



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 5, 2022

Mr. Matthew Graul
East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605
MGraul@ebparks.org

Subject: Incidental Take Permit for the Vargas Plateau Regional Park,
2081-2014-062-03 Amendment No. 1, Alameda County

Dear Mr. Graul:

Enclosed you will find an electronic copy of the Incidental Take Permit Amendment for the above referenced Project, which has been digitally signed by the California Department of Fish and Wildlife (CDFW). Please read the permit carefully and sign the acknowledgement **no later than 30 days from CDFW signature** and prior to initiation of ground-disturbing activities. You may return an electronic copy of the permit with digital signature to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5. Alternatively, you may return a hard copy of the permit via mail to:

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

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

The permit amendment will not take effect until the signed acknowledgement is received by CDFW. If you wish to discuss these instructions or have questions regarding the Amendment, please contact Marcia Grefsrud, Environmental Scientist, at Marcia.Grefsrud@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

7988E6C4FDC24F2
Erin Chappell
Regional Manager
Bay Delta Region



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. 2081-2014-062-03 A-1

VARGAS PLATEAU REGIONAL PARK

Authority:

This California Endangered Species Act (CESA) Incidental Take Permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

Permittee:	East Bay Regional Park District
Principal Officer:	Matthew Graul
Contact Person:	Matthew Graul, (510) 544-2327
Mailing Address:	2950 Peralta Oaks Court, Oakland, CA 94605

Amended ITP³ Background

On August 18, 2014, East Bay Regional Park District (EBRPD)(Permittee) submitted a CESA ITP application pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations Title 14, section 783.0 et. seq. EBRPD sought take coverage authorization for CESA listed species associated with project related impacts from the Vargas Plateau Regional Park in Alameda County, California (Project). On November 19, 2020, CDFW received a request, from EBRPD to amend the ITP and on March 25, 2021, CDFW received the appropriate fee.

The original Project for the development of recreational facilities in Vargas Plateau Regional Park included the construction of Morrison Canyon Staging Area, the creation of a Multi-Use Connector Trail, construction of the Watercress Loop Trail with an armored ford stream

¹ 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").

² "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.

³ When this incidental take permit and attachments refer to the "ITP", it means the "Amended ITP" unless the context dictates otherwise.

crossing and repair of an ephemeral stream erosion, and the enhancement of three man-made stock ponds (VPPND001, VPPND005, and VPPND006). As described in the ITP, the Covered Activities associated with this Project were expected to result in 2.55 acres of permanent impact and 0.77 acres of temporary impact to annual grassland. The pond restoration component of the Project was expected to result in 0.013 acres of permanent impact and 0.799 acres of temporary impact to pond habitat. Moreover, the activities described above were expected to result in incidental take of California tiger salamander (*Ambystoma californiense*) and Alameda whipsnake (*Masticophis lateralis euryxanthus*). Based on the habitat in the Project Area, the proposed impacts and pursuant to CESA, CDFW required permanent protection and perpetual management of compensatory habitat as mitigation for the Project-related impacts. To meet this requirement, the Permittee identified an area around perennial pond VPPND001 to provide both the permanent protection and management of 8.42 acres of Habitat Management (HM) lands at Vargas Plateau Regional Park.

Completed Project Activities

During the late summer and fall of 2015, the Morrison Canyon Staging Area for the Vargas Plateau Regional Park was constructed. The staging area includes a 25-car gravel parking lot, a 15-foot traffic lane, a vault toilet, and picnic tables. Development of Morrison Canyon Staging Area resulted in 0.75 of permanent impacts and approximately 1.75 acres of temporary impacts to annual grassland habitat. The temporarily disturbed grassland was restored to its original contour and was re-seeded with native grass and flowers.

Future Project Activities

Future construction activities will include the development of the Multi Use Connector Trail. This activity will result in permanent disturbance to 1.46 acres of annual grassland habitat and temporary impacts to 0.37 acres of annual grassland habitat.

The Permittee will not proceed with construction of the Watercress Loop Trail with an armored ford stream crossing and repair of an ephemeral stream erosion, and enhancement of three man-made stock ponds (VPPND001, VPPND005, and VPPND006). Since the above activities are no longer proposed and the remainder of the Project is complete, the Conditions of Approval 6 through 8 are no longer required but will not be amended.

