



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



August 5, 2020

Mr. Jose Gutierrez  
Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
[jgutierrez@wwd.ca.gov](mailto:jgutierrez@wwd.ca.gov)

Subject: Incidental Take Permit for Lower Yolo Restoration Project, 2081-2019-045-03,  
Yolo County

Dear Mr. Gutierrez:

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. Alternatively, a signed hardcopy can be mailed 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 continuation 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. Phillip Poirier, Senior Environmental Scientist (Specialist), at [Phillip.Poirier@wildlife.ca.gov](mailto:Phillip.Poirier@wildlife.ca.gov); or Ms. Gina Van Klompenburg, Senior Environmental Scientist (Supervisory), at [Gina.VanKlompenburg@wildlife.ca.gov](mailto:Gina.VanKlompenburg@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
A handwritten signature in blue ink that reads "Gregg Erickson".  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

*Conserving California's Wildlife Since 1870*



**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. 2081-2019-045-03

**LOWER YOLO RESTORATION PROJECT**

**Authority:**

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

<b>Permittee:</b>	<b>Westlands Water District</b>
<b>Principal Officer:</b>	<b>Jose Gutierrez</b>
<b>Contact Person:</b>	<b>Carl Jensen, (916)737-3000</b>
<b>Mailing Address:</b>	<b>3130 North Fresno Street, Fresno, CA 93703</b>

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

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **December 31, 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 8.7 of this ITP.

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

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

## Project Location:

The Lower Yolo Restoration Project (Project) is located in the Sacramento River Delta at the southern end of the Yolo Bypass near Cache Slough within the Yolo County (See **Error! Reference source not found.**). The Project is located approximately 16 miles south of Davis, at a latitude of 38.37243887 North and a longitude of 121.6938111 West. The Project site is bounded by Prospect Slough to the East and South, Liberty Farms to the West, and agricultural lands to the North.

## Project Description:

The primary objective of the proposed Project is to enhance regional food web productivity and provide rearing habitat in support of native fish species, including Delta Smelt and out-migrating salmonids utilizing the Yolo Bypass. The Project is intended to help fulfill a portion of the 8,000-acre tidal restoration obligations of the Department of Water Resources (DWR) contained within Reasonable and Prudent Alternative (RPA) of the U.S. Fish and Wildlife Service (USFWS) Delta Smelt Biological Opinion (BiOp) for long-term coordinated operations of the State Water Project (SWP) and the federal Central Valley Project (CVP).

Project activities include the restoration of tidal marshes through the removal and relocation of existing water control infrastructure elements, grading lands to facilitate establishment of intertidal wetlands, removing irrigation and grazing, and excavating new tidal channels. Earthmoving equipment will include standard-reach excavators, agricultural tractor and scrapers, low ground pressure bulldozers, and water trucks.

Approximately 1,671 acres of intertidal wetlands would be restored, including 12 acres of tidal channels and swales. Tidal channels, swales, and berm notches would be excavated to facilitate the movement of tidal water between existing tidal sources and the restored intertidal wetland areas. Four tidal basins will be restored: Historic Lake, Island, Yolo Flyway Farms Extension, and Lower Step (See **Error! Reference source not found.** and **Error! Reference source not found.**):

- Historic Lake (Basin 1). The Historic Lake is a natural depression currently managed as pasture. A former drainage channel would be connected to channels at the lower end of the Project site to facilitate drainage. Roads and berms would be notched to facilitate tidal access.
- Island (Basin 2). The Island is a historic tidal marsh managed as summer irrigated pasture. The tidal connections for this basin would be an existing north-south irrigation ditch reconnected to tidal influence by removing a tide gate.
- Yolo Flyway Farms Extension (Basin 3). The Yolo Flyway Farms Extension is a historic tidal marsh that is currently managed as summer irrigated pasture. A channel

would be excavated east to connect to the Yolo Flyway Farms Restoration Project. Roads and berms would be notched and lowered to facilitate flood flows.

- Lower Step (Basin 4). The Lower Step is an area of historic tidal marsh that is currently managed as irrigated pasture. A channel would be excavated to facilitate drainage into the Stair Step. Roads and berms would be notched to facilitate drainage.

## ***Site Preparation***

### ***Fish Rescue and Exclusion Barrier***

To reduce potential impacts on fish that may be present in tidal channels, water exclusion structures would be installed. A fish rescue plan would be implemented immediately prior to completing the installation of the exclusion barrier within the tidal channel. During installation of the exclusion barrier, an area at the downstream end of the site would remain open and the area swept through with a beach seine to catch and relocate or herd fish out of the enclosure. Once the downstream end of the barrier is sealed, the interior of the exclusion barrier would be sampled, and all collected fish will be relocated to designated release spots.

### ***Establish Construction Access***

Prior to restoration activities, existing roads would be improved to allow for construction vehicles. The main entrance would not be utilized by haul vehicles. An adjacent asphalt road and existing asphalt roads would be improved by grinding and reuse, utilizing rumble plates, or other methods that meet California Department of Transportation standards. If required, existing dirt roads would be improved to construction standards by clearing a smooth, vegetation-free path at least 12 feet wide, to which dry, excavated soil would be added to support earthmoving equipment. Filter fabric may also be used in problematic (soft or damp) soil areas to provide a base to build the roads upon. Turnouts (24-foot minimum width) would be cleared in several locations to permit two-way vehicle traffic. Aggregate base would be placed for turn around areas. All construction roads would be removed upon Project completion.

Approximately 4,450 linear feet of existing roads would be improved for construction access and approximately 1.5 acres of upland would be temporarily impacted.

### ***Establish Staging Areas***

One main and ten smaller staging areas would be established for equipment storage and refueling. Areas would be cleared if necessary and then enclosed by 2,500 feet of silt fencing to prevent access by terrestrial wildlife. Staging areas would utilize secondary containment measures for construction liquids and materials such as diesel fuel, hydraulic oil, and diesel exhaust fluid. Vehicles would be positioned over drip pans. Cleared areas would be reseeded upon project completion.

Approximately one acre of upland habitat would be temporarily impacted.

#### *Internal Infrastructure Removal*

Internal infrastructure includes culverts, pipes, powerlines and poles, duck blinds, gates, and fencing. Infrastructure that would not be utilized post-construction would be removed and properly disposed of offsite. Most infrastructure would be removed with standard construction equipment with little earthwork.

Approximately 98 culverts and 306 pipe turnouts would be removed and require earthwork. Excavators would remove culverts and then backfill to match existing grade. Erosion control blankets and silt curtains would be utilized in areas that may run into water sources.

Approximately one acre of wetland habitat would be temporarily impacted.

#### *Pump Station Removal and Redesign*

Three pump stations would be reinstalled or redesigned to maintain agriculture water sources following restoration.

Pump Station 3. Pump 3 moves water from a tidal channel connected to Shag Slough into a central basin that then moves water into adjacent basins and then into agriculture ditches. The existing discharge pipe would be detached and rotated to move water from the Shag Slough connection channel into one agriculture basin to the north. A flap gate would be installed near the pump to allow movement into a separate, central ditch. A new tower and stair structure would be installed in the channel with concrete embedded galvanized steel piles. A concrete retaining wall and culvert would be installed in the existing berm. Aggregate base, sand, and rip-rap would be added to stabilize the berm and new structure.

In total, 1.5 cubic yards of cement, 100.1 cubic yards of aggregate base, and 10.7 cubic yards of rip-rap would be placed, and 0.107 acres of annual grassland would be permanently impacted by the installation of Pump Station 3 and the flap gate structure.

Pump Station 8. Pump Station 8 would not be removed or redesigned, but a new power drop would be installed by PG& E.

Pump Station 9. Pump Station 9 would remain, but the outfall would be rerouted. The existing steel pipe would be removed and disposed of offsite, and the retention pond would be filled to existing grade. A new steel pipe would be installed and route the pump water to an existing agriculture ditch.

Approximately 0.01 acres of aquatic habitat would be permanently impacted by conversion to upland habitat.

### *Establish Environmentally Sensitive Areas*

Approximately 4,100 linear feet of exclusion fencing would be installed around the existing vernal pool area. Additionally, 870 linear feet of silt fence would be installed between the haul road and vernal pool area perimeter to minimize any runoff into this area. Fencing would be a woven geotextile fabric attached to fence posts. Posts would be 8 feet apart, posts and geotextile would be installed 8 inches below ground, and the geotextile would extend 36 inches above the ground.

