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PLANNING BRANCH

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

California Endangered Species Act  
Incidental Take Permit No. 2081-2019-041-02

**COSUMNES RIVER BRIDGE REPLACEMENT**

**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>Granite Construction Company</b>
<b>Principal Officer:</b>	<b>George Delano, Senior Project Manager</b>
<b>Contact Person:</b>	<b>Jordan Main, Compass Land Group</b>
<b>Mailing Address:</b>	<b>4001 Bradshaw Road Sacramento, CA 95827</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 7.7 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 Cosumnes River Bridge Replacement (Project) is located along State Route 99 (SR 99) between post miles 7.1 to 9.4, in unincorporated Sacramento County, State of California; Latitude 38.357836 Longitude -121.343594, Section 20, Township 6N, Range 6E, U.S. Geological Survey (USGS) map Galt, approximately 1.5 miles south of Elk Grove. The Project crosses both the Cosumnes River and Cosumnes River Overflow.

**Project Description:**

The Project includes roadway and related infrastructure improvements over approximately 103.4 acres. The scope of work will include replacing four (4) bridge structures (both Northbound (NB) and Southbound (SB) crossings at the Cosumnes River and the Cosumnes River Overflow (River Bridges)), improving the Dillard Road Overcrossing, relinquishing the McConnell Underpass, replacing the McConnell Overhead structure, realigning the southbound lanes of SR 99, and maintaining access to southbound SR 99 at Eschinger Road with the exception of temporary closure during construction.

**Stage 1***River Bridges*

In Stage 1, Permittee will build temporary bridge widening structures and roadway adjacent to and east of NB SR99 at the River Bridges. The temporary bridges are anticipated to have pier placement similar to the existing River Bridges; however, the span lengths will be twice as long (approximately 50 feet), eliminating half of the piers. In addition, the temporary Cosumnes River bridge will fully span the existing Cosumnes River channel. Temporary bridge abutment fills will be placed adjacent to the existing bridge abutment fills. The temporary bridges will be 20-feet wide, supported on approximately eleven (11) piers at the Cosumnes River Bridge and approximately twelve (12) pier at the Cosumnes River Overflow Bridge, with four approximately six (6) 18-inch diameter piles per pier. The temporary bridges will be precast concrete structures, which will not require falsework supports within the active channel or cast-in-place concrete decks.

Access ramps will be constructed from the east side of SR 99 to the River Bridges (at both ends of the bridges). Construction equipment and vehicle access will also be provided by the existing maintenance roads on the west side of SR 99. The temporary bridge piers will consist of driven steel pipe foundation piles capped with steel or concrete beams. The driven steel pipe and caps will be installed using crane-mounted equipment. The bridge superstructure precast slabs will then be placed on the piers using cranes. Approximately 3-inches of asphalt concrete will be placed on the precast slabs between temporary Type-K rails as a riding surface. It is anticipated that the temporary bridges will be constructed when the River is dry. The piers within approximately 200-feet of the River centerline of the wetted channel will be installed using cast-in-drill-hole (CIDH) piles. CIDH piles are reinforced concrete piles cast in holes that are drilled to predetermined depths. If needed to stabilize

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loose soil, a steel hollow casing will be inserted into the ground by drilling an oversized hole and dropping the steel hollow casing into place.

Stage 1 of construction will include installation of Environmentally Sensitive Area (ESA) fencing, tree removal, and clearing and grubbing the construction area. There will be temporary construction easements (TCEs) required along the east side of the River Bridges. It will be necessary to remove vegetation within the TCE area and the TCE area will be revegetated following construction. The shaded riparian area along both the northern and southern banks will be temporarily removed to accommodate construction. This area will be revegetated following construction.