The Permittee requested that the ITP be amended to reflect these changes in the Project which will result in a decrease in permanent impacts and an increase in temporary impacts to annual grassland, and no impact to pond habitat. The Project will therefore result in 2.21 acres of permanent and 2.12 acres of temporary impacts to annual grassland.

The HM lands described above were not secured as required by the original ITP. This ITP Major Amendment also allows mitigation for Project impacts at an off-site location in lieu of establishing 8.42 acres of HM lands on-site. In order to account for temporal loss associated

with the uncompleted obligations, the Permittee has proposed off-site mitigation within a 30-acre area located in the Ohlone Regional Wilderness, in Alameda County for the permanent protection and management of HM lands.

Effective Date and Expiration Date of this ITP:

The original ITP was executed in duplicate original form and became effective when a duplicate original was acknowledged by signature of the Permittee on the last page of the original ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. The original ITP's effective date was August 4, 2015. This remains the effective date for the original take authorization. The Amended ITP shall be executed in the same manner and shall become effective with CDFW's Habitat Conservation Planning Branch receives the signed Amended ITP. Unless renewed by CDFW, this Amended ITP's authorization to take the Covered Species shall expire on **December 31, 2026**. This Amended ITP shall become effective when 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.

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.

Project Location:

The Vargas Plateau Regional Park (Project) is located within the Vargas Plateau Regional Park (Figure 1), located south of State Route 84 (SR84) in the Fremont hills along Morrison Canyon Road, outside the city limits of Fremont, in the County of Alameda, State of California.

Project Description:

The Project includes the development of recreational facilities (the Morrison Canyon Staging Area and the Multi Use Connector Trail), within the Park. Figure 2 shows the locations of existing and proposed trails and staging area (collectively, the Project Area).

Recreational Facilities Construction

There are two construction jobs proposed to create the new recreational facilities for the Park. These activities include the following:

1. Morrison Canyon Staging Area – located at the top of Morrison Canyon Road, this 0.75-acre staging area will provide a 25-car gravel parking lot with 15-foot-wide one-way traffic lane, vault toilet, picnic tables, information and interpretive signs, gates, fences and a 5,000-gallon water tank.

Multi-Use Connector Trails – the creation of these trails will require the construction of four new multi-use trail connectors totaling approximately 8,000 linear feet. These trails will consist of 8-foot-wide mowed trails that will tie into existing trails and access roads.

Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

Name	CESA Status
1. California tiger salamander (<i>Ambystoma californiense</i>)	Threatened ⁴
2. Alameda whipsnake (<i>Masticophis lateralis euryxanthus</i>) also known as Alameda striped racer (<i>Coluber lateralis euryxanthus</i>)	Threatened ⁵

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

Impacts of the Taking on Covered Species:

The Project will result in 2.21 acres of permanent impact and 2.12 acres of temporary impact to annual grassland.

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include vehicular traffic along Morrison Canyon Road and existing service roads in the Project vicinity, and at the Project site; grubbing; scraping; grading; trenching and backfilling; cutting and filling; stockpiling of material; ground compaction; compaction from equipment and materials storage; materials and equipment transport and laydown; heavy equipment operations; installation of fencing; construction of pit toilets, parking areas, and other public staging area infrastructure; construction of multi-use connector trails (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality (“kill”) may occur as a result of Covered Activities such as vehicle/equipment strikes during site preparation and hauling materials and spoils; collapse or excavation of occupied burrows that results in crushing or suffocation of underground individuals during vegetation removal, grubbing, cut/fill, grading, excavation, compaction, and trenching; entombment of individuals from deposition of stockpiled material or spoils over occupied burrows; crushing due to movement of construction vehicles, compaction of soils; and entrapment and burial within trenches or open excavations.

⁴ See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(3)(G).

⁵ See *Id.*, subd. (b)(4)(D).

Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species from entrapment in holes or trenches, by uncovering through the excavation of burrow systems, and by capture and relocation efforts. The area where authorized take of the Covered Species is expected to occur is within the Project Area.

Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise and vibrations; stress resulting from capture and relocation; and long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

Incidental Take Authorization of Covered Species:

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

Conditions of Approval:

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular, ingress and egress, staging and parking, and noise and vibration generating activities that may/will 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 Vargas Plateau Regional Park Land Use Plan Mitigated Negative Declaration and Initial Study (SCH No.: 2007102135) adopted by East Bay Regional Park District on April 1, 2008 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

- 3. LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No. 1600-2014-0257-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 Programmatic Biological Opinion for U.S. Army Corps of Engineers (Corps) Permitted Projects Utilizing the East Alameda County Conservation Strategy that May Affect Federally Listed Species in East Alameda County, California (Corps File Number 2011-00230S) (No.08ESMFOO-2012-F-0092-1) as appended, 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 biological monitors (collectively, Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
 - 6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately

stop any activity 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. If the Designated Biologist is unable to comply with the ITP due to a conflict with Project construction, then the Designated Biologist shall notify the CDFW representative immediately.

- 6.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.
- 6.5. Construction Monitoring Binder. The Designated Biologist shall maintain a construction-monitoring binder 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 binder is available for review at the Project site upon request by CDFW.
- 6.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs. Plastic bags and plastic water bottles shall be picked up and removed daily.
- 6.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.
- 6.8. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.

- 6.9. Firearms and Dogs. Permittee shall prohibit firearms and domestic dogs from the Project Area and site access routes during Covered Activities, except those in the possession of authorized security personnel or local, State, or federal law enforcement officials.
- 6.10. Delineation of Property Boundaries. Before starting Covered Activities along each part of the route in active construction, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 6.11. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 6.12. Project Access. Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.
- 6.13. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.12 of this ITP.
- 6.14. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 6.15. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the

Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.

- 6.16. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

7. Monitoring, Notification and Reporting Provisions:

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.
- 7.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Designated Biologist shall conduct compliance inspections a minimum of one day per week during periods of inactivity longer than 5 days.
- 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 also include an accounting of the number of acres that have been temporarily disturbed within the Project Area, both for the prior month and a total since ITP issuance and estimate the expected acreage to be disturbed in the successive month; a summary of all pre-activity surveys conducted; and the ground disturbing activities authorized under the

covered activities within the Project Area which occurred during the previous month. Monthly Compliance Reports shall be submitted by the 5th working day of the month to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative. At the time of this ITP's approval, the CDFW Regional Representative is Marcia Grefsrud (Marcia.Grefsrud@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 acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.
- 7.6. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next monthly 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 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. Invasive Species Management Plan. At least thirty (30) days prior to the commencement of the pond restoration activities, the Permittee shall submit an Invasive Species Management Plan to the CDFW for review, comments and written approval. The plan shall include monitoring, management strategies, and success criteria for invasive aquatic and plant species in the area.
- 7.9. Notification of Take or Injury. 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, Designated Representative and Permittee shall be notified immediately. The Designated Biologist or Designated Representative shall immediately notify CDFW by calling the Regional Office at (707) 428-2002 and the CDFW Representative at (707) 644-2812. 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 of the discovery. The report shall include the date and time of the finding or incident, GPS location of the Covered Species, photographs of the location and the Covered Species, explanation as to cause of take or injury, and any other pertinent information.
- 7.9.1. California tiger salamander. If the Covered Species is found recently deceased, the carcass shall be immediately bagged, labeled, and preserved in a freezer. The label shall include time and date, GPS location, circumstances surrounding death (if known), and ITP tracking number. Specimens shall be delivered to the CDFW Wildlife Investigations Lab, Attention: Deana Clifford, 1701 Nimbus Road Suite D, Rancho Cordova, CA 95670 within two calendar days of the discovery.

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. Pond Work Period. The work period for pond restoration activities shall be confined to between August 1 and October 31.
- 8.2. Bullfrog Eradication. To prevent bullfrogs from escaping the pond areas during dewatering an exclusion fence shall be installed around pond VPPN005 prior to dewatering. The Permittee shall consult with CDFW to obtain a Permit to Destroy Harmful Species of Fish in Private Waters for Management Purposes and shall dispatch and dispose of all bullfrogs in accordance with Fish and Game Code Section 6855 and Section 226.5 of Title 14, California Administrative Code.