### **Construction**

#### *Tule Salvage*

Prior to main earthwork operations, areas to be graded that contain existing tules would be excavated to remove the rhizomes and stockpiled for future application in restored tidal marsh areas. The total areas of tule rhizome salvage is approximately 5.3 acres. Once all earthwork is complete, the salvaged tule rhizomes will be placed in the graded tidal marsh restoration areas at approximately 20 feet on-center spacing.

#### *Internal Grading*

The Project site has numerous roads and internal berms, which, if left untouched, would impede tidal circulation in the restored Project site. Roads and berms throughout the site would be graded down to adjacent field height. Material would be used in nearby fill areas or used for restoration features, but most would be placed in the main stockpile area. Grading of berms and roads would excavate 72,078 cubic yards of material.

Similar to the roads and berms, there are areas of the landscape that could impede water movement. Skim grading throughout the Project site would lower these areas to adjacent elevations and provide some material for construction. Most of the 59,400 cubic yards of material would be stockpiled in the main stockpile area.

Approximately 131,478 cubic yards of soil would be excavated, and 215 acres of wetland habitat would be temporarily impacted.

#### *Channel Excavation*

Channels throughout the interior of the Project site would be excavated to facilitate flow after restoration. Channels would be dug with an excavator and excavated material may be utilized for nearby construction locations or placed in the main stockpile area.

#### *Yolo Flyway Farm Extension Channel*

The Yolo Flyway Farm extension channel would be constructed at a 2:1 slope with a 5-foot bottom invert at elevations that range from 0.7 feet to 2.7 feet NAVD88. The depth and top

width would vary over the 700-foot long channel where it connects with the existing Yolo Flyway Farm restoration area. A small section of the channel would be left in place for final breaching during the in-water work window. A silt curtain would be installed by the permittee to control release of sediment into waterways.

### *Internal Channels*

Channels within the remainder of the site would be similar in construction to each other. Channels would be constructed with 1.5:1 side slopes with a 4-foot bottom invert at elevations that range from -2.0 to 2.7-feet NAVD88. Top width and depth would vary throughout the site as topography changes. New channel cuts will be approximately 4 feet to 9 feet below existing grade or 4 feet below MLLW up to 0.7 feet above MLLW. Deeper channels would have a top width of 30 feet to 35 feet and narrower channels have a top width of 15 feet to 20 feet. Internal berms would be breached and graded as channels are constructed through them.

Approximately 69,760 cubic yards of soil would be excavated and placed in the main stockpile area, and six acres of wetland habitat would be permanently impacted by conversion to aquatic habitat.

### *Construct Perimeter Berm*

Construction of the new perimeter berm would involve clearing vegetation from the footprint of the new berm, leveling the area, and then placing and compacting fill to reach the target finish elevations ranging from 8.5 to 12 feet. After the target elevation is reached, salvaged and imported gravel would be placed on top. The new perimeter berm would be approximately 38,530 linear feet long.

In total, 11,005 cubic yards of gravel would be salvaged and placed on the new perimeter berm and would temporarily impact 18.95 acres of upland habitat and permanently impact 7.28 acres of farmed wetland, 0.1 acres of perennial emergent marsh, 0.14 acres of riparian woodland, 0.63 acres of seasonal marsh, and 6.20 acres of seasonal wetland habitat.

### *Install Diversion Structure*

A diversion structure would be installed to maintain irrigation through the newly constructed perimeter berm. The existing irrigation ditch would be excavated to install two 36-inch pipes and cast-in-place concrete endwalls. Native fill would be used to construct up to adjacent ground level, and then aggregate base would be placed to the specifications of the perimeter berm. Disturbed areas would be seeded for stabilization.

In total, 2 cubic yards of cement and 95.2 cubic yards of aggregate base would be used to construct the diversion structure. Construction would permanently impact 0.06 acres of seasonal wetland and 0.063 acres of upland habitat.

### *Channel Dredging*

Following the installation of silt curtains, the Permittee would dredge approximately one mile of the existing main north-south irrigation channel to increase conveyance capacity to supply the restored tidal marsh basins. Dredging would occur with an excavator. The existing top width and channel depth varies, and the dredge depth and width would vary depending on adjacent ground elevation and channel width. The final channel invert elevation would range from -2 feet to -4 feet NAVD88.

Approximately 34,988 cubic yards of material would be dredged and placed in the permanent stockpile area.

### *Tree Trimming and Removal*

To accommodate dredging access, permittee proposes to remove or trim riparian trees. Trimming and removal of vegetation along the main north-south channel would total 0.143 acres of canopy area with 5 trees to be completely removed. Estimates of trimming are included below in Table 1.

### *Replace Internal Culverts*

While 98 culverts would be removed during site preparation to enhance water conveyance, Culvert Crossing 1 and Culvert Crossing 2 would be redesigned to maintain roadways and irrigation to adjacent properties. Culvert Crossing 1 will be created with two precast concrete weir boxes and Culvert Crossing 2 will be retrofitted from existing pipe with a combination flap gate.

After dredging, the channel would be excavated to 2:1 side slope. The channel bottom would be reinforced with native soil, aggregate base, and rip-rap before installing the two 48-inch pipes and cast-in-place endwalls. Native fill would be placed over the structure at a 3:1 slope up to the road top. Filler rock and rip-rap would be placed on top of the slopes for additional reinforcement. Gravel would top the road. Any exposed soil would be reseeded.

Approximately 3.8 cubic yards of cement, 276.8 cubic yards of aggregate base and filler rock, and 361.5 cubic yards of rip-rap would be used to construct Culvert Crossings 1 and 2. Construction would temporarily impact 0.1 acres of aquatic habitat.



*Table 1. Estimated Tree Trimming to Occur in Channel Dredge Area*

Tree ID	Action	Scientific Name	Common Name	Diameter at breast height (inches)	Canopy Area (acres)
Cluster 1	Removal	<i>Salix exigua</i>	Sandbar willow	<4	0.014
Cluster 2	Removal	<i>Salix exigua</i>	Sandbar willow	<4	0.025
Trim 1	Trimming	<i>Acer negrundo</i>	Box elder	<4	0.011
Trim 2	Trimming	<i>Salix exigua</i>	Sandbar willow	<4	0.013
Trim 3	Trimming	<i>Acer negrundo</i>	Box elder	<4	0.01
Trim 4	Trimming	<i>Salix exigua</i>	Sandbar willow	<4	0.007
Trim 5	Trimming	<i>Salix exigua</i>	Sandbar willow	<4	0.004
Trim 6	Trimming	<i>Salix laevigata</i>	Red willow	<4	0.01
Trim 7	Trimming	<i>Salix laevigata</i>	Red willow	<4	0.011
Trim 8	Trimming	<i>Salix laevigata</i>	Red willow	<4	0.008
Trim 9	Trimming	<i>Fraxinus latifolia</i>	Oregon ash	<4	0.002
Trim 10	Trimming	<i>Fraxinus latifolia</i>	Oregon ash	<4	0.002
Tree 2	Removal	<i>Salix exigua</i>	Sandbar willow	7	0.006
Tree 7	Removal	<i>Acer negrundo</i>	Box elder	4	0.009
Tree 9	Removal	<i>Acer negrundo</i>	Box elder	6	0.011
Totals				17	0.143

### *Install Cattle Gates*

Gates would be installed at several crossings to prevent livestock from entering the restoration area from adjacent irrigated pasture but still allow for vehicles. Gates would be steel and installed in roads or berms concrete footings with sleeves spaced 8 feet apart. Gates may be attached to cast-in-place endwalls if the terrain necessitates. Gates would have the ability to be completely detached.

### *North-South Tide Gate Removal*

The existing tide gate pipe and structure along the main north-south irrigation channel would be removed to allow for conveyance of tidal water throughout the restored site. The channel would be recontoured to match the slope and elevation of the main channel. The culvert and structure would be disposed of at a proper disposal site. Prior to excavating activities, a silt curtain would be installed by the permittee to control release of sediment into waterways.

Estimates of excavation volume are included in the “Channel Dredging” section above. Impact estimates are included in the “Tree Trimming and Removal” section above.

*Remove Temporary Plugs and Excavate Breaches*

The final breaches opening the site to tidal waters would occur at the Yolo Flyway Farms extension channel and the removal of the main north-south tide gate during the in-water work window. An excavator would work from the land-side outward to remove the earthen plug and tide gate to fully connect newly graded tidal channels with the existing tidal channels. Soil would be reused for nearby construction or disposed of in the main disposal area. Silt curtains would be installed during work if necessary. Excavation volumes and impact estimates are included above.