#### *McConnell Overhead*

The existing McDonnell Overhead (OH) carries NB traveling vehicles over the Union Pacific Railroad tracks. The existing McDonnell OH structure is a three-span welded steel composite girder bridge with a reinforced concrete deck on reinforced concrete square column bents on spread footings. This Project proposes to demolish the existing NB McDonnell OH structure and replace it with a single bridge structure spanning the entire width of the roadway (both NB and SB lanes, including the median). Construction of the new McDonnell Bridge structure will begin with tree removal. Access roads to the McDonnell bridge will be constructed. Cranes and other construction equipment will be mobilized to the site. Fill material (soil) will be trucked into the site and the slopes and roadway will be constructed for the new bridge and alignment. The abutment piles will be installed, and the abutments will then be constructed. Precast girders to support the superstructure will then be installed. The bridge deck will then be constructed.

## **Stage 2**

#### *Demolition and Construction of New SB and Median River Bridges*

In Stage 2, SB traffic will be shifted onto the new McDonnell OH. Both NB and SB traffic will be shifted to the temporary alignment (built in Stage 1). The Permittee will demolish the existing SB River Bridges and build the new SB and median portions of the new bridges and roadway. The existing SB River Bridges are each supported by 18-inch diameter piles and concrete piers. At the Cosumnes River Bridge, two of the existing piers are within the active channel. Access ramps will be constructed from the west side of SR99 to the River Bridges (at both ends of the bridges). Construction equipment and vehicle access will also be provided by the existing maintenance roads and/or agricultural roads on the west side of SR99. Once the traffic has been shifted to the newly constructed temporary bridges, the existing SB bridges will be demolished with an excavator mounted breaker (hoe ram). At the Cosumnes River Bridge, all bridge rubble will be contained and kept from entering the Cosumnes River. Existing piles will be removed with an excavator that will pull out or break off the piles approximately three (3) feet below the Cosumnes River bed. The new SB and median portions of River Bridges will be constructed using CIDH piles with steel hollow casings for its foundation. It is anticipated that steel hollow casings will be installed using

oscillating or rotating methods or an oversized hole will be drilled and the steel hollow casing will be dropped into place. It is anticipated that the steel hollow casings for the CIDH piles will be installed using crane mounted drill equipment. The CIDH piles will be approximately 84 inches (7 feet) in diameter. Approximately twelve (12) CIDH piles will be required for the new Cosumnes River SB and median bridge structure. Approximately fifteen (15) CIDH piles will be required for the new Cosumnes River Overflow SB and median bridge structure. Approximately forty (40) 24-inch diameter CIDH piles will be installed at each bridge abutment foundation (160 total). The abutments of the new SB and median bridge structures will then be formed and cast with concrete. Precast girders will be placed on the pier foundations using cranes. The bridge deck will then be formed/poured. Once the new SB and median roadways and bridge structures are completed, SB and NB SR99 traffic will be shifted onto the newly constructed bridge structures and roadways.

### **Stage 3**

#### *Demolition and Construction of New NB Bridges, Abutment Protection, and McConnell UP Demolition and Construction of the New NB Bridges*

In Stage 3, once the traffic has been shifted to the newly constructed southbound and median portion of the final bridges and roadways, the existing NB bridges and temporary bridges will be demolished with an excavator mounted breaker (hoe ram). At the Cosumnes River Bridge, all bridge rubble will be contained and kept from entering the Cosumnes River channel. The new NB structures will then be constructed in a similar way as the SB and median bridges. The CIDH piles for the new NB structures will be approximately 84 inches (7 feet) in diameter. Approximately eight (8) CIDH piles will be installed for the NB Cosumnes River Bridge and approximately ten (10) CIDH piles will be installed for the NB Cosumnes River Overflow Bridge. Approximately twenty (20) 24-inch diameter CIDH piles will be installed at each bridge abutment foundation (80 total). The abutments of the new NB bridge structures will then be formed and cast with concrete. Once the new NB portion of the structure is completed, the NB traffic will be shifted onto the newly constructed NB portion of structure. Bridge Abutment Protection at River Bridges.