- 8.3. Non-native Aquatic Species Control. Unless annual pond survey information indicates bullfrogs or other non-native fish are not present, all ponds in each Mitigation Site shall either be drained or allowed to dry naturally a minimum of once every 24 months in perpetuity. Any pumps used to drain ponds shall be screened with screens that meet CDFW screening criteria. Ponds that are drained or allowed to dry naturally shall be completely dry for a minimum of 30 days such that soils are not saturated to ensure bullfrog tadpoles do not survive. Dry ponds shall be surveyed visually for surviving bullfrogs after ponds have been completely drained. Each pond shall be 100% free of living bullfrogs of all life stages before allowing each pond to be re-filled.
- 8.4. Dewatering. Sediment-laden water from dewatering shall be held in a settling container or discharged in an upland location where it will not drain directly into a stream or into small mammal burrows.
- 8.5. Screen According to Existing Standards. All dewatering intake hoses and pump inlets shall be screened to prevent entrapment or intake of aquatic species. The screens shall be made of non-corrosive material and diameter/diagonal openings shall meet the criteria of CDFW and the National Marine Fisheries Service before water is pumped from within the coffer dams (see screening criteria at: http://www.westcoast.fisheries.noaa.gov/publications/reference_documents/reference_documents.html). The screen shall be kept in good repair and cleaned/checked as frequently as possible. All screens shall be supported above the channel or pond bottom.
- 8.6. Trench Escape and Inspection. The Designated Biologists and trained construction foreman/manager, supervised by the Designated Biologist shall inspect all open holes, sumps, and trenches within the Project Area at the beginning of each day, completing within 30 minutes of sunrise and any Covered Species discovered within the barrier shall be relocated in accordance with the Covered Species Relocation Plan as described in Condition of Approval 8.10 below. To prevent inadvertent entrapment of Covered Species, the Designated Biologist(s) shall oversee the covering of all trenches, holes, sumps, or other excavations with a greater than 1:1 (45 degree) slope of any depth with barrier material (such as hardware cloth) at the close of each working day such that Covered Species are unable to dig or squeeze under the barrier and become entrapped. The outer two feet of excavation cover shall conform to solid ground so that gaps do not occur between the cover and the ground and secured with soil staples or similar means to prevent gaps. Each morning prior to beginning Covered Activities and immediately before trenches, holes, sumps, or other excavations are back-filled, the Designated Biologist(s) and/or construction foreman/manager shall thoroughly inspect them for Covered Species. Trenches, holes, sumps, or other excavations that are covered long-term shall be inspected at the beginning of each working day to ensure inadvertent entrapment has not occurred. Permittee shall cease all Covered Activities in the vicinity and notify the Designated Biologist(s) immediately if any worker discovers that Covered

Species have become trapped. If at any time a trapped Covered Species is discovered by the Designated Biologist or anyone else, the Designated Biologist shall capture and relocate the animal to a safe nearby location per the Relocation Plan described in Condition of Approval 8.10.

- 8.6.1. If the open holes, sumps, trenches or excavations cannot be covered then the Designated Biologist shall inspect the open holes, sumps, trenches or excavations at the beginning of each day, completed within 30 minutes of sunrise and any Covered Species discovered within the barrier shall be relocated in accordance with the Covered Species Relocation Plan as described in Condition of Approval 8.10 below.
- 8.7. Erosion Control. All erosion and sediment control measures shall be installed prior to earth moving Covered Activities on any phase of the Project. Permittee shall utilize erosion control measures throughout all phases of Project where sediment runoff from exposed slopes could leave the Project Area and/or enter a stream or pond. Permittee, Designated Representative, or other trained staff shall monitor erosion control measures before, during, and after each storm event and repair and/or replace ineffective measures immediately.
- 8.8. Prohibited Plant Species. Permittee shall not plant, seed or otherwise introduce invasive exotic plant species. Prohibited exotic plant species include those identified in the California Exotic Pest Plant Council's database, which is accessible at: <http://www.cal-ipc.org/paf/>.
- 8.9. Temporary Covered Species Barrier. Prior to commencing any Covered Activities Permittee shall install a temporary barrier to prevent the Covered Species from dispersing into the Project Area. The barrier shall be designed to allow the Covered Species to leave the Project Area using a one-way funnel or other method approved by CDFW. The barrier shall consist of exclusion fencing with 36 inches above the soil surface, designed with a lip to prevent the Covered Species from climbing over the barrier. The exclusion fencing shall be secured to the ground in order to prevent Covered Species from gaining access to the Project Area. The soil shall be compacted against both sides of the fence to prevent the Covered Species from gaining access. The barrier shall remain in place until the Project is complete. The Designated Biologist shall inspect the barrier daily, and during and after storm events. The Permittee shall maintain and repair the barrier immediately to ensure that it is functional and without defects. Permittee shall provide refuge opportunities, such as coverboards or straw wattles, along the exclusion fence on both sides of the fence. Permittee shall submit to CDFW for approval, the location and, if requesting approval of an alternative design than what is described above, the design of the barrier and refuge opportunities no less than 30 days prior to the proposed start of Covered Activities. The Designated Biologist shall inspect refuge areas each morning during and after rain events. Covered Species found within the interior fence