**Demobilization**

*Deconstruct Temporary Roads and Grading*

Upon completion of main construction activities, temporary roads, access ramps, and turnouts would be deconstructed. Road materials would be removed from the site or reused to repair non-project roads that were damaged during construction. Grading of deconstructed roads, staging areas, and stockpile areas would occur before removing equipment offsite.

*Remove Fencing and Equipment*

Exclusion fencing and erosion control materials would be removed from the 10 staging areas, the vernal pool area, and any other sensitive areas designated during construction. Materials would be removed from the site and disposed of at a proper facility.

*Hydroseed*

Upon demobilization of areas, disturbed soil would be hydroseeded with a mixture of plant species appropriate for each area. Additional erosion control materials would be utilized if necessary. In total, 283 acres of disturbed area would be seeded.

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

This ITP covers the following species:

<b>Name</b>	<b>CESA Status</b>
1. Giant Garter Snake ( <i>Thamnophis gigas</i> )	Threatened <sup>3</sup>
2. Swainson’s Hawk ( <i>Buteo swainsoni</i> )	Threatened <sup>4</sup>

<sup>3</sup>See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(4)(E).  
<sup>4</sup>See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(5)(A).

These species and only these species are the “Covered Species” for the purposes of this ITP.

### Impacts of the Taking on Covered Species:

The following activities are expected to result in incidental take will henceforth be referred to as Covered Activities: construction and removal of roads and staging areas, gasline and well capping, powerline and pole removal, fencing off sensitive areas, removal and replacement of pump stations, removal and replacement of culverts, grading fill and borrow areas, excavating new channels, dredging existing channels, stockpiling vegetation and soil, construction or degrading of berms, trimming or removing riparian vegetation, fugitive dust control activities, and final removal of construction infrastructure.

The Covered Activities have potential to take Covered Species within the entire project area due to removal and trimming of potential nesting trees, nest abandonment from construction activities, loss of foraging habitat and nesting trees, vehicular strikes on roads or excavation areas, entombment in burrows, or entombment from stockpiling.

Take due to removal and trimming of potential nesting trees would occur within the main north-south channel and within the channel west of the Yolo Flyway Farm Extension. Take due to all other Covered Activities have potential to occur within the entire Project Area.

The Project is expected to permanently impact 1,129 acres of Swainson’s Hawk foraging habitat by conversion to tidal marsh and tidal open-water habitat. Temporary impacts to 234 acres of Swainson’s Hawk foraging habitat is expected due to construction disturbance, staging, grading, hauling, and soil stockpiling.

The Project is expected to have a net increase of 1,213 acres of active season habitat for Giant Garter Snake due to conversion of unsuitable seasonal wetland into tidal marsh and tidal open-water habitat. Temporary impacts to 92 acres of active season habitat for Giant Garter Snake is expected due to construction disturbance, staging, grading, hauling, and soil stockpiling. These impacts are summarized in Table 2 and Table 3 with pre- and post-construction habitat maps in **Error! Reference source not found.** and **Error! Reference source not found.**

*Table 2. Temporary Impacts to Giant Garter Snake Habitat Categories*

Habitat Type	Acres Affected by Cut	Acres Affected by Fill
Aquatic (Marsh)	1	0
Ephemeral Aquatic	2	0
Seasonal Wetland (Pasture)	61	29
<b>Total</b>	<b>63</b>	<b>29</b>

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*Table 3. Permanent Impacts to Giant Garter Snake Active Season Habitat*

Habitat	Existing Acreage	Post-Restoration Acreage	Net Change
Aquatic (Marsh)	142	1,847	+1,705
Ephemeral Aquatic	160	5	-155
Terrestrial Buffer	1,362	1,025	-337
Seasonal Wetland (Pasture)*	1,213	0	-1,213
<b>Total</b>	<b>2,877</b>	<b>2,877</b>	<b>0</b>

\* Habitat delineated as seasonal wetland (pasture) outside of the 200-foot aquatic buffer is not considered Giant Garter Snake Habitat.

### **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.

### **Conditions of Approval:**

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

- 1. Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
- 2. CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Environmental Impact Report (SCH No. 2011032001 certified by the State and Federal Contractors Water Agency on July 18, 2013 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

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Alteration Agreement (Notification No. 1600-2019-0300-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 Biological Opinion for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
5. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.

## 6. General Provisions

- 6.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute 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 Designated Biologist and biological monitors at least 30 days before starting Covered Activities. The Designated Biologist or an approved biological monitor shall be present during all covered activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist shall be responsible for maintaining a team of biological monitors who monitor Covered Activities to help minimize and fully mitigate or avoid the incidental take of Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain approval in advance in writing if the Designated Biologist must be changed. The Designated Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species in consultation with CDFW.
- 6.3. 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

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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. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. 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.

- 6.4. Debris and Waste Disposal. Permittee shall not dump any litter or construction debris within the Project area. Permittee shall pick up all debris and waste daily and properly dispose of the debris and waste at an appropriate site. Upon completion of operations and/or onset of wet weather, Permittee shall remove all construction material and/or debris from the Project work site to an area not subject to inundation. All removed vegetation and debris shall be disposed of according to State and local laws and ordinances. Permittee shall remove any temporary flagging, fencing, and barriers upon completion of Project activities.
- 6.5. Erosion Control Materials. Permittee shall submit to CDFW a Stormwater Pollution Prevention Plan (SWPPP) to address Best Management Practices (BMPs) utilized to prevent erosion, sediment loss, and potential pollution within the project site for CDFW review and approval 30 days prior to initiation of Project activities. Permittee shall utilize erosion control measures throughout all phases of operation where sediment runoff from exposed slopes threatens to enter a river, stream, vernal pool, drainage ditch, or lake. All personnel involved in the use of hazardous materials shall be trained in emergency response and spill control. Diesel fuel and oil shall be used, stored, and disposed of in accordance with standard protocols for the handling of each hazardous material and as described in the SWPPP.
- 6.6. Access Routes and Speed Limits. Project-related personnel shall access the Project Area using existing routes or routes identified in the Project Description (Figure 3). Permittee shall ensure that vehicle speeds do not exceed 15 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur.

- 6.7. Staging Areas. Permittee shall confine all Project-related parking, material storage, equipment storage, refueling areas, or any other staging activity to designated staging areas identified in Figure 3. All staging areas shall utilize secondary containment for materials and equipment and shall be fenced off to exclude wildlife. Refueling shall not occur outside of staging areas unless secondary containment is utilized as detailed in an approved Stormwater Pollution Prevention Plan.
- 6.8. Hazardous Materials. Equipment, materials, fuels, lubricants, solvents, or any material deleterious to the Covered Species and not stored in a staging area (ex: portable pumps) shall be located in a dry upland location with secondary containment. Storage of equipment or materials shall follow best management practices as required by the Storm Water Pollution Prevention Plan. Permittee shall check and maintain daily any equipment or vehicles driven or operated within or adjacent to water to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Spill equipment such as booms shall be on-site at each staging area and at any equipment, machinery, or hazardous material stored or operated outside of staging areas.
- 6.9. Hazardous Spills. 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 properly contain and dispose of any unused or leftover hazardous products off-site. All personnel involved in the use of hazardous materials shall be trained in emergency response and spill control. In the event of a hazardous materials spill into water, Permittee shall immediately notify the California Office of Emergency Services State Warning Center by calling (800) 852-7550. Permittee shall take all reasonable measures to document the extent of the impacts and affected areas including photographic documentation of affected areas. Permittee shall meet with CDFW within ten days of the reported spill to develop a resolution including: site clean-up, remediation, and compensatory mitigation for the harm caused as a result of the spill. The Permittee shall be responsible for all spill clean-up, site remediation and compensatory mitigation costs. CDFW reserves the right to refer the matter to the District Attorney's Office if a resolution cannot be agreed upon and achieved within a specified timeframe, generally six months from the date of the incident.
- 6.10. CDFW Access. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement and Permittee shall make available the necessary safety equipment for CDFW staff to enter the site.