To protect the bridge abutments from future potential scour, permanent rock slope protection (RSP) will be placed under, and around the sides of the new bridge structure abutments. The permanently placed RSP at the Cosumnes River bridge abutments will be a minimum of 2.5 feet deep and wrap around the new bridge like a horseshoe. The RSP in front of the abutments will measure approximately 26 feet wide by 180 feet long. On both sides of the bridges, RSP will measure approximately 26 feet wide by 60 feet long. The permanently placed RSP at the Cosumnes River Overflow bridge abutments will be a minimum of 2.5 feet deep and wrap around the new bridge like a horseshoe. The RSP in front of the abutments will measure approximately 32 feet wide by 180 feet long. On both sides of the bridges, RSP will measure approximately 32 feet wide by 50 feet long. The area of permanently placed RSP totals 0.77 acres. No RSP will be placed within the Cosumnes River channel.



#### *Modification of the Existing McConnell Underpass*

The old SB roadway which carries SR99 traffic under the Union Pacific Railroad tracks will be removed and filled in with soil. The existing McConnell Underpass (railroad) bridge will be removed and replaced with new railroad tracks.

#### *Removal of the Existing McConnell Overhead Bridge*

After all traffic is moved to the final alignment, the existing McConnell Overhead Bridge (NB) will be demolished with an excavator mounted breaker (hoe ram) and cranes. Any remaining pavement surfacing will be removed or obliterated.

### **Other Project Activities**

#### *Temporary Work Pad*

The temporary work pad will consist of approximately 2,300 cubic yards of clean coarse aggregate covering approximately 0.79 acres. The temporary work pad will allow complete removal of bridge demolition debris and access across the Cosumnes River channel.

Culverts will be placed in the bottom of the Cosumnes River channel to allow any water that is present to flow unimpeded through the work pad. The culverts will then be covered with the clean coarse aggregate, which will be delivered in dump trucks and placed with excavators or bulldozers. The work pad will begin at the edge of the TCE and slope up to a level surface at The work pad will be installed at the beginning of the salmonid work window (approximately June 15) and removed at the end of the salmonid work window (approximately October 15), for each of the 2020 and 2021 work seasons. Removal of the work pad and culverts will be done with excavators seasonally and at the end of the Project the clean coarse aggregate will be hauled to a stockpile location outside of the floodplain within the TCE for reuse, or incorporated into a roadway fill elsewhere on the jobsite.

#### *Utilities*

Two utility lines exist within the Project area at the Cosumnes River Bridge: a Kinder Morgan pipeline and a Frontier Communications telephone line, both located on the east side of the Cosumnes River Bridge. The Kinder Morgan pipeline is located underground and will be protected in place; the pipeline will not be relocated or impacted. The Frontier Communications telephone line is located belowground on the north side of the Cosumnes River channel transitioning to aboveground to cross the channel, then back belowground on the south side of the channel. During construction activities, the aboveground portion of the line will be spliced and re-routed to temporary aboveground poles east of the existing aboveground poles within the TCE. Following construction, the aboveground segment will be relocated back to its original alignment on new aboveground poles in substantially the same locations that currently exist.

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

This ITP covers the following species:

**Name**

Swainson's hawk (*Buteo swainsoni*)

**CESA Status**

Threatened<sup>3</sup>

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

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

Based on nesting bird surveys conducted by the Permittee in 2019, there is one (1) Covered Species nest within the Project Area near the Cosumnes River Bridge. In addition, suitable nesting habitat for the Covered Species occurs within 0.5 mile of the Project Area. Project activities and their impacts are expected to result in the incidental take of individuals of the Covered Species. Individuals of the Covered Species nesting, foraging, or roosting at or near the Project Area may have become habituated to the local baseline vehicular traffic and agricultural activities; however, many of the Project related activities may represent novel stimuli and/or more intensive disturbance which could result in incidental take of the Covered Species. The activities described above that are expected to result in incidental take of individuals of the Covered Species include: tree and vegetation removal; grading and excavation; cut and fill; trenching; relocation and installation of utilities; materials stockpiling, laydown, and transport; roadbed and bridge demolition; roadway, bridge, and temporary work pad construction; pile driving; use of cranes to remove and replace roadway and bridges; removal of the temporary work pad; heavy equipment staging and operations; the use of generators and artificial lighting; surveying or monitoring activities; and hand crews. These Project related activities constitute the Covered Activities under this ITP.

