.
- 9.2.5. Start-up Activities. Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the

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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://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;

9.2.6. 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, and vegetation and invasive species management, and restoration of disturbed habitat. 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. Endowment Fund. 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 9.2.5 (Start Up Activities). 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

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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.

- 9.3.1. 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).
- 9.3.2. 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.
- 9.3.2.1. 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.
- 9.3.2.2. 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:

- 9.3.2.2.1. 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.
- 9.3.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
- 9.3.2.2.3. 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.
- 9.3.3. 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. Habitat Restoration. Permittee shall restore on-site the 0.72 acres of Covered Species habitat that will be temporarily disturbed during construction to pre-Project or better. All exposed/disturbed soils left barren of vegetation in areas of permanent and temporary impact including staging areas, access roads, creek banks and upland areas shall be revegetated immediately following work activities. Impacted areas shall be seeded with an erosion control seed mix consisting of native forbs, shrubs, wildflowers, and grasses. Revegetation shall be completed after construction has concluded and as soon as possible after earthmoving activities cease. Erosion control blankets with monofilament or woven plastic strands shall not be used.

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 (Habitat Management Land Acquisition and Restoration) 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 **\$460,208.00**. This amount is based on the cost estimates identified in Condition of Approval 9.1 (Cost Estimates) above.
- 10.2. 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.
- 10.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 6 months 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 4) 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:
 - Submission of Bill of Sale from a CDFW approved Bank;
 - 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; and
 - 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 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

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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 (2081-2019-064-03) 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
Bay Delta Region – 3
2825 Cordelia Road, Suite 100
Fairfield, CA 94534

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:

Robert Stanley, Senior Environmental Scientist (Specialist)
California Department of Fish and Wildlife
Bay Delta Region – 3
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Telephone (707) 428-2083
E-mail: Robert.Stanley@wildlife.ca.gov

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 Mitigated Negative Declaration (MND) for the Middle River Bridge Roadway Realignment, (SCH No.: 2018082014) dated October 2018 that the California Department of Transportation certified on December 3, 2018. At the time the lead agency certified the MND and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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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 MND 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 for The Middle River Bridge Roadway Realignment Project, the Lake and Streambed Alteration Agreement (Notification No. 1600-2019-0449-R3, 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 purchase of 1 Covered Species Nesting Credit and 2.18 acres of Covered Species Foraging Credits 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

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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 Location
FIGURE 2	Project Design Layout Map(s)
FIGURE 3	Project Impact Analysis Map
FIGURE 4	Buffer Zone Analysis Map
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2A, 2B	Habitat Management Lands Checklist; Proposed Lands for
Acquisition Form	
ATTACHMENT 3	Letter of Credit Form
ATTACHMENT 4	Mitigation Payment Transmittal Form

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 6/22/2020.

DocuSigned by:
Gregg Erickson
BE74D4C83C604EA...

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: Jeskrn Padda Date: 6/29/2020
BD5C6690DA08483...

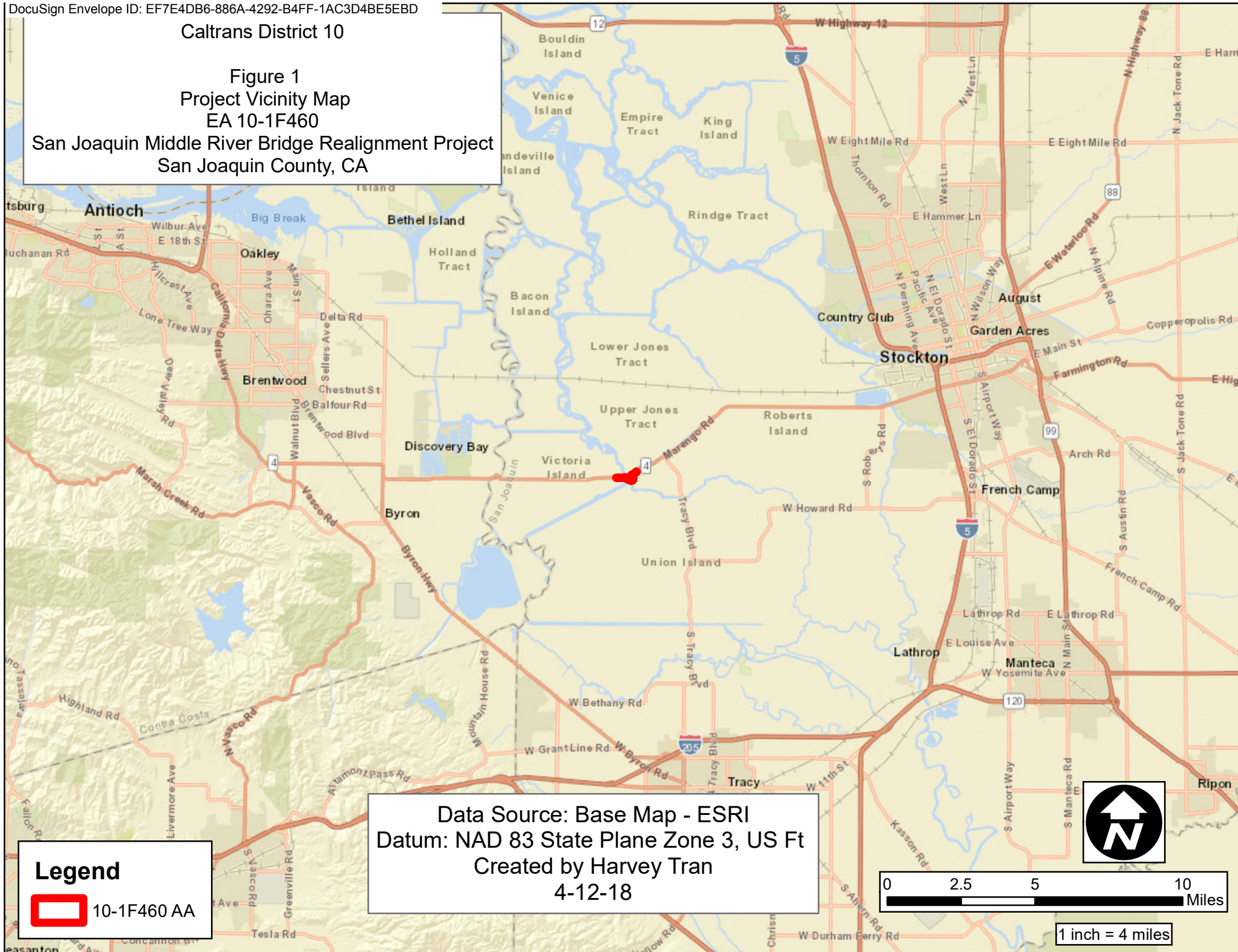
Name: Jeskrn Padda Title: Mr.