shall be relocated outside the fence line no more than 300 feet from the Project boundary and shall be relocated by the Designated Biologist per the Relocation Plan described in Condition of Approval 8.10.

- 8.10. Covered Species Relocation Plan. The Designated Biologist(s) shall prepare a Covered Species Relocation Plan (Relocation Plan). The Relocation Plan shall include, but not be limited to, pre-activity survey methodology appropriate for the season, hand excavation, capture, handling, and relocation methods; and identification of where the individuals will be relocated to. The relocation areas shall be identified by the Designated Biologist based upon best suitable habitat available and time of year and approved by CDFW prior to the start of Covered Activities. The Relocation Plan shall be submitted to CDFW for approval prior to the beginning of Covered Activities. Covered Activities anywhere within the Project Area may not proceed until the Relocation Plan is approved in writing by CDFW. Only the approved Designated Biologist(s) are authorized to capture and handle the Covered Species.
- 8.11. Covered Species Relocation. The Designated Biologist shall relocate any Covered Species found within the Project Areas to be impacted to an active rodent burrow system located no more than 300 feet outside of the Project Area and in accordance with the Relocation Plan described in Condition of Approval 8.10 above unless otherwise approved by CDFW in writing. The Designated Biologist shall document both the capture and relocation areas by photographs and GPS positions. The Covered Species shall be photographed and measured (Snout-Vent) for identification purposes prior to relocation. All documentation shall be provided to the CDFW within 24 hours of Covered Species Relocation.
- 8.12. Augering and Excavation. The Designated Biologist shall survey all auguring and excavation soils material for Covered Species. The Permittee shall ensure auger bits are cleaned by shaking the soil loose and not cleaned by spinning. The Permittee shall ensure excavation is coordinated with the Designated Biologist to allow sufficient time to survey the excavated soil.
- 8.13. Pre-activity Surveys. The Designated Biologist shall inspect all ruts and holes near root structures, foundations, abutments, etc. for Covered Species immediately prior to and during excavation or removal. The Designated Biologist shall follow initial grading equipment to look for Covered Species and grading activities shall be done in a manner that allows Designated Biologists to safely survey the area. A Designated biologist shall survey the open areas adjacent to ongoing grading or scraping as the footprint expands. Multiple biologists may be necessary to survey the area appropriately. If a Covered Species is discovered by the Designated Biologist or anyone else, the Designated Biologist shall move the animal to a safe nearby location (e.g., mouth of ground-squirrel burrow outside of the temporary barrier) per the Relocation Plan described in Condition of Approval 8.10 and monitor it until it is determined that it is not imperiled by predators or other dangers.