## 7. Biological Provisions

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

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and adhere to the following conditions to minimize take of Covered Species:

### **Giant Garter Snake Measures**

- 7.1. Giant Garter Snake Work Window. Covered Activities shall be limited to the Covered Species active season of May 1 through October 1. If ground disturbing activities were initiated prior to October 1 and breaks in construction have not exceeded two weeks, CDFW may allow for construction beyond October 1 following additional consultation. CDFW may incorporate additional measures into this ITP at that time.
- 7.2. Covered Species Inspections. The Designated Biologist or a Biological Monitor shall inspect the work areas, areas adjacent to the work areas, and machinery prior to the start of Covered Activities each day. If the Designated Biologist or biological monitor determines the work site does not contain Covered Species, construction may be initiated and continue under the observation of the biological monitor.
- 7.3. Exclusion Fencing. Before initial use of a designated staging area, exclusion fencing with escape funnels shall be installed around the perimeter of staging areas to discourage the Covered Species from entering staging areas. The fencing shall be inspected by a biological monitor daily, and any observed tears or holes shall be repaired immediately. The fencing shall remain and be maintained until the completion of Covered Activities.
- 7.4. Covered Species Encounters. While conducting Project activities, if the Permittee encounters any Covered Species, work shall be suspended, and CDFW notified. Permittee shall not re-initiate the Covered Activity until the Permittee has contacted CDFW at the contact information located below. CDFW may allow for the relocation of the Covered Species by a biological monitor after consultation.
- 7.5. Covered Species Injury. If a Covered Species is injured or nest abandoned as a result of Project-related activities, the Designated Biologist shall immediately halt work and take it to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately by telephone and e-mail followed by a written incident report as described in Condition of Approval 8.9. Notification shall include the name of the facility where the animal was taken. Work shall not continue until the Permittee has consulted with CDFW regarding the incident, at which point additional protective measures may be required.
- 7.6. Vegetation Removal. All vegetation within the Project site in areas deemed suitable for the Covered Species shall be surveyed prior to removal by a biological monitor. The disturbance or removal of vegetation shall not exceed the minimum necessary to complete work.

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## Swainson's Hawk Measures

- 7.7. Nesting Bird Avoidance. CDFW recommends conducting Covered Activities outside of the Swainson's hawk nesting season of March 1 through August 31. If work is to be conducted during the nesting season, a focused survey for active Swainson's hawk nests shall be conducted by an approved Biological Monitor. Surveys shall be conducted in proposed work areas, staging, and storage areas. Surveys shall be conducted within 1/2-mile of the Project area. Nest surveys for Swainson's hawks shall be conducted in a manner consistent with the recommended timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. For more information, see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline> If any active Swainson's hawk nests are found within 1/2-mile of the Project site, CDFW shall immediately be contacted and additional measures may be required to continue Covered Activities.
- 7.8. Active Nest Buffers. If an active nest is found during surveys, the active nest shall be designated as an "Ecologically Sensitive Area" and protected while occupied during construction. The minimum distance of the protective buffer surrounding each identified nest site shall be 1/2-mile. If work within the 1/2-mile buffer becomes necessary, the Permittee shall consult with CDFW, at which time additional protective measures may be required. Work may be allowed to continue within the buffer if a Biological Monitor determines the birds are not experiencing agitated behavior like defensive flights, leaving brooding position, or flying off the nest. Nest monitoring shall continue during construction work until the young have fully fledged, are no longer being fed by the parents, and have left the nest site, as determined by a Biological Monitor.

## Temporary Impact Measures

- 7.9. Revegetating Temporary Impacts. Temporary impacts to grassland and marsh habitat due to staging, mobilization, demobilization, construction access, turnaround areas, soil cut and fill, stockpiling, and grading shall be restored to pre-project conditions by utilizing a CDFW-approved seed mixture and reseeding technique, or by utilizing stockpiled plants. The composition of the seed mixture shall be sent to CDFW for approval at least 7 days prior to use. Monitoring and management of these areas shall occur according to Condition of Approval 8.3 below.

## 8. Notification and Reporting Provisions

- 8.1. Notification of Work Initiation/Completion. The Designated Representative shall notify CDFW 5 calendar days before starting Covered Activities and shall document compliance with all Conditions of Approval before starting Covered Activities.

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- 8.2. 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.
- 8.3. Revegetation Monitoring. To ensure a successful revegetation effort (see Condition of Approval 7.9 above), temporary impacts to 234 acres of Swainson's Hawk foraging habitat and 92 acres of Giant Garter Snake active season habitat shall be monitored and maintained for five years. All temporary impact areas shall have a minimum of 80% survival at the end of 5 years and shall attain 70% cover after three years and 75% coverage after 5 years. If survival and/or cover requirements are not meeting these goals, the Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting. If the on-site mitigation fails, off-site mitigation will be required for the loss of habitat.
- 8.4. Compliance Monitoring. A Biological Monitor shall be on-site daily when Covered Activities occur and shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. Daily written reports shall be written of all observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.
- 8.5. Monthly Construction Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 8.4 into a Monthly Compliance Report and submit it to CDFW by the 5<sup>th</sup> of each month following the first month of Covered Activities. Monthly compliance reports shall continue until construction activities are complete. A copy of the MMRP table with notes showing the current implementation status of each mitigation measure shall be submitted as part of the report. Monthly Compliance Reports shall be submitted to the CDFW contact listed below via e-mail and hardcopy. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.
- 8.6. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report

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no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Compliance Monitoring Reports for that year identified in Condition of Approval 8.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; and (6) information about other Project impacts on the Covered Species.

- 8.7. Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 8.8. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or Annual Status Report, whichever is submitted first relative to the observation.
- 8.9. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Representative below. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

## 9. Habitat Management Land Acquisition and Restoration

### Swainson's Hawk

CDFW has determined that permanent protection and perpetual management of compensatory habitat management lands (HM lands) 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 has purchased the Project site and 1,129 acres of adjacent farmland foraging habitat to fulfill the requirements for the Covered Species. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations. The Permittee shall also restore on-site 234 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.6 below.

9.1. Swainson's Hawk HM Lands Cost Estimates. CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands and restoration of temporarily disturbed habitat as follows:

- 9.1.1. Land Acquisition. Land acquisition costs for HM lands are estimated at \$1,500/acre for 1,129 acres: \$1,693,500. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements.
- 9.1.2. Start-up Costs. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at \$50,000.
- 9.1.3. Interim Management. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at \$153,000;
- 9.1.4. Endowment Funding. Long-term endowment funding as described in Condition of Approval 9.4 below, estimated at \$776,000. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management. Endowment funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 9.1.5. Transaction Fees. Related transaction fees including but not limited to account

set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at \$3,000.

- 9.1.6. Temporary Impacts. Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.6, calculated at \$1,000/acre for 234 acres: \$234,000.
- 9.1.7. No Tenant Contingency. The No Tenant Contingency is estimated at \$2,557,000. The Permittee shall ensure that the HM Lands are managed for the Covered Species with or without an agricultural tenant. The land manager shall implement the management of the HM lands as described in the final management plan (see Condition of Approval 9.3.6) and conservation easement approved by CDFW. Management activities described in the final management plan shall include those activities necessary to maintain the HM lands for the Covered Species that would reasonably be expected to be completed by an agricultural grazing tenant. A grazing tenant would be reasonably expected to complete maintenance and land management of the Covered Species habitat, infrastructure maintenance, and pay utility costs associated with Long-Term Management of the HM Lands. Land management and maintenance activities by the tenant shall include but are not limited to: limiting the height of vegetation through grazing or mowing, invasive species control, culvert replacement, ditch maintenance, lift pump maintenance, road maintenance, gate replacement, fence maintenance, and utility costs. If the land manager at any time cannot obtain a tenant, the above-mentioned activities would become the responsibility of the land manager. If for a period of eleven (11) months no tenant can be obtained, the land manager shall undertake and complete the tenant activities as listed above, the land manager must notify CDFW. If the “No Tenant Contingency” is implemented, CDFW will require a full or partial deposit of the “No Tenant Contingency” funding into the endowment fund.

### Giant Garter Snake

CDFW has determined that this restoration project will directly benefit Giant Garter Snake through the restoration and enhancement of 1,213 acres of active season grazing habitat. This determination is based on factors including an assessment of the importance of the habitat in the Project Area and the extent to which the Covered Activities will impact the habitat. The Permittee has proposed to complete the temporary impact mitigation on-site and shall develop and monitor 92 acres of habitat for Giant Garter Snake in accordance with success criteria Condition of Approval 8.3. If the Permittee does not meet this mitigation obligation, they shall submit the following costs to CDFW.

- 9.2. Giant Garter Snake Restoration Cost Estimates. CDFW has estimated the cost of

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restoration and interim management of the temporary impact lands as follows:

- 9.2.1. Interim Management. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at \$56,400.
- 9.2.2. Temporary Impacts. Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.6, calculated at \$500/acre for 92 acres: \$46,000.