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Caltrans District 10

Figure 1
Project Vicinity Map
EA 10-1F460

San Joaquin Middle River Bridge Realignment Project
San Joaquin County, CA

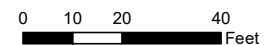


**10-1F460 SJ-4 PM 4.1-4.9
Highway Re-Alignment at
Middle River Bridge
SR-4 in San Joaquin County, CA**

Aerial Photography:
ESRI "ESRI_Imagery_World_2D.lyr"
This photo taken on August 8, 2018



1 inch = 25 feet



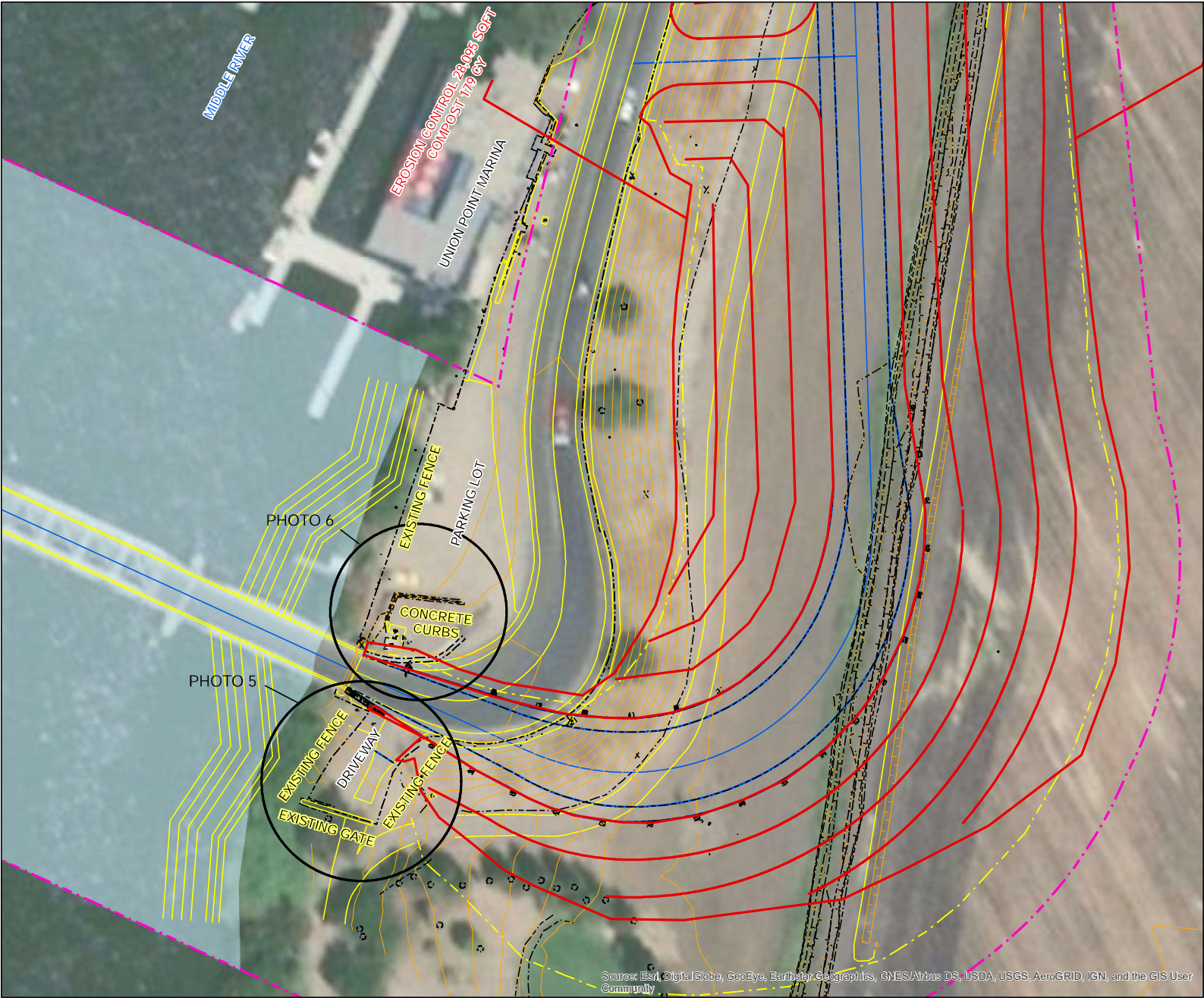


Figure 4:
Erosion Control Detail
Eastern Side of Middle River Bridge

10-1F460 SJ-4 PM 4.1-4.9
Highway Re-Alignment at
Middle River Bridge
SR-4 in San Joaquin County, CA

LEGEND

- 10-1F460 Action Area
- Riverine - OHWM
- Existing Roadway Features
- Proposed Features
- Topographic Contours (Existing)
2-ft Interval
- Cut/Fill Line
- Erosion Control Application

Datum: North American Datum 1983
Projection: California State Plane, Zone 3
Map Prepared on March 2, 2020 By
Jason Meigs, Associate Environmental Planner - NS
California Department of Transportation, District 10

Aerial Photography:
ESRI "ESRI_Imagery_World_2D.lyr"
This photo taken on August 8, 2018