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of vehicle strikes due to Project-related traffic on SR99 and the surrounding area and disturbance-related nest failure resulting in the loss of young, fledglings, or eggs due to nest destruction or abandonment during grubbing, grading activities, pile driving, demolition, or construction that occur in close proximity to the nest during the Covered Species nesting season. Incidental take of individuals of the Covered Species may also occur through capture when eggs or individuals of the Covered Species are salvaged after parental nest abandonment has occurred. The chance of viability of eggs and/or survival for the Covered Species in this circumstance is greatly reduced. Direct impacts to foraging habitat could also affect migrating individuals, and the fitness of Covered Species young raised in close proximity to the Project due to reduced or disrupted foraging opportunities that reduce the ability of parents to acquire food for their dependent young. Potential indirect impacts to the Covered Species and their habitat include effects of ground-disturbing activities associated with implementation of Covered Activities. These include construction-related noise; ground vibration; fugitive dust; habitat loss and modification; introduction or spread of invasive

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

species; and increased human activity which could result in a reduction in prey abundance and/or availability. Project-related noise, vibration, percussion, odors, and artificial lighting could cause physiological and/or behavioral disruptions that may interfere with breeding, result in nest abandonment, and a loss of fitness in dependent young resulting from interruptions to brooding and/or feeding schedules. **As requested by the Permittee, this ITP only authorizes the abandonment of one (1) Covered Species nest during the duration of the Project.**

**Incidental Take Authorization of Covered Species:**

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

**Conditions of Approval:**

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular, watercraft, aircraft (e.g. drone) 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 Negative Declaration (SCH No.: 2019039070) adopted by the California Department of Transportation on May 20, 2019, as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the final Streambed Alteration Agreement (Notification No. 1600-2019-0158-R2 for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.

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**4. Right of Entry Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the State of California, Department of Transportation, State Route 99 Cosumnes River Bridge Replacement Right of Entry Permit dated August 15, 2019, for the Project. For purposes of this ITP, where the terms and conditions for the Covered Species in the Right of Entry Permit are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.

**5. ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.

**6. General Provisions:**

6.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.

6.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) prior to starting Covered Activities in the nesting season. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, and natural history of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed.

6.2.1. Designated Capture and Handling Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a Designated Capture and Handling Biologist (Capture Biologist) responsible for Covered Species Encounters as defined in Condition of Approval 8.9 prior to starting Covered Activities in the nesting season. Permittee shall ensure that the Capture Biologist is knowledgeable and experienced in the biology, has the valid handling authorizations for the Covered Species, and is experienced in the



natural history of the Covered Species. The Capture Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Capture Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Capture Biologist must be changed.

6.2.2. Capture Biologist Role. For the purposes of this ITP, the approved Capture Biologist may fulfil any role of the Designated Biologist including monitoring, reporting, or other requirements of this ITP.

6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist, in coordination with the Resident Engineer, shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.

6.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.