### 9.3. Habitat Acquisition and Protection

To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:

- 9.3.1. Fee Title/Conservation Easement. Transfer fee title to the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW does not hold the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e).
- 9.3.2. HM Lands Approval. Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, a formal Proposed Lands for Acquisition Form (see Attachment 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.
- 9.3.3. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife

Conservation Board and the Department of General Services.

- 9.3.4. Land Manager. Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified.
- 9.3.5. Start-up Activities. Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates>) (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage.
- 9.3.6. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, water control structure maintenance, and vegetation and invasive species management. 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.

#### 9.4. 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 Condition of Approval 9.3.4, the conservation easement, and the final management plan approved by

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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 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

After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.

- 9.4.1. 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: (1) the name of the proposed Endowment Manager; (2) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (3) 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 (4) 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).
- 9.4.2. 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-like analysis to calculate the amount of funding necessary to ensure the long-term management of the HM lands. The Permittee shall submit to CDFW for



review and approval the results of the PAR before transferring funds to the Endowment Manager.

9.4.2.1. 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.

9.4.2.2. 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:

9.4.2.2.1. 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.

9.4.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.

9.4.2.2.3. 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.

9.4.3. Transfer 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.

9.5. 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.

- 9.6. Temporary Impact Habitat Restoration. Permittee shall restore on-site the 234 acres of Swainson's Hawk habitat and 92 acres of Giant Garter Snake habitat to pre-project or better conditions. These habitats will be temporarily disturbed during construction. Within 6 months of issuance of this ITP, the Permittee shall prepare a Vegetation Restoration Plan to facilitate revegetation of the 326 acres total of temporary construction disturbance on-site, and shall ensure that the Plan is successfully implemented by the contractor. The Plan shall include detailed specifications for restoring all temporarily disturbed areas, such as seed mixes, application methods, and additional watering. See Condition of Approval 8.3 for success criteria that must be included in the Vegetation Restoration Plan.

## **10. Performance Security.**

The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 9 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

- 10.1. Security Amount. The Security shall be in the amount of **\$2,236,900**. This amount is based on the cost estimates identified in Condition of Approval 9.1 and 9.2 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 30 days after the effective date of this ITP, whichever occurs first.
- 10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 10.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 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:

- 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 or transfer of HM lands to the Department of Water Resources; 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:**

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**LOWER YOLO RESTORATION PROJECT**

The Permittee shall email the digitally signed ITP to [CESA@wildlife.ca.gov](mailto:CESA@wildlife.ca.gov). Digital signatures shall comply with Government Code section 16.5.

Alternatively, 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  
1416 Ninth Street, Suite 1260  
Sacramento, CA 95814

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email or 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 (2081-2019-045-03) in a cover letter and on any other associated documents.

Gregg Erickson, Regional Manager  
California Department of Fish and Wildlife  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
[AskBDR@wildlife.ca.gov](mailto:AskBDR@wildlife.ca.gov)

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  
[CESA@wildlife.ca.gov](mailto:CESA@wildlife.ca.gov)

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

Phillip Poirier, Senior Environmental Scientist  
2109 Arch-Airport Road, Suite 100  
Stockton, CA 95206  
Telephone (209) 234-3448  
[Phillip.Poirier@wildlife.ca.gov](mailto:Phillip.Poirier@wildlife.ca.gov)

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### **Compliance with CEQA:**

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, Westlands Water District (See generally Pub. Resources Code, §§ 21067, 21069). The lead agency's prior environmental review of the Project is set forth in the Lower Yolo Restoration Project SCH No. 2011032001) dated July 18, 2013 that the Westlands Water District certified the Supplemental Final Environmental Impact Report (EIR) and adopted various mitigation measures for the Covered Species as conditions of Project approval.

This ITP, along with CDFW's related CEQA findings, which are available as a separate document, provide evidence of CDFW's consideration of the lead agency's EIR 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 and the Lower Yolo Restoration Project EIR (SCH No. 2011032001), the results of site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP.
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of

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1,129 acres of compensatory Swainson's Hawk habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP.
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible.
- (5) All required measures are capable of successful implementation.
- (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	Project Vicinity
FIGURE 2	Proposed Restoration Design
FIGURE 3	Project Overview
FIGURE 4	Existing Giant Garter Snake Habitat
FIGURE 5	Proposed Giant Garter Snake Habitat
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

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**LOWER YOLO RESTORATION PROJECT**

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

on 8/5/2020.

DocuSigned by:

*Gregg Erickson*

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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.

DocuSigned by:

*Jose Gutierrez*

By: \_\_\_\_\_

7E5959A67D484F9...