1:600
1 inch = 50 feet
0 20 40 80
Feet

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

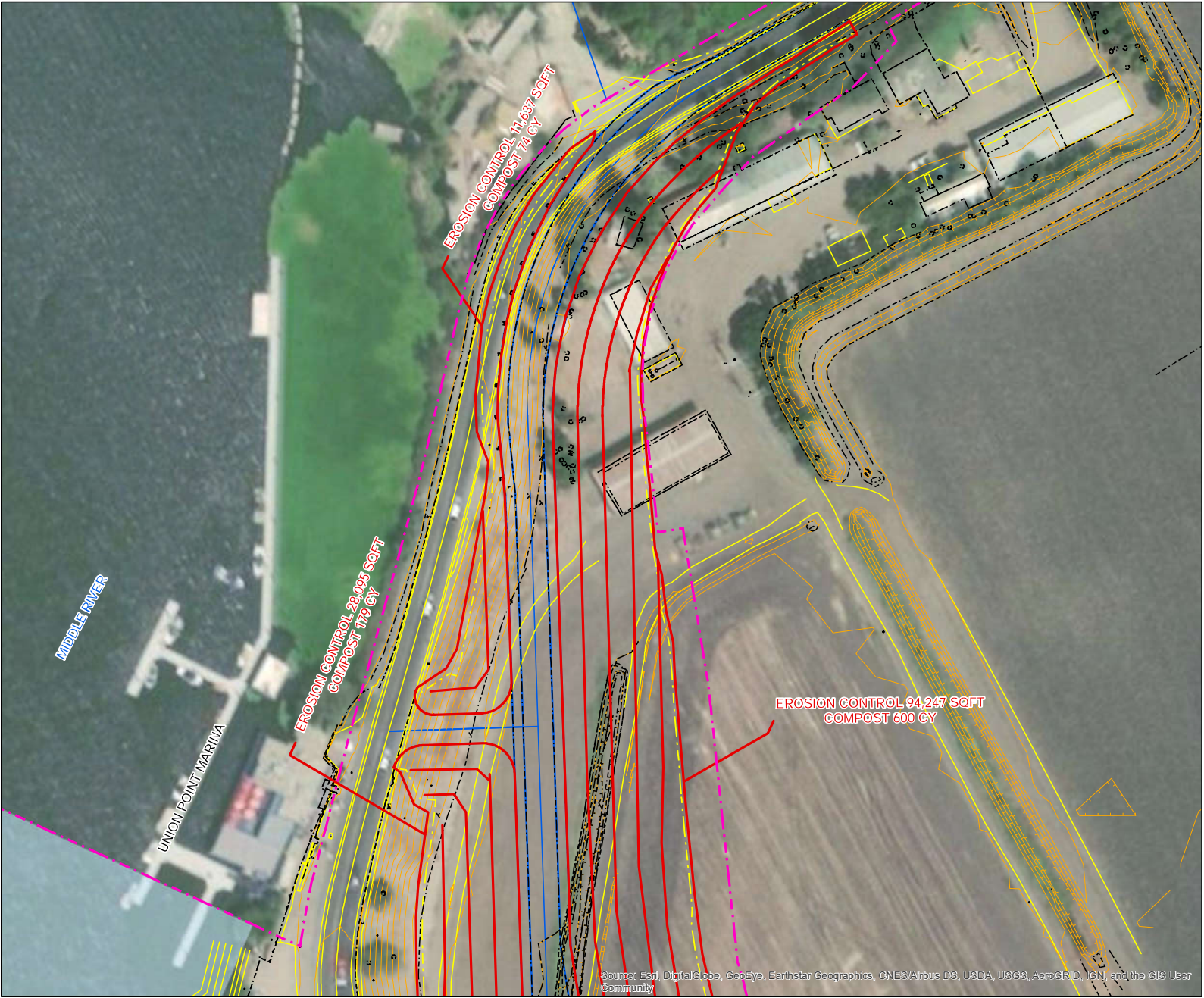


Figure 5:
Erosion Control Detail
Eastern Side of Middle River Bridge

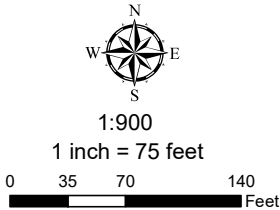
10-1F460 SJ-4 PM 4.1-4.9
Highway Re-Alignment at
Middle River Bridge
SR-4 in San Joaquin County, CA

LEGEND

- 10-1F460 Action Area
- Riverine - OHWM
- Existing Roadway Features
- Proposed Features
- Topographic Contours (Existing)
2-ft Interval
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- Erosion Control Application

Datum: North American Datum 1983
Projection: California State Plane, Zone 3
Map Prepared on March 2, 2020 By
Jason Meigs, Associate Environmental Planner - NS
California Department of Transportation, District 10

Aerial Photography:
ESRI "ESRI_Imagery_World_2D.lyr"
This photo taken on August 8, 2018