6.5. Construction Monitoring Notebook. The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.

- 6.6. Trash Abatement. Permittee shall initiate a trash abatement program (excluding construction materials) before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and are managed to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 6.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 6.8. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (commonly found in fiber rolls and erosion control matting) or similar material, in potential Covered Species' habitat.
- 6.9. Fence and Signpost Considerations. Permittee shall cap the top opening or fill the three holes on the top (e.g., with a bolt and nut), of any of u-channel posts, signs, or vertical poles installed temporarily or permanently throughout the course of the Project to prevent entrapment of the Covered Species. Permittee shall ensure fence posts, signs, or vertical poles comply with this requirement at the completion of the Project.
- 6.10. Delineation of Property Boundaries. Permittee shall clearly delineate the boundaries of the 103.4-acre Project Area as shown in Figure 3. Permittee shall restrict all Covered Activities to within the Project Area, unless otherwise agreed to with CDFW in writing. Permittee shall maintain all markers (e.g. fencing, stakes, and flags) until the completion of Covered Activities in those portions of the Project Area.
- 6.11. Project Access. Project-related personnel shall access the Project Area using existing routes and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. 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 if additional take of Covered Species will occur as a result of the Project modification.
- 6.12. Staging Areas. Within the Project Area (Figure 1), Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the

marked Project Area unless provided for as described in Condition of Approval 6.11 of this ITP.

- 6.13. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall properly store, handle, contain, and dispose of any hazardous materials in compliance with hazardous material regulations.
- 6.14. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.15. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill (unless otherwise agreed to in writing with CDFW) and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

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

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.
- 7.3. Compliance Monitoring. The Designated Biologist shall be on-site when Covered Activities occur within 0.5 miles of an occupied Covered Species nest and when Covered Activities have the potential to impact the Covered Species. The frequency of Covered Species monitoring shall be determined on a weekly basis by the Designated Biologist, with written approval of CDFW, and in accordance with Condition of Approval 7.3.1. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact,

and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. Compliance inspections and written observation may be reduced to once weekly in the period of February 1-September 15 if no Covered Species nests are occupied at or within 0.5 miles of the Project Area. Compliance inspections by the Designated Biologists are not required between September 15-February 1 if it is documented that no Covered Species occupy the area at or within 0.5 miles of the Project Area (i.e. migrated for the winter).

7.3.1. Monitor Frequency. Once per week, the Designated Biologist shall consult with the Resident Engineer regarding the upcoming week's project schedule. The Designated Biologist will evaluate the proposed schedule to determine the frequency of Compliance Monitoring described in Condition of Approval 7.3. The frequency shall be based on the potential for Covered Activities to take or otherwise adversely impact the Covered Species.

7.3.2. CDFW Concurrence. The Designated Representative or the Designated Biologist shall prepare a weekly schedule and evaluation report that summarizes the upcoming week's Covered Activities and the proposed monitoring frequency for CDFW review and written approval. The report shall be submitted by 5:00pm on the Thursday prior to the upcoming week's project activities (unless the Permittee and CDFW agree to an alternative submission schedule). CDFW shall have 48 hours to review the report and provide concurrence with the monitoring frequency or request changes. Permittee shall implement any changes proposed by CDFW. If CDFW does not respond within 48 hours, the report shall be deemed automatically concurred, and the Permittee shall implement the monitoring as described in the report. If no report is received, Permittee shall monitor all Covered Activities unless otherwise approved by CDFW in writing.

7.4. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is R2CESA@wildlife.ca.gov, and Headquarters CESA Program email is CESA@wildlife.ca.gov. All communication to the CDFW Regional Representative should copy the regional office email at R2CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of



compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

- 7.5. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 7.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of nests subject to disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.
- 7.6. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly/Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 7.7. 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/Quarterly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 7.8. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a

Covered Species is otherwise found dead or injured within the vicinity of the Project. If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility and shall bear any costs associated with the care or treatment of such injured Covered Species. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (916) 358-2930. 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 (2) calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

## **8. Take Minimization Measures:**

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

8.1. Raptor Nest Inspection. All Project-related tree removal work will be conducted between September 15 and February 1 to avoid impacting nesting individuals of the Covered Species unless consultation occurs, and a request is submitted to and approved in writing by CDFW for tree removal between February 15 and September 15. The Designated Biologist shall inspect any trees marked for removal for evidence of raptor nests. The results of the nest inspection shall be provided to CDFW prior to commencing tree removal activities. If a raptor nest is found, the Permittee shall consult with CDFW regarding appropriate action to comply with the Fish and Game Code.