Date: 8/5/2020

Printed Name: Jose Gutierrez

Title: Chief Operating Officer

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Figure 1. Project Vicinity

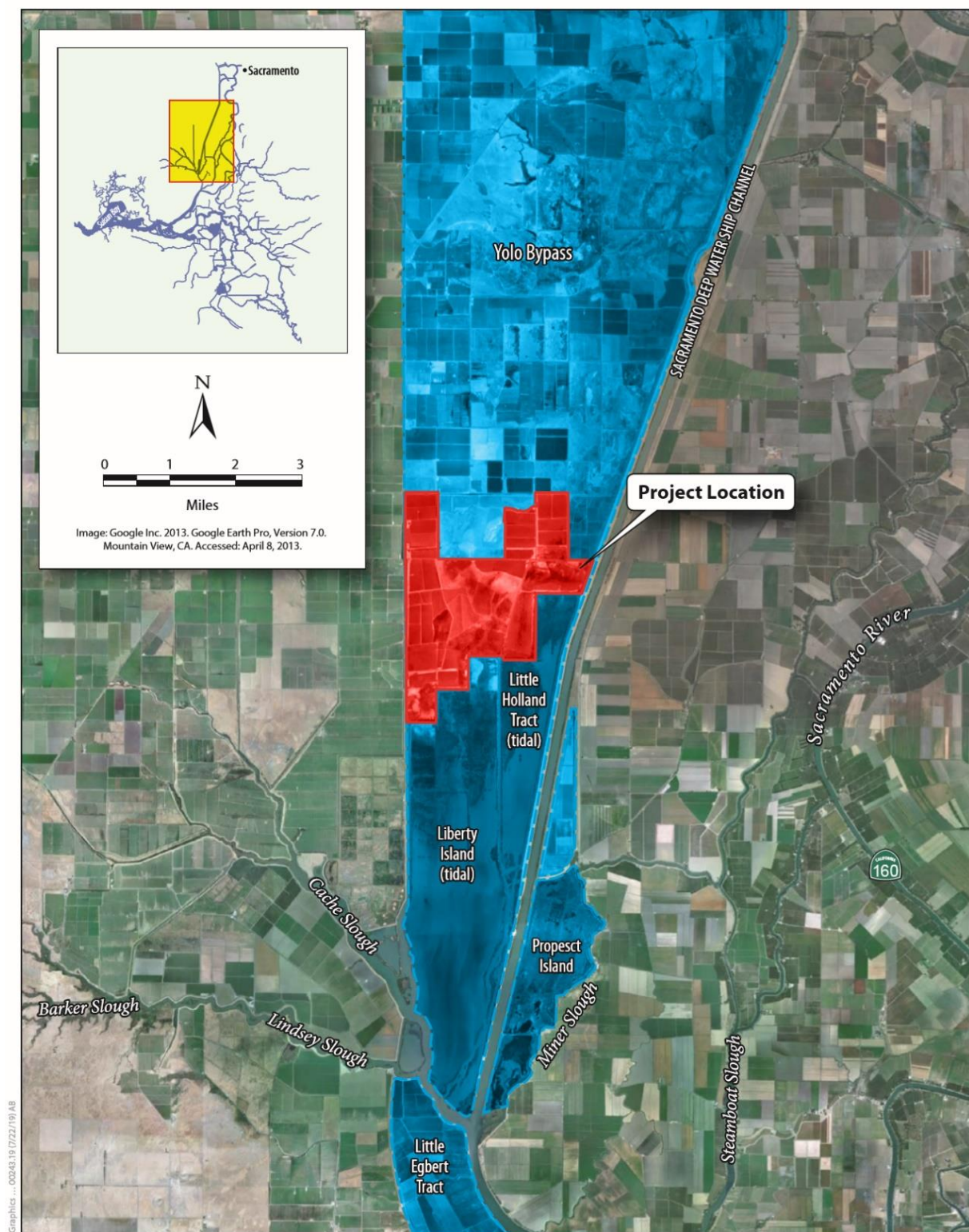




Figure 2. Proposed Restoration Design

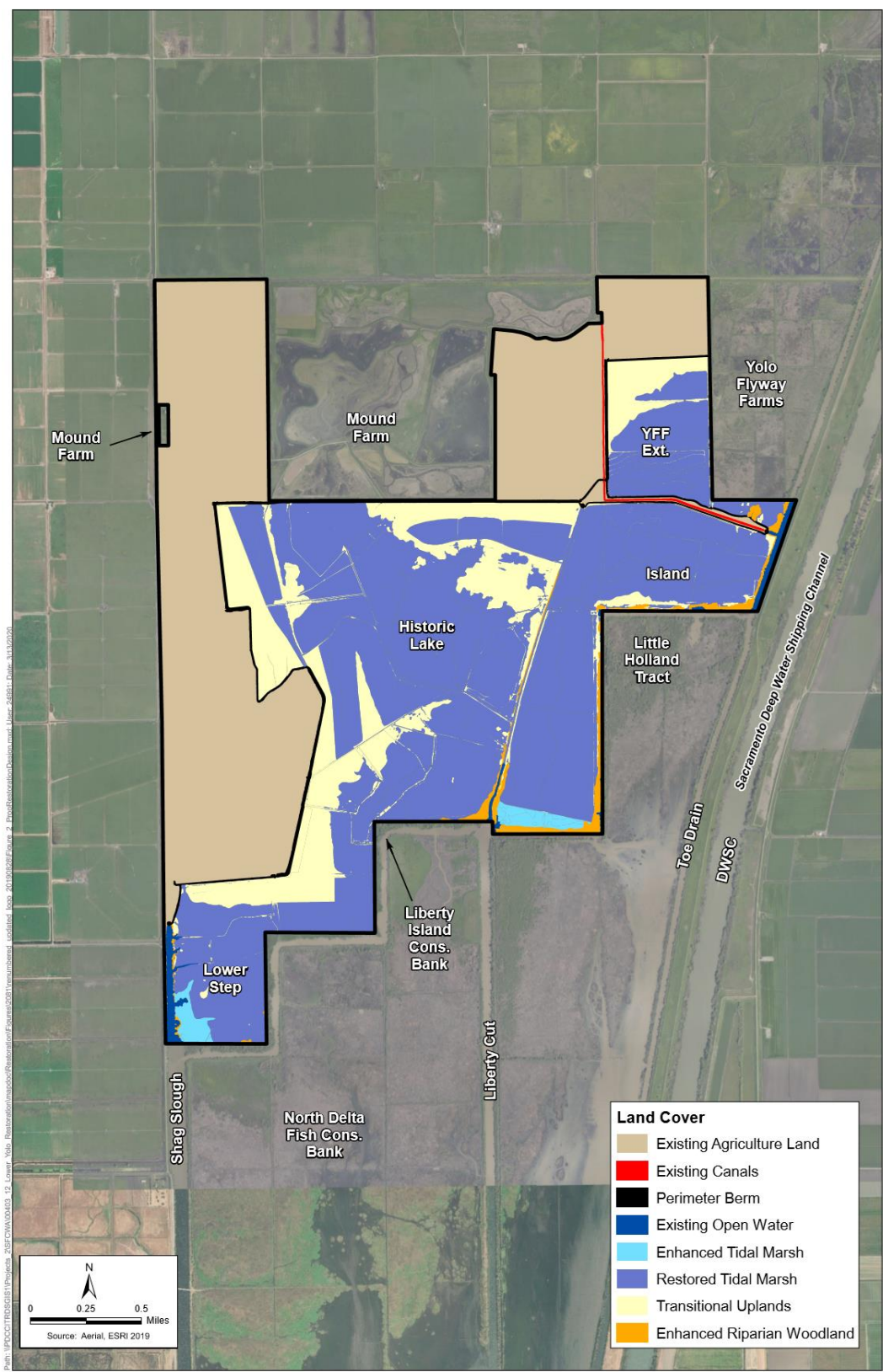






Figure 4. Existing Giant Garter Snake Habitat

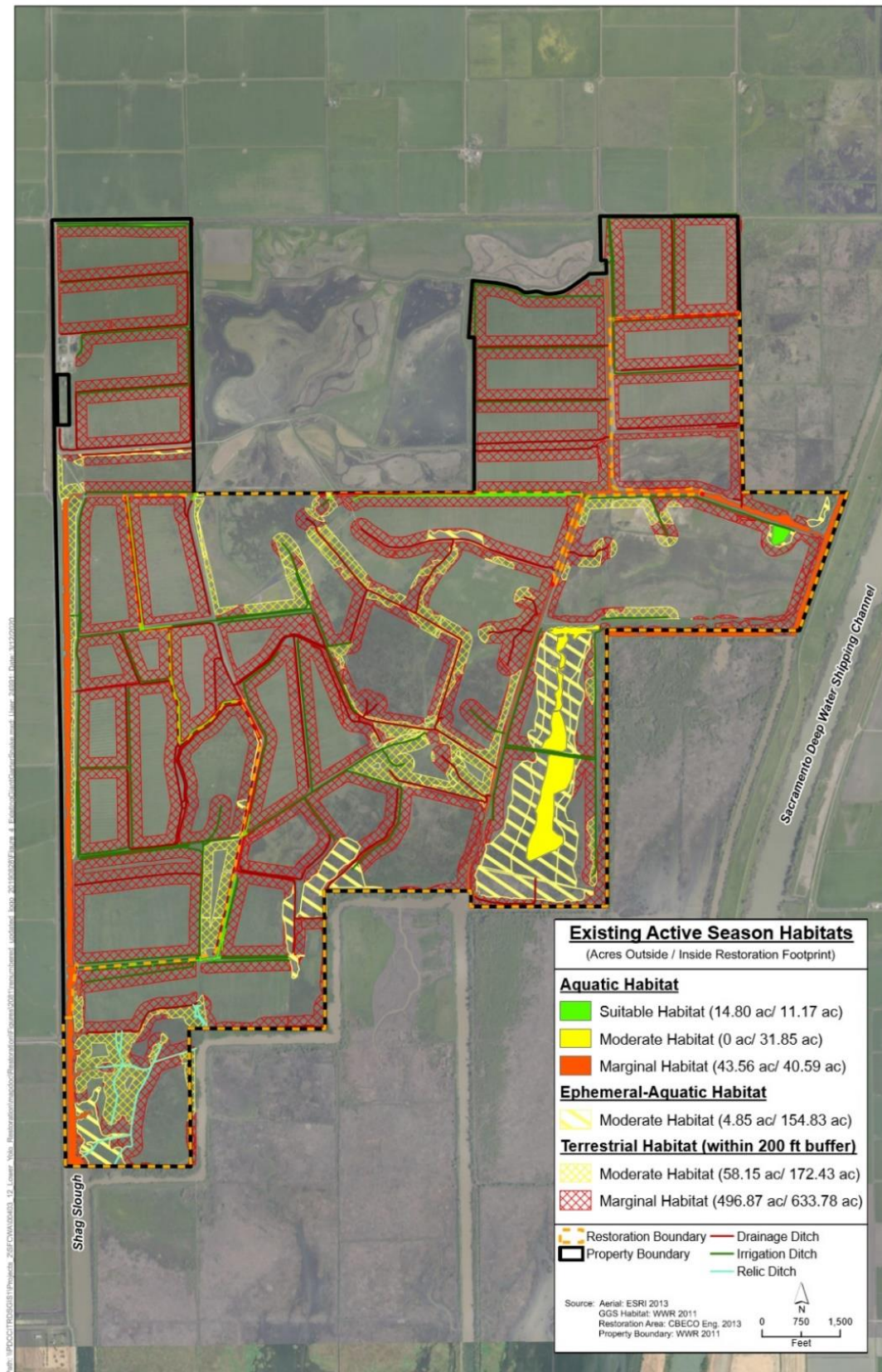
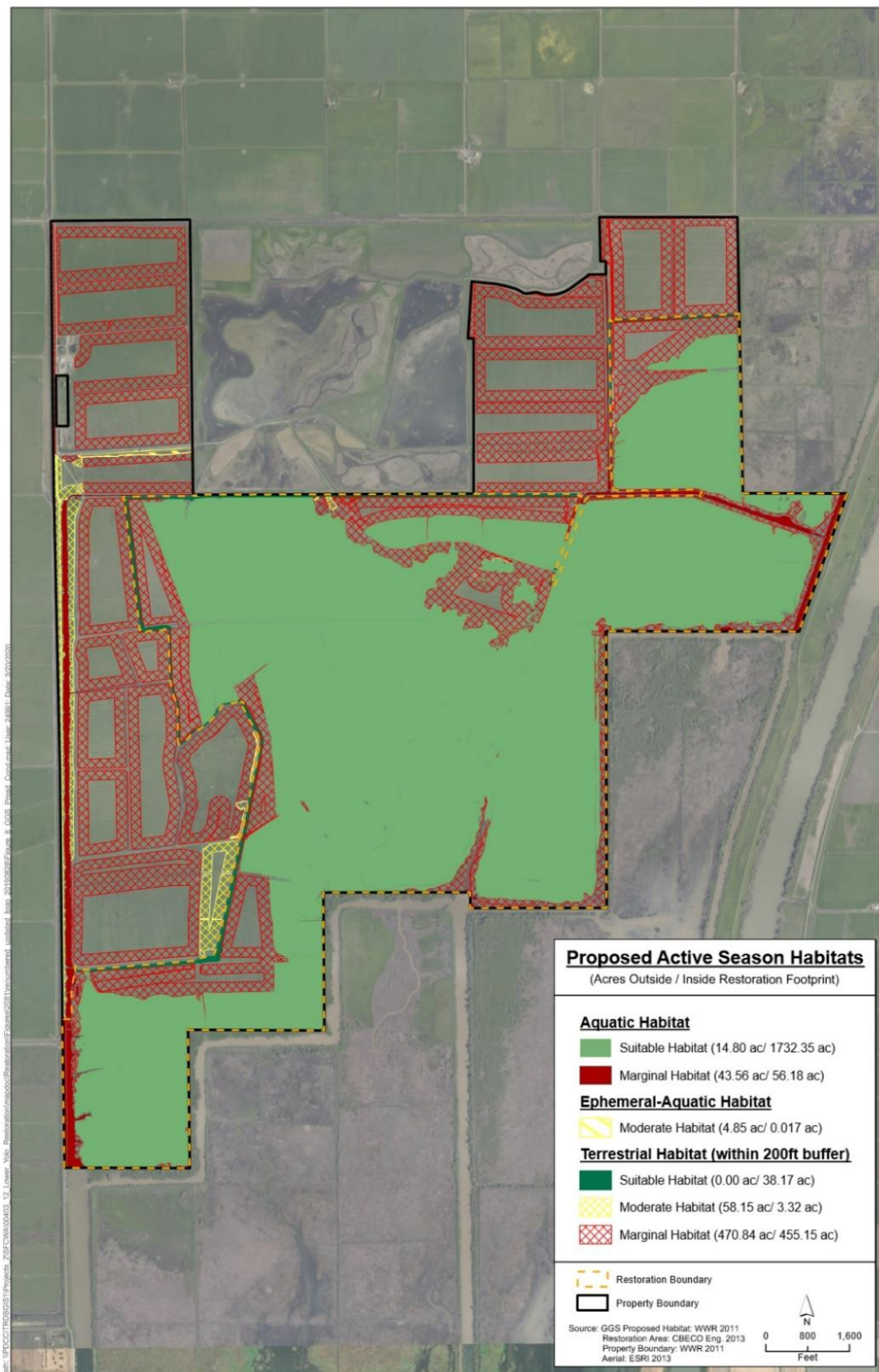