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

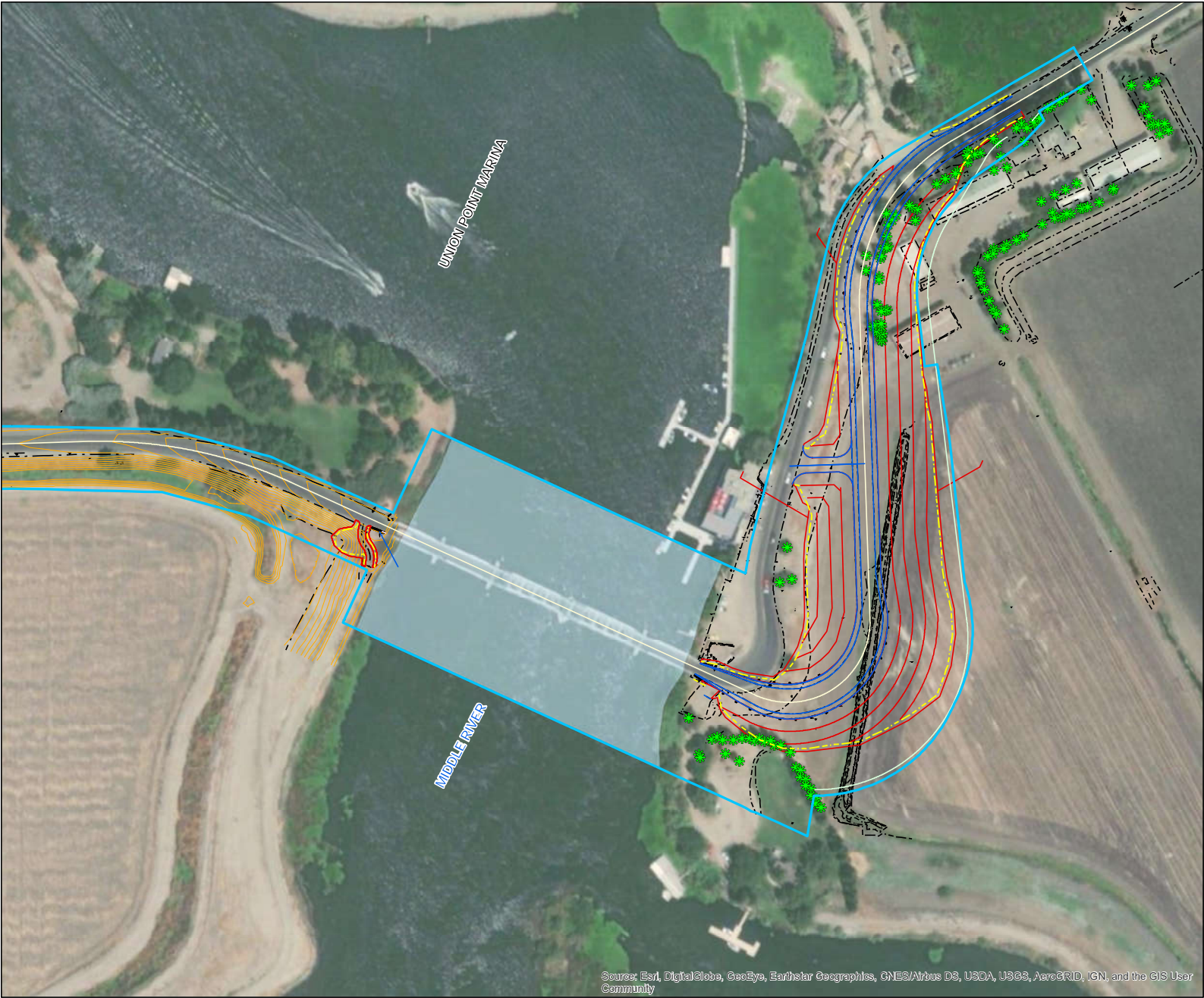


Figure 6:
Existing Mature Trees

10-1F460 SJ-4 PM 4.1-4.9
Highway Re-Alignment at
Middle River Bridge
SR-4 in San Joaquin County, CA

LEGEND

- 10-1F460 Action Area
- Riverine - OHWM
- Existing Roadway Features
- Proposed Features
- Topographic Contours (Existing)
2-ft Interval
- Cut/Fill Line
- Erosion Control Application
- Mature Trees

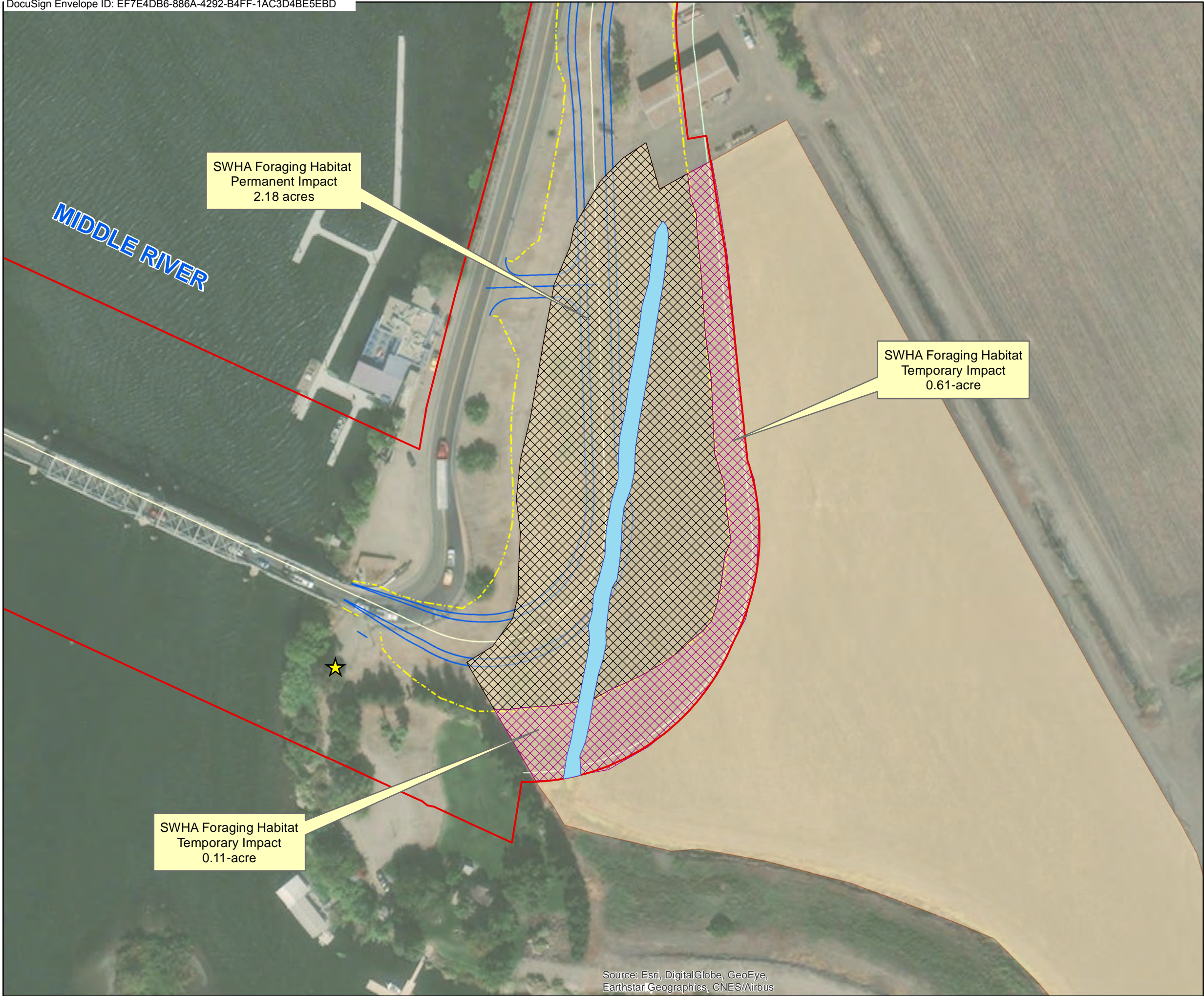
Datum: North American Datum 1983
Projection: California State Plane, Zone 3
Map Prepared on March 2, 2020 By
Jason Meigs, Associate Environmental Planner - NS
California Department of Transportation, District 10

Aerial Photography:
ESRI "ESRI_Imagery_World_2D.lyr"
This photo taken on August 8, 2018