8.2. Covered Species Protocol Survey. Starting in 2020 and in each year in which Project activities occur, the Designated Biologist shall conduct a Covered Species survey within a minimum 0.5-mile radius around the Project Area. The Designated Biologist shall conduct the appropriate technique in each of the five (5) periods below in accordance with the methodology described in the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (Swainson's Hawk Tech. Advis. Comm., 5/2000):

- January to March 20- One (1) Survey, All Day
- March 20 to April 5- Three (3) Surveys, Sunrise to 1000 / 1600 to Sunset
- April 5 to April 20- Three (3) Surveys, Sunrise to 1200 / 1630 to Sunset
- April 21 to June 10- Monitoring

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- June 10 to July 30- Three (3) Surveys, Sunrise to 1200 / 1600 to Sunset

Results of each period survey shall be submitted to CDFW with the appropriate monthly compliance report.

8.3. Nesting Covered Species. If a nesting Covered Species is found at or within 0.5 miles of the Project Area, the Designated Biologist(s) shall be present in accordance with the frequency identified in Condition of Approval 7.3 to monitor the behavior of the potentially affected Covered Species. The Designated Biologist(s), in coordination with the Resident Engineer, shall have the authority to order the cessation of any or all Covered Activities if the bird(s) exhibits distress and/or abnormal nesting behavior (swooping/stooping, excessive vocalization (e.g. distress calls), agitation, failure to remain on nest, failure to deliver prey items for an extended time period, failure to maintain nest, etc.) which may cause reproductive failure (nest abandonment and loss of eggs and/or young). Permittee shall not resume any ceased Covered Activities until the appropriate response procedure described in Condition of Approval 8.4 has been implemented. If no occupied Covered Species nests initially occur at or within 0.5 mile of the Project Area any discovery of nests shall trigger the monitoring and records required under this Condition of Approval and Condition of Approval 7.3.

8.4. Covered Species Mortality Reduction and Relocation Plan. The Designated Biologist shall prepare a Covered Species Mortality Reduction and Relocation Plan (Plan) and submit it to CDFW for review and written approval prior to commencing Covered Activities in the nesting season. The Plan shall describe mortality reduction strategies and buffer sizes that the Permittee will implement and shall describe the response procedure for each of the following scenarios:

- Scenario 1: Mortality or injury of adult Covered Species prior to egg-laying
- Scenario 2: Mortality or injury of adult Covered Species during egg-laying
- Scenario 3: Mortality or injury of adult Covered Species after egg-laying
- Scenario 4: Abandonment of Covered Species nest prior to egg-laying
- Scenario 5: Abandonment of Covered Species nest during egg-laying
- Scenario 6: Abandonment of Covered Species nest after egg-laying
- Scenario 7: Abandonment of Covered Species nest after egg-hatching
- Scenario 8: Damage or destruction of nest tree with eggs or juvenile Covered

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## Species

### ○ Scenario 9: Mortality or injury of juvenile Covered Species

The Plan shall include, but not be limited to, identification of capture methods, handling methods, methods to return Covered Species individuals back into the wild, and the identification of a wildlife rehabilitation center or veterinary facility. Only the Capture Biologist shall handle and relocate eggs, hatchlings, or injured Covered Species. Notification to CDFW shall be made immediately via telephone or email, followed by a written incident report within two (2) days. Each notification shall include the date, time, location and circumstances of the incident, and the name of the facility where the animal was taken. These incidents shall also be included in the reports required by Conditions of Approval 7.4, 7.5, and 7.7 of this ITP.

8.5. Artificial Lighting at Night. Permittee shall not use permanent or temporary, fixed, exterior lighting, including motion-triggered security lighting that casts light on Covered Species habitat beyond the Project Area of Covered Activities between sunset and sunrise. Nighttime construction lighting shall be shielded and oriented downward to minimize effects on any nearby Covered Species.