Figure 5. Proposed Giant Garter Snake Habitat



**Attachment 1****CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)  
CALIFORNIA ENDANGERED SPECIES ACT****INCIDENTAL TAKE PERMIT NO. 2081-2020-045-R3****PERMITTEE: Jose Gutierrez, Westlands Water District****PROJECT: Lower Yolo Restoration Project****PURPOSE OF THE MMRP**

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

**OBLIGATIONS OF PERMITTEE**

Mitigation measures must be implemented within the time periods indicated in the table that appears below. Permittee has the primary responsibility for monitoring compliance with all mitigation measures and for reporting to CDFW on the progress in implementing those measures.

**VERIFICATION OF COMPLIANCE, EFFECTIVENESS**

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

**TABLE OF MITIGATION MEASURES**

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



	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
<b>General Provisions</b>					
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.	ITP Condition # 6.1	Before commencing ground-disturbing activities	Permittee	
2	Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a Designated Biologist and biological monitors at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist shall be responsible for maintaining a team of biological monitors who monitor Covered Activities to help minimize and fully mitigate or avoid the incidental take of Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain approval in advance in writing if the Designated Biologist must be changed. The Designated Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species in consultation with CDFW .	ITP Condition # 6.2	Before commencing ground-disturbing activities	Permittee	
3	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. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. 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.	ITP Condition # 6.3	Before commencing ground-disturbing activities	Permittee	
4	Debris and Waste Disposal. Permittee shall not dump any litter or construction debris within the Project area. Permittee shall pick up all debris and waste daily and properly dispose of the debris and waste at an appropriate site. Upon completion of operations and/or onset of wet weather, Permittee shall remove all construction material and/or debris from the Project work site to an area not subject to inundation. All removed vegetation and debris shall be disposed of according to State and local laws and ordinances. Permittee shall remove any temporary flagging, fencing, and barriers upon completion of Project activities.	ITP Condition # 6.4	Daily, During Construction	Permittee	
5	Erosion Control Materials. Permittee shall submit to CDFW a Stormwater Pollution Prevention Plan (SWPPP) to address Best Management Practices (BMPs) utilized to prevent erosion, sediment loss, and potential pollution within the project site for CDFW review and approval 30 days prior to initiation of Project activities. Permittee shall utilize erosion control measures	ITP Condition # 6.5	Before commencing ground-disturbing activities	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	throughout all phases of operation where sediment runoff from exposed slopes threatens to enter a river, stream, vernal pool, drainage ditch, or lake. All personnel involved in the use of hazardous materials shall be trained in emergency response and spill control. Diesel fuel and oil shall be used, stored, and disposed of in accordance with standard protocols for the handling of each hazardous material and as described in the SWPPP.				
6	Access Routes and Speed Limits. Project-related personnel shall access the Project Area using existing routes or routes identified in the Project Description (Figure 3). Permittee shall ensure that vehicle speeds do not exceed 15 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur.	ITP Condition # 6.6	During Construction	Permittee	
7	Staging Areas. Permittee shall confine all Project-related parking, material storage, equipment storage, refueling areas, or any other staging activity to designated staging areas identified in Figure 3. All staging areas shall utilize secondary containment for materials and equipment and shall be fenced off to exclude wildlife. Refueling shall not occur outside of staging areas unless secondary containment is utilized as detailed in an approved Stormwater Pollution Prevention Plan.	ITP Condition # 6.7	During Construction	Permittee	
8	Hazardous Materials. Equipment, materials, fuels, lubricants, solvents, or any material deleterious to the Covered Species and not stored in a staging area (ex: portable pumps) shall be located in a dry upland location with secondary containment. Storage of equipment or materials shall follow best management practices as required by the Storm Water Pollution Prevention Plan. Permittee shall check and maintain daily any equipment or vehicles driven or operated within or adjacent to water to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Spill equipment such as booms shall be on-site at each staging area and at any equipment, machinery, or hazardous material stored or operated outside of staging areas.	ITP Condition # 6.8	During Construction	Permittee	
<b>Biological Provisions</b>					
9	Giant Garter Snake Work Window. Covered Activities shall be limited to the Covered Species active season of May 1 through October 1. If ground disturbing activities were initiated prior to October 1 and breaks in construction have not exceeded two weeks, CDFW may allow for construction beyond October 1 following additional consultation. CDFW may incorporate additional measures into this ITP at that time.	ITP Condition # 7.1	During Construction	Permittee	
10	Covered Species Inspections. The Designated Biologist or a Biological Monitor shall inspect the work areas, areas adjacent to the work areas, and machinery prior to the start of Covered Activities each day. If the Designated Biologist or biological monitor determines the work site does not contain Covered Species, construction may be initiated and continue under the observation of the biological monitor.	ITP Condition #7.2	Daily, During Construction	Permittee	
11	Exclusion Fencing. Before initial use of a designated staging area, exclusion fencing with escape funnels shall be installed around the perimeter of staging areas to discourage the Covered Species from entering staging areas. The fencing shall be inspected by a biological monitor daily, and any observed tears or holes shall be repaired immediately. The fencing shall remain and be maintained until the completion of Covered Activities.	ITP Condition #7.3	Before commencing ground-disturbing activities	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
12	Vegetation Removal. All vegetation within the Project site in areas deemed suitable for the Covered Species shall be surveyed prior to removal by a biological monitor. The disturbance or removal of vegetation shall not exceed the minimum necessary to complete work.	ITP Condition #7.6	During Construction	Permittee	
13	Nesting Bird Avoidance. CDFW recommends conducting Covered Activities outside of the Swainson's hawk nesting season of March 1 through August 31. If work is to be conducted during the nesting season, a focused survey for active Swainson's hawk nests shall be conducted by an approved Biological Monitor. Surveys shall be conducted in proposed work areas, staging, and storage areas. Surveys shall be conducted within 1/2-mile of the Project area. Nest surveys for Swainson's hawks shall be conducted in a manner consistent with the recommended timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. For more information, see <a href="https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&amp;inline">https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&amp;inline</a> If any active Swainson's hawk nests are found within 1/2-mile of the Project site, CDFW shall immediately be contacted and additional measures may be required to continue Covered Activities.	ITP Condition #7.7	Before commencing ground-disturbing activities	Permittee	
14	Active Nest Buffers. If an active nest is found during surveys, the active nest shall be designated as an "Ecologically Sensitive Area" and protected while occupied during construction. The minimum distance of the protective buffer surrounding each identified nest site shall be 1/2-mile. If work within the 1/2-mile buffer becomes necessary, the Permittee shall consult with CDFW, at which time additional protective measures may be required. Work may be allowed to continue within the buffer if a Biological Monitor determines the birds are not experiencing agitated behavior like defensive flights, leaving brooding position, or flying off the nest. Nest monitoring shall continue during construction work until the young have fully fledged, are no longer being fed by the parents, and have left the nest site, as determined by a Biological Monitor.	ITP Condition #7.8	Before commencing ground-disturbing activities/During Construction	Permittee	
15	Revegetating Temporary Impacts. Temporary impacts to grassland and marsh habitat due to staging, mobilization, demobilization, construction access, turnaround areas, soil cut and fill, stockpiling, and grading shall be restored to pre-project conditions by utilizing a CDFW-approved seed mixture and reseeding technique, or by utilizing stockpiled plants. The composition of the seed mixture shall be sent to CDFW for approval at least 7 days prior to use. Monitoring and management of these areas shall occur according to Condition of Approval 8.3 below.	ITP Condition #7.9	During Construction	Permittee	
<b>Notification and Reporting Provisions</b>					
16	Notification of Work Initiation/Completion. The Designated Representative shall notify CDFW 5 calendar days before starting Covered Activities and shall document compliance with all Conditions of Approval before starting Covered Activities.	ITP Condition #8.1	Before commencing ground-disturbing activities	Permittee	
17	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.	ITP Condition # 8.2	During Construction	Permittee	
18	Revegetation Monitoring. To ensure a successful revegetation effort (see Condition of Approval 7.9 above), temporary impacts to 234 acres of Swainson's Hawk foraging habitat and 92 acres of Giant Garter Snake active season habitat shall be monitored and maintained for five years. All temporary impact areas shall have a minimum of 80% survival at the end of 5 years and shall attain 70% cover after three years and 75% coverage after 5 years. If survival and/or cover requirements are not meeting these goals, the Permittee is responsible for replacement	ITP Condition # 8.3	Post-Construction	Permittee	