1:1,800
1 inch = 150 feet
0 75 150 300 Feet

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



Source: Esri, DigitalGlobe, GeoEye,
Earthstar Geographics, CNES/Airbus

**Permanent and Temporary Impacts
to Swainson's Hawk
Foraging Habitat**

**10-1F460 SJ-4 PM 4.1-4.9
Highway Re-Alignment at
Middle River Bridge
SR-4 in San Joaquin County, CA**

LEGEND

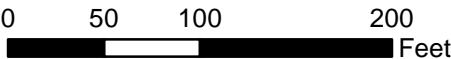
-  Agriculture Ditch
-  10-1F460 Action Area
-  Existing SWHA Nest Tree
-  SWHA Foraging Habitat
- SWHA Foraging Habitat Impacts**
-  Permanent
-  Temporary
-  Proposed Features
-  Cut/Fill Line

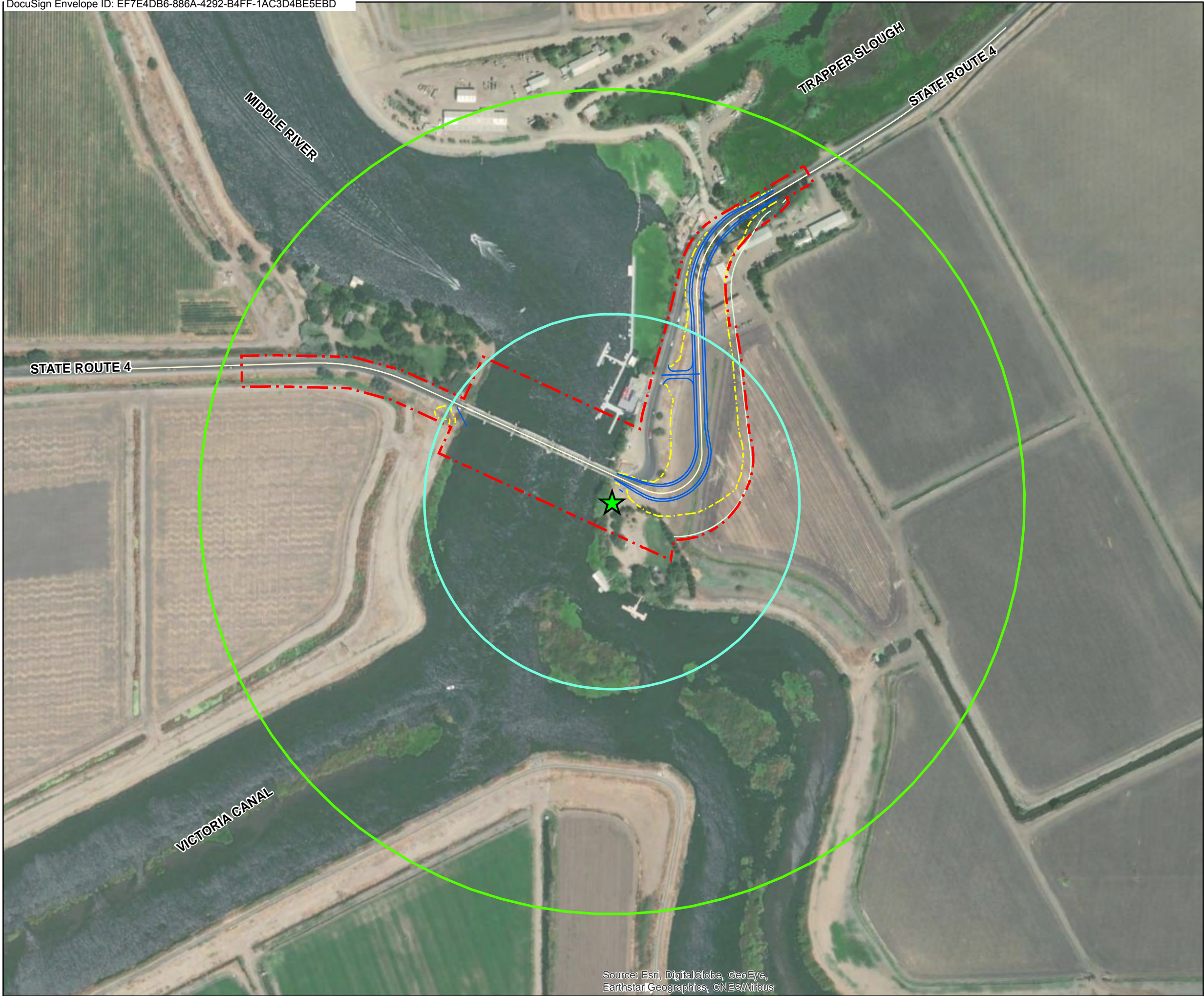
Datum: North American Datum 1983
Projection: California State Plane, Zone 3
Map Prepared on June 17, 2020 By
Jason Meigs, Associate Environmental Planner - NS
California Department of Transportation, District 10

Aerial Photography:
ESRI "ESRI_Imagery_World_2D.lyr"
This photo taken on August 8, 2018



1:1,200
1 inch = 100 feet





SWHA Nest Buffer Zones

**10-1F460 SJ-4 PM 4.1-4.9
Highway Re-Alignment at
Middle River Bridge
SR-4 in San Joaquin County, CA**

LEGEND

- ★ Existing SWHA Nest Tree
- 10-1F460 Action Area
- 0.25 Mile Buffer of SWHA Nest**
- 0.25 Mile (1320 feet)
- 600 feet
- Proposed Features
- Cut/Fill Line

Datum: North American Datum 1983
Projection: California State Plane, Zone 3
Map Prepared on June 2, 2020 By
Jason Meigs, Associate Environmental Planner - NS
California Department of Transportation, District 10

Aerial Photography:
ESRI "ESRI_Imagery_World_2D.lyr"
This photo taken on August 8, 2018