8.6. High Impact Covered Activities. To the maximum extent feasible, Permittee shall coordinate with the Designated Biologist and/or CDFW to time the loudest or otherwise most disruptive Covered Activities outside periods where the Covered Species, its nest, its eggs, or its young are most vulnerable to disturbance.

8.7. Rodenticide Use. Permittee shall prohibit the use of rodenticides in the Project Area during Covered Activities.

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

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the quality and importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall complete one of the following: 1) mitigate at a CDFW-approved conservation site; 2) provide funding, protection, restoration, and enhancement of Covered Species habitat in the Cosumnes River Preserve area; 3) purchase one (1) Covered Species credit from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.3); or 4) provide for both the permanent



protection and management of Habitat Management (HM) lands (e.g. purchase land adjacent to the Cosumnes River Preserve) pursuant to Condition of Approval 9.5 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.6 below. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 24 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 1.20 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.8 below.

The approaches below will provide compensatory mitigation for the impacts to no more than one (1) Covered Species nests. Upon the determined detection of a second (or more) Covered Species nest that may be impacted, the Permittee shall immediately consult with CDFW on the need for an amendment to this ITP and secure mitigation to compensate the loss of additional Covered Species nest(s).

Permittee shall implement one of the following:

- 9.1. Permittee Responsible Mitigation. Permittee shall mitigate at a CDFW-approved conservation site prior to initiating Covered Activities, or no later than 24 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below.

OR

- 9.2. Covered Species Habitat. Permittee shall provide funding for protection, restoration, and enhancement of Covered Species habitat in the Cosumnes River Preserve or adjacent properties prior to initiating Covered Activities, or no later than 24 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below.

9.2.1. Land costs for protection, restoration, and enhancement are, estimated at \$150,000 per nest: **\$150,000**.

9.2.2. Start-up costs, including initial site protection and enhancement costs as described in Condition of Approval 9.5.5 below, estimated at **\$35,000** per nest;

9.2.3. Interim management period funding as described in Condition of Approval 9.5.6 below, estimated at **\$30,000** per nest;

9.2.4. Long-term management funding as described in Condition of Approval 9.6 below, estimated for one nest: **\$50,000**. Long-term management funding is

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estimated initially for the purpose of providing Security to ensure implementation of lands management.

OR

- 9.3. Covered Species Credits. Permittee shall purchase one (1) Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 24 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below. The CDFW-approved mitigation or conservation bank shall be deemed appropriate at the discretion of CDFW.

OR

- 9.4. Permanent Protection and Management of HM Lands. Permittee shall acquire, permanently protect and manage HM Lands containing at least one occupied Covered Species nest and a CDFW-approved buffer of adjacent foraging habitat prior to initiating Covered Activities, or no later than 24 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below. CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands and restoration of temporarily disturbed habitat as follows:

- 9.4.1. Land acquisition costs for HM lands identified in Condition of Approval 9.5 below, estimated at: **\$700,000**. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;
- 9.4.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.5.5 below, estimated at **\$35,000**;
- 9.4.3. Interim management period funding as described in Condition of Approval 9.5.6 below, estimated at **\$30,000**;
- 9.4.4. Long-term management funding as described in Condition of Approval 9.6 below, estimated for one nest: **\$1,100,000**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 9.4.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.6, estimated at **\$30,000**.

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9.5. Habitat Acquisition and Protection. To provide for the acquisition and perpetual protection and management of the HM lands described in Condition of Approval 9.4, the Permittee shall:

9.5.1. 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);

9.5.2. 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;

9.5.3. 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.

9.5.4. 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.

- 9.5.5. 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 <http://www.dfg.ca.gov/habcon/conplan/mitbank/>); (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;
- 9.5.6. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management. 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.
- 9.6. Endowment Fund. If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 9.5, The Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s). 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.