	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
	planting, additional watering, weeding, invasive exotic eradication, or any other practice to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting. If the on-site mitigation fails, off-site mitigation will be required for the loss of habitat.				
19	Compliance Monitoring. A Biological Monitor shall be on-site daily when Covered Activities occur and shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. Daily written reports shall be written of all observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP	ITP Conditions # 8.4	Daily, During Construction	Permittee	
20	Monthly Construction Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 8.4 into a Monthly Compliance Report and submit it to CDFW by the 5th of each month following the first month of Covered Activities. Monthly compliance reports shall continue until construction activities are complete. A copy of the MMRP table with notes showing the current implementation status of each mitigation measure shall be submitted as part of the report. Monthly Compliance Reports shall be submitted to the CDFW contact listed below via e-mail and hardcopy. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.	ITP Conditions # 8.5	Monthly, During Construction	Permittee	
21	Annual Status Report. Permittee shall provide CDFW with an Annual Status Report no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Compliance Monitoring Reports for that year identified in Condition of Approval 8.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; and (6) information about other Project impacts on the Covered Species	ITP Conditions # 8.6	Annually, During Construction	Permittee	
22	Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information	ITP Conditions # 8.7	Post-Construction	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
23	CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or Annual Status Report, whichever is submitted first relative to the observation	ITP Conditions # 8.8	During Construction	Permittee	
24	Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Representative below. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.	ITP Conditions # 8.9	During Construction	Permittee	
<b>Habitat Acquisition and Protection</b>					
25	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).	ITP Conditions # 9.3.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
26	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.	ITP Condition # 9.3.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
27	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.	ITP Condition # 9.3.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
			if Security is provided)		
28	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.	ITP Condition # 9.3.4	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
29	Start-up Activities. Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see <a href="https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates">https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates</a> ) (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage.	ITP Condition # 9.3.5	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
30	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 activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, water control structure maintenance, and vegetation and invasive species management. 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.	ITP Condition # 9.3.6	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
<b>Endowment Fund</b>					
31	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: (1) the name of the proposed Endowment Manager; (2) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (3) 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 (4) 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	ITP Condition # 9.4.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	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).				
32	<p>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-like analysis to calculate the amount of funding necessary to ensure the long-term management of the HM lands. The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.</p> <p>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.</p> <p>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:</p> <p>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.</p> <p>Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.</p> <p>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</p>	ITP Condition # 9.4.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
33	Transfer 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.	ITP Condition # 9.4.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
<b>Temporary Impacts Restoration</b>					
34	Temporary Impact Habitat Restoration. Permittee shall restore on-site the 234 acres of Swainson's Hawk habitat and 92 acres of Giant Garter Snake habitat to pre-project or better conditions. These habitats will be temporarily disturbed during construction. Within 6 months of issuance of this ITP, the Permittee shall prepare a Vegetation Restoration Plan to facilitate revegetation of the 326 acres total of temporary construction disturbance on-site, and shall ensure that the Plan is successfully implemented by the contractor. The Plan shall include detailed specifications for restoring all temporarily disturbed areas, such as seed mixes, application methods, and additional watering. See Condition of Approval 8.3 for success criteria that must be included in the Vegetation Restoration Plan.	ITP Condition # 9.6	During Construction Post-Construction	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
<b>Performance Security</b>					
35	<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 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:</p> <p>Security Amount. The Security shall be in the amount of <b>\$2,236,900</b>. This amount is based on the cost estimates identified in Condition of Approval 9.1 and 9.2 above.</p> <p>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.</p> <p>Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.</p> <p>Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.</p> <p>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.</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>• Written documentation of the acquisition of the HM lands;</li> <li>• Copies of all executed and recorded conservation easements;</li> <li>• Written confirmation from the approved Endowment Manager of its receipt of the full Endowment or transfer of HM lands to the Department of Water Resources; and</li> <li>• Timely submission of all required reports.</li> </ul> <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	Before commencing ground- or vegetation-disturbing activities	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:

California 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/Reduction, 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: Incidental Take Permit No. [*permit number*]

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

1. [*Insert one of the following statements:* "In the opinion of 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 [**insert either: "CANCELLATION" or "REDUCTION"**]

To:

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

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

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

1. [**Insert one of the following statements:** "The Applicant has presented documentary evidence of full compliance with the Mitigation Requirements referenced in paragraph 3 of the Credit." **or** "The Applicant has presented documentary evidence of compliance with the following Mitigation Requirement[(s)] referenced in paragraph 3 of the Credit: [**insert brief description of requirement(s) or requirement number(s) completed**]." **or** "The Applicant has provided CDFW with an equivalent security approved by CDFW to replace the Credit."]
2. [**Insert one of the following statements:** "CDFW therefore requests the cancellation of the Credit." **or** "CDFW therefore requests a reduction in the Principal Sum in the amount of \$\_\_\_\_\_, thereby making the new Principal Sum \$\_\_\_\_\_."]

[**Insert one of the following statements:** "Therefore, CDFW has executed and delivered this Certificate for Cancellation as of the \_\_\_\_ day of [**month**], [**year**]." **or** "Therefore, CDFW has executed and delivered this Certificate for Reduction 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.

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

**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: \_\_\_\_\_

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