1:3,600
1 inch = 300 feet
0 150 300 600 Feet

Attachment 1**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)
CALIFORNIA ENDANGERED SPECIES ACT****INCIDENTAL TAKE PERMIT NO. 2081-2019-064-03****PERMITTEE: California Department of Transportation****PROJECT: San Joaquin River Bridge Roadway Realignment Project
EA 10-1F460****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
BEFORE DISTURBING SOIL OR VEGETATION					
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 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.	ITP Condition # 6.1	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, 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.	ITP Condition # 6.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
3	<u>Designated Biologist Authority</u> . To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity in consultation with the Resident Engineer, 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 ensure compliance with this ITP, the Designated Biologist shall notify the CDFW representative immediately.	ITP Condition # 6.3	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 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. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.	ITP Condition # 6.4	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
5	<u>Delineation of Habitat</u> . Before the initiation of Covered Activities the Permittee shall clearly delineate habitat of the Covered Species within the Project Area beyond those areas within the immediate project construction footprint with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' nesting activities.	ITP Condition # 6.9	Before Commencing Covered Activities	Permittee	
6	<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 # 7.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
7	<p><u>Habitat Management Land Acquisition and Restoration.</u> 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 provide for adequate compensation.</p> <p>To meet this requirement, the Permittee shall purchase one Covered Species credit for suitable nesting habitat from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) to cover the potential loss or abandonment of one Covered Species nest. The Permittee shall also purchase 2.18 acres of Covered Species credit for suitable foraging habitat from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2). OR shall provide for both the permanent protection and management of 2.18 acres of Habitat Management (HM) lands, pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. Compensatory habitat shall include upland foraging and dispersal habitat for Covered Species through preservation, restoration, enhancement, and/or creation of habitat that is the same or better quality as upland habitat that will be impacted. 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 9 below for all uncompleted obligations. The Permittee shall also restore on-site 0.72 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.5 below.</p>	ITP Condition # 9	Before commencing ground- or vegetation-disturbing activities/ Or within 18 months of effective date of ITP if CDFW-approved security is provided	Permittee	
8	<p><u>Cost Estimates.</u> CDFW has estimated the cost of purchasing credits from a from a CDFW-approved mitigation or conservation bank and restoration of temporarily disturbed habitat as follows:</p> <p>Purchase of one Covered Species nesting habitat credit identified in Condition of Approval 9, estimated at \$160,000.00;</p> <p>Purchase of 2.18 credits of Covered Species foraging habitat credit identified in Condition of Approval 9, estimated at \$127,690.00/acre; \$278,364.00;</p> <p>Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.5 (Habitat Restoration), calculated at \$30,339.00/acre for 0.72 acres: \$21,844.00.</p>	ITP Condition # 9.1	Before commencing ground- or vegetation-disturbing activities/ Or within 18 months of effective date of ITP if CDFW-approved security is provided	Permittee	

9	<p><u>Habitat Acquisition and Protection.</u> To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:</p> <p><u>Fee Title/Conservation Easement.</u> 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);</p> <p><u>HM Lands Approval.</u> 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 2B) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;</p> <p><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 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;</p> <p><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. 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.</p> <p><u>Start-up Activities.</u> 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;</p> <p><u>Interim Management (Initial and Capital).</u> 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</p>	ITP Condition # 9.2	Before commencing ground- or vegetation- disturbing activities/ Or within 18 months of effective date of ITP if CDFW-approved security is provided	Permittee	
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	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	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				