9.6.1. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended. Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) ~~whether~~ the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). Within thirty days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(4) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(4).

9.6.2. Calculate the Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, final management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.

9.6.2.1. 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.

9.6.2.2. 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:

9.6.2.2.1. 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.

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

9.6.2.2.3. 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.

9.6.3. Transfer Long-term Endowment Funds. Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

9.7. 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.

9.8. Habitat Restoration. Permittee shall restore on-site the 1.20 acres of Covered Species habitat that will be disturbed during construction to pre-project or better conditions. Within 6 months of issuance of this ITP, the Permittee shall prepare a Vegetation Restoration Plan to facilitate revegetation of the 1.20 acres of 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 disturbed areas, such as seed mixes and application methods, success criteria and adaptive management if success criteria is not met. Restoration shall be started within one (1) year of completing Covered Activities. Upon completion of the monitoring period specified in the Vegetation Restoration Plan, Permittee shall provide requesting evaluation of the restoration. CDFW will provide written evaluation that deems restoration successful or if unsuccessful, the measures needed to complete the mitigation effort.

9.8.1. Restoration of on-site effects to Covered Species habitat as described in Condition of Approval 9.8, calculated at \$100,000/acre for 1.2 acres: \$120,000.

## **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 one (1) of the following amounts described in Condition of Approval 10.1.1-10.1.4, as determined by the mitigation approach agreed to by CDFW and the Permittee.

10.1.1. The Security shall be in the amount of **\$270,000**. The security amount is based on the cost estimates identified in Condition of Approval 9.1 and 9.8 above.

10.1.2. The Security shall be in the amount of **\$385,000**. The security amount is based on the cost estimates identified in Condition of Approval 9.2 and 9.8 above.

10.1.3. The Security shall be in the amount of **\$270,000**. The security amount is based on the cost estimates identified in Condition of Approval 9.3 and 9.8 above.

10.1.4. The Security shall be in the amount of **\$2,0150,00**. The security amount is based on the cost estimates identified in Condition of Approval 9.4 and 9.8 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

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CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.

10.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:

- Written documentation of the acquisition of the HM lands
- Copies of all executed and recorded conservation easements
- Written confirmation from the approved Endowment Manager of its receipt of the full Endowment
- Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 24 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.

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**Compliance with Other Laws:**

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

**Notices:**

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

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

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2019-041-02) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

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

and a copy to:

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

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

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

**Compliance with CEQA:**

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, California Department of Transportation. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Negative Declaration (SCH No.: 2019039070) dated May 20, 2019, that California Department of Transportation adopted for Cosumnes River Bridge Replacement Project on May 20, 2019. At the time the lead agency adopted the Negative Declaration and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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

**Findings Pursuant to CESA:**

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

CDFW finds based on substantial evidence in the ITP application, Cosumnes River Bridge Replacement Negative Declaration, the results of site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;

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- (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 quality and 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 compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;
- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (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 Map
FIGURE 2	Project Impact
FIGURE 3	Project Boundaries
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2A, 2B	Habitat Management Lands Checklist; Proposed Lands for Acquisition Form
ATTACHMENT 3	Letter of Credit Form
ATTACHMENT 4	Mitigation Payment Transmittal Form

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

on March 25, 2020

Thomas,  
Kevin@Wildlife

Digitally signed by Thomas, Kevin@Wildlife  
DN: DC=Gov, DC=Ca, DC=Dfg, DC=AD,  
OU=DFG Divisions, OU=(2) NCR, OU=Users,  
CN="Thomas, Kevin@Wildlife"  
Reason: I am the author of this document  
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Kevin Thomas, Regional Manager  
NORTH CENTRAL REGION

**ACKNOWLEDGMENT**

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

By: George C Delano Date: 03/30/2020

Printed Name: George Delano Title: Sr. Project Manager

Incidental Take Permit  
No. 2081-2019-041-02  
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