10	<p><u>Endowment Fund.</u> If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 8.3, 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 9.3.5. 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.</p> <p>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.</p> <p><u>Identify an Endowment Manager.</u> 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 30 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 30-day period, the proposal shall be deemed consistent with Section 2081(b)(4);</p> <p><u>Calculate the Endowment Funds Deposit.</u> 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.</p> <p><u>Capitalization Rate and Fees.</u> 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.</p> <p><u>Endowment Buffers/Assumptions.</u> 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.</p> <p><u>10 Percent Contingency.</u> A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.</p> <p><u>Three Years Delayed Spending.</u> The endowment shall be established assuming spending will not occur for the first three years after full funding.</p>	ITP Condition # 9.3	Before commencing ground- or vegetation-disturbing activities/ Or within 18 months of effective date of ITP if CDFW-approved security is provided	Permittee	
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	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	<p><u>Non-annualized Expenses.</u> 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.</p> <p><u>Transfer Long-term Endowment Funds.</u> 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.</p>				
11	<p><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, 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.</p>	ITP Condition # 9.4	Before commencing ground- or vegetation-disturbing activities/ Or within 18 months of effective date of ITP if CDFW-approved security is provided	Permittee	
12	<p><u>Habitat Restoration.</u> Permittee shall restore on-site the 0.72 acres of Covered Species habitat that will be temporarily disturbed during construction to pre-Project or better. All exposed/disturbed soils left barren of vegetation in areas of permanent and temporary impact including staging areas, access roads, creek banks and upland areas shall be revegetated immediately following work activities. Impacted areas shall be seeded with an erosion control seed mix consisting of native forbs, shrubs, wildflowers, and grasses. Revegetation shall be completed after construction has concluded and as soon as possible after earthmoving activities cease. Erosion control blankets with monofilament or woven plastic strands shall not be used.</p>	ITP Condition # 9.5	30 Days Prior to Construction, During Construction, Post Construction	Permittee	
13	<p>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 (Habitat Management Land Acquisition and Restoration) that has not been completed before Covered Activities begin. This Security requirement is subject to change if the proposed Marsh Creek Road mitigation property is withdrawn or proven to be unsuitable as HM lands. Permittee shall provide Security as follows:</p> <p><u>Security Amount.</u> The Security shall be in the amount of \$460,208.00. This amount is based on the cost estimates identified in Condition of Approval 9.1 (Cost Estimates) above.</p>	ITP Condition # 10.1	Before commencing ground- or vegetation-disturbing activities/ Or within 18 months of effective date of ITP if CDFW-approved security is provided	Permittee	
14	<p><u>Security Form.</u> 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>	ITP Condition # 10.2	Before commencing ground- or vegetation-disturbing activities/ Or within 18 months of effective date of ITP if CDFW-approved security is provided	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
15	<p><u>Security Timeline.</u> The Security shall be provided to CDFW no less than 30 days before Covered Activities begin.</p> <p><u>Security Holder.</u> The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.</p> <p><u>Security Transmittal.</u> 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><u>Security Drawing.</u> 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><u>Security Release.</u> 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> <p>Submission of Bill of Sale from a CDFW approved Bank; 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; and Timely submission of all required reports</p> <p>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 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.</p>	ITP Condition # 10.3 to 10.7	Before commencing ground- or vegetation-disturbing activities/ Or within 18 months of effective date of ITP if CDFW-approved security is provided	Permittee	
DURING CONSTRUCTION					
16	<u>Construction Monitoring Notebook.</u> 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 upon request by CDFW.	ITP Condition # 6.5	Entire Project	Permittee	
17	<u>Trash Abatement.</u> 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.	ITP Condition # 6.6	Entire Project	Permittee	
18	<u>Dust Control.</u> 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.	ITP Condition # 6.7	Entire Project	Permittee	
19	<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), filter-fabric, geo-textile fabric or similar material, in potential Covered Species' habitat. Four instances of outfalls associated with drainage systems 1 – 4 are authorized to employ filter fabric under the terms of this ITP.	ITP Condition # 6.8	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
20	<u>Project Access.</u> If Covered Activities are determined to be necessary to occur outside the Project Area, the Permittee shall contact the CDFW representative for written approval before carrying out such 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. Permittee shall ensure that vehicle speeds do not exceed 15 miles per hour to avoid Covered Species on or traversing the roads.	ITP Condition # 6.10	Entire Project	Permittee	
21	<u>CDFW Access.</u> Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.	ITP Condition # 6.12	Entire Project	Permittee	
22	<u>Staging Areas.</u> Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.12 of this ITP.	ITP Condition # 8.7	Entire Project	Permittee	
23	<u>Hazardous Waste.</u> 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.	ITP Condition # 6.11	Entire Project	Permittee	
24	<u>Notification of Non-compliance.</u> The Designated Representative and Designated Biologist 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 and Designated Biologist shall report any non-compliance with this ITP to CDFW within 24 hours.	ITP Condition # 7.2	Entire Project	Permittee	
25	<u>Compliance Monitoring.</u> The Designated Biologist shall be required on-site during Covered Activities, refer to condition of approval 8.2 for guidance in regards to compliance monitoring schedule requirements. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species, as feasible; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) Establish and maintain nest buffer zones, as applicable (See Condition of Approval 8.3); (5) ensure that signs, stakes, and fencing are intact, and (6) capture photos of Project Area conditions and Covered Activities and to ensure that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare written observation and inspection records as specified in Condition of Approval 8.3; summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.	ITP Condition # 7.3	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
26	<u>Monthly Compliance Report.</u> The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.3 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; (2) describe the location, acres, and type of restoration actions that have occurred; and (3) 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 Robert Stanley (robert.stanley@wildlife.ca.gov) and Headquarters CESA Program email is CESA@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.	ITP Condition # 7.4	Entire Project	Permittee	
27	<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 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 and via e-mail to CDFW's Regional Representative Robert Stanley (robert.stanley@wildlife.ca.gov).	ITP Condition # 7.5	Entire Project	Permittee	
28	<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 # 7.6	Entire Project	Permittee	
29	<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 Office at (707) 428-2002. 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 business 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 # 7.8	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
30	Nest Abandonment and Hacking. If the Project results in nest abandonment and nestling(s) are still alive, the Designated Biologist(s) shall recover the hatchling(s) or egg(s) and immediately take it to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall bear any cost associated with recovery of nestling(s) and hacking (controlled release of captive reared young) of the nestling(s).	ITP Condition # 8.5	Entire Project	Permittee	
31	Pre-Construction Surveys. Prior to initiating Covered Activities, the Designated Biologist(s) shall conduct reconnaissance surveys to identify all potential nesting habitat within 0.25 miles of the Project Area and identify and potential Covered Species active nests. Surveys shall follow methods outlined in the <i>Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley</i> (https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds). The survey shall include all potential staging areas, storage areas, stockpile areas, and vehicle access routes. All results shall be submitted to CDFW a minimum of 7 days prior to initiating Covered Activities.	ITP Condition # 8.1	Entire Project	Permittee	
32	Daily Construction Surveys. A Designated Biologist(s) shall be on-site daily for all Covered Activities occurring during the Covered Species nesting season from March 15 to September 15. If a Covered Species nest within 0.25 miles of the Project Area is active beyond the nesting season, monitoring shall continue each day until the young have fledged. Outside of the Covered Species nesting season, if no nests are active within a 0.25 mile, the Designated Biologist may develop an alternate monitoring schedule in coordination with the CDFW representative. Surveys shall follow methods outlined in the <i>Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley</i> (https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds). Survey requirements and buffer limits may be modified with written request to and approval from CDFW approval. If a lapse in Covered Activities of 7 days or longer occurs, additional surveys shall be performed prior to resuming Covered Activities during the nesting season (March 15 to September 15) and the results sent to CDFW 48 hours prior to the re-initiation of work. All daily construction survey results should be submitted weekly to CDFW when an active nest is present and monthly when no active nest is present.	ITP Condition # 8.2	Entire Project	Permittee	
33	Active Nest Buffer Zones. If active Covered Species nests are found, no Covered Activities shall occur within 600 feet of an active Covered Species nest (Figure 4). If Covered Species do not exhibit signs of disturbance, as specified in Condition Of Approval 8.4, the buffer distance can be incrementally reduced based on monitoring the response of Covered Species to Covered Activities. The Designated Biologist(s) may increase, reduce or remove the buffer in consultation with CDFW; in the form of written permission to and written acceptance from CDFW based on the monitoring responses of Covered Species. The Permittee shall clearly delineate the buffer zone around an active nest within the Project Area with posted signs demarcating the area to avoid and using stakes, fencing, flags, and/or rope or cord to minimize the disturbance of Covered Species nesting behaviors. All construction personnel shall be notified of the existence and location of the known active Covered Species nest site and any active Covered Species nest sites detected during pre-construction surveys. Construction Personnel shall be instructed to minimize disturbances to these sites to the maximum extent feasible during nesting season. Trees or other features containing active nests shall be flagged or otherwise marked in the field. The marking should be readily visible at a distance of at least 600 feet. If a nest is located on an off-site property, signage and/or flagging shall be placed at the property boundary near where the nest is located. The sign shall indicate the direction and approximate distance of the nest from the property line.	ITP Condition # 8.3	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
34	<u>Stop Work for Abnormal Nesting Behavior.</u> A Designated Biologist(s), who is experienced in raptor behavior and approved by CDFW, shall be assigned to monitor the behavior of actively nesting Covered Species within the Project Area or within 0.25 miles of the Project Area. The Designated Biologist(s) shall have the authority to stop all Covered Activity determined to cause abnormal nesting behavior in Covered Species, which may cause nest abandonment and loss of eggs/young. Abnormal nesting behaviors include, but are not limited to, swooping/stooping excessive vocalization (distress calls), agitation, standing up from a brooding position, failure to remain on the nest, and failure to deliver prey items for an extended time-period. Project activities resulting in abnormal nesting behavior shall not resume until the Designated Biologist(s) has consulted with CDFW and both the Designated Biologist and CDFW confirm that the bird's behavior has normalized, or the young have left the nest. On a weekly basis, the Designated Biologist shall report directly to CDFW the status of each Covered Species active nest. Reports shall include observations of abnormal nesting behaviors and any significant changes in ambient conditions due to Covered Activities. Significant changes would include noise levels and visual conditions such as an increase in the number of personnel walking around the Project Area or mobilization of large equipment into the Project Area.	ITP Condition # 8.4	Entire Project	Permittee	
35	<u>Removal of Nest Trees.</u> No active nest trees, or trees known to have active nests in the last five years, are authorized for removal under the conditions of this ITP.	ITP Condition # 8.6	Entire Project	Permittee	
36	<u>Project Access and Staging.</u> The Permittee shall establish all Project Areas, Staging Areas and Access Routes as specified in Figure 2. Staging Areas should not occur within the active nest buffer as specified in Condition of Approval 8.3.	ITP Condition # 8.7			
37	<u>Signs and Fence Post Restrictions.</u> Any fencing posts or signposts installed temporarily or permanently throughout the course of the Project will prevent the entrapment of wildlife, specifically birds of prey. If open-ended pipes or bollards are used for posts, they shall be capped. If metal posts with post holes are used (including, but not limited to U-channel posts and T-posts), the posts shall have the top three post holes or any post holes above an affixed sign capped, covered, or filled. The Designated Biologist will be responsible for ensuring compliance with this measure throughout the course of the Project and will inspect each post for compliance when at the Project Site.	ITP Condition # 8.8	Entire Project	Permittee	
38	<u>Temporary Lighting Restrictions.</u> Work is restricted to daylight hours (30 minutes before sunrise to 30 minutes before sunset). CDFW approval shall be required in writing before any nightwork may proceed. Any temporary Project lighting will be shut down upon the completion of work each day and not used as security lighting overnight.	ITP Condition # 8.9	Entire Project	Permittee	
39	<u>Permanent Lighting Restrictions.</u> All light emitters or bulb types for permanent use in all lighting systems within the Project site will be submitted to CDFW 30 days prior to the initiation of construction for approval. All permanent lighting will be required to produce light emissions of 2700K or less. All permanent lighting will be directed towards the surface of the road and not into areas outside the road surface to prevent additional light pollution into natural lands. Baffles and shielding devices will be required on all lighting systems within the Project limits including flashing beacons. Permanent lighting shall also be directed and shielded away from areas of potential nest trees to prevent disruption of nocturnal raptor behavior.	ITP Condition # 8.10	Entire Project	Permittee	
POST-CONSTRUCTION					
40	<u>Refuse Removal.</u> Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill 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.	ITP Condition # 6.14	Post-construction	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
41	<u>Final Mitigation Report</u> . No later than 60 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 # 7.6	During and Post Construction	Permittee	

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)



**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
PROPOSED LANDS FOR ACQUISITION FORM ("PLFAF")**

Date: _____

TO: Regional Representative

Facsimile:

FROM: _____

Applicant proposes that the following parcel(s) of land be considered for approval by the California Department of Fish and Wildlife as suitable for purposes of habitat management lands to compensate the adverse environmental impacts of the Project:

<u>Section(s)</u>	<u>Township</u>	<u>Range</u>	<u>County</u>	<u>Acres</u>
-------------------	-----------------	--------------	---------------	--------------

_____	_____	_____	_____	_____
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Current Legal Owner(s), of the surface and mineral estates, include Assessor's Parcel Number(s):

General Description of Location of Parcel(s):

Land Value: \$

For Region Use Only

APPROVED ____

By: _____
Regional Manager's Signature

DATE: _____

REJECTED ____

Region: _____

Explanation: _____

[Financial institution letterhead]

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

Issue Date: **[date]**

Beneficiary:

Department of Fish and Wildlife
Habitat Conservation Planning Branch
Post Office Box 944209
Sacramento, CA 94244-2090
Attn: HCPB Contract 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 CDFW pursuant to the terms of the incidental take permit for the **[name of project]** issued by 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 CDFW and the Applicant to serve as a security device for the performance by the Applicant of the Mitigation Requirements.
5. 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 CDFW as defined in paragraph 12 below. Presentation by 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 CDFW, or to the account of CDFW, in immediately available funds, as CDFW shall specify.
8. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give 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, 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 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 CDFW, as defined in paragraph 12 below.
12. An “Authorized Representative” shall mean the Director of CDFW; the General Counsel of CDFW; a Regional Manager of CDFW; or the Branch Chief of CDFW’s Habitat Conservation Planning Branch.
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 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 CDFW: Department of Fish and Wildlife, Habitat

Conservation Planning Branch, Post Office Box 944209, Sacramento, CA 94244-2090, Attn: HCPB Contract 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 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: _____
Telephone: _____

ATTACHMENT A

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

To:

[Name and address of financial institution]

Re: [***Insert: "Lake" or "Streambed"***] Alteration Agreement (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 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 CDFW that the Credit will not be extended and the Applicant has not provided CDFW with an equivalent security approved by 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. 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, CDFW has executed and delivered this Certificate as of the ____ day of [***month***], [***year***].

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: _____

[Insert one of the following: "DIRECTOR" or "GENERAL COUNSEL" or "REGIONAL MANAGER, [NAME OF REGIONAL OFFICE]" or "BRANCH CHIEF, HABITAT CONSERVATION PLANNING BRANCH"]

ATTACHMENT B

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

To:

[Name of financial institution and address]

Re: **[Insert: "Lake" or "Streambed"]** Alteration Agreement (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 Applicant has provided CDFW with an equivalent security approved by CDFW to replace the Credit."]
2. CDFW therefore requests the cancellation of the Credit.

Therefore, CDFW has executed and delivered this Certificate for Cancellation as of the ____ day of **[month]**, **[year]**.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: _____

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

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.

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

4. AGREEMENT/ACCOUNT INFORMATION: (check the applicable type)
☐ 2081 Permit ☐ Conservation Bank ☐ 2835 NCCP ☐ 1802 Agreement ☐ 1600 Agreement ☐ Other _____

 Project Tracking Number
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: _____

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