- 8.14. Inspection of Pipes and Culverts. All construction pipes, culverts, or similar structures that are stored at the Project site for one or more overnight periods shall be securely capped prior to storage or inspected by the Designated Biologist before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a Covered Species is discovered inside a pipe by the Designated Biologist or anyone else, the Covered Species shall be allowed to leave its own accord, or if it can be safely captured, it shall be relocated by the Designated Biologist to a suitable location outside of the Project Area and in accordance with the Conditions of Approval 8.10 and 8.11 above.
- 8.15. Vehicle and Equipment Inspection. Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall wait for the Covered Species to move unimpeded to a safe location. Alternatively, the Permittee shall contact the Designated Biologist to determine if the Designated Biologist can safely move the Covered Species in Accordance with Conditions of Approval 8.10 and 8.11 above.
- 8.16. Covered Species Handling and Injury. Covered Species shall be handled and assessed according to the Restraint and Handling of Live Amphibians USGS, National Wildlife Health Center (D. Earl Greene, ARMI SOP NO. 100; 16 February 2001) (Attachment 2). If an injured Covered Species is found during the project term, the individual shall be evaluated by the Designated Biologist who shall then immediately contact the CDFW Regional Representative, via email and telephone, to discuss the next steps. If the CDFW Regional Representative cannot be contacted immediately, the injured Covered Species shall be placed in a shaded container and kept moist. If the CDFW Regional Representative is not available or has not responded within 15 minutes of initial attempts then the following steps shall be taken by the Designated Biologist:
- a) If the injury is minor or healing and the Covered Species is likely to survive, the Covered Species shall be released immediately in accordance with the Condition of Approval 8.10.
 - b) If it is determined that the Covered Species has major or serious injuries as a result of Project-related activities the Designated Biologist shall immediately take it to the Lindsay Wildlife Museum or another CDFW approved facility. If taken into captivity, the individual shall remain in captivity and not be released into the wild unless it has been kept in quarantine and the release is authorized by the CDFW and U.S. Fish and Wildlife Service. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The circumstances of the injury, the procedure followed and the final disposition of the injured animal shall be documented in a written incident report as described in Condition of Approval 7.9.

8.17. Time of Day Work Restriction. Permittee shall terminate all Covered Activities 30 minutes before sunset and shall not resume Covered Activities until 30 minutes after sunrise during the Covered Species migration/active season from November 1 to June 15. The Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for determining when Covered Activities shall terminate and resume.

8.18. Wet Season Work Restriction. Covered Activities involving ground disturbing and heavy equipment use (such as excavation, grading, and contouring) during the wet season (November 1 to April 30) shall be subject to the written approval of CDFW. If approved by CDFW, Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the Project Area. Covered Activities involving ground disturbing activities and heavy equipment use shall cease 24 hours prior to a 40 percent or greater forecast of rain. Covered Activities may continue 24 hours after the rain ceases if and there is less than a 40 percent change of precipitation in the 24-hour forecast.

8.18.1. If CDFW approves wet season work, a Designated Biologist(s) shall survey the Project site EACH day rain is forecast and the morning after all storm events. If rain exceeds 0.25 inches during a 24-hour period, work shall cease until there is a less than a 40 percent change of precipitation in the 24-hour forecast.

9. Habitat Management Land Acquisition and Restoration:

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

To meet this requirement, the Permittee shall either purchase 30 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of 30 acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. 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 2.12 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.6 below.

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

- 9.1.1. Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$17,060.70/acre for 30 acres: **\$511,821.00**. Land acquisition costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements and include real estate broker fees and escrow fees;
- 9.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at **\$17,102.91**;
- 9.1.3. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at **\$8,065.20**;
- 9.1.4. Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$5,669.27/acre for 30 acres: **\$170,078.10**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 9.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at **\$12,000.00**.
- 9.1.6. Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.6, calculated at \$400.00/acre for 2.12 acres: **\$848.00**.

9.2. Covered Species Credits. Permittee shall purchase 30 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below.

OR:

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

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

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>); (2) conducting a baseline biological assessment and land survey report within four months of

recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;

9.3.6. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, 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. Funding for Perpetual Management of HM Lands. CDFW and Permittee entered into a Mitigation Funding Agreement (MFA), dated April 28, 2020, which is incorporated herein by reference, that ensures long-term funding for the perpetual management of the HM lands through a mechanism other than a long-term management endowment. Funding for perpetual management of compensatory habitat, pursuant to the MFA must be completed before starting Covered Activities, or within 18 months of the start of Covered Activities if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

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 long-term funding pursuant to the MFA.

9.4.1. Perpetual Management Funding Agreement. In recognition of Permittee's statutorily defined mission, staff expertise, and statutory authority and constraints, CDFW has determined that perpetual management funding for the Project may be accomplished by a mechanism other than a long-term management endowment. CDFW and Permittee have entered into the MFA, which sets forth the terms and conditions under which Permittee shall ensure

funding for the long-term management of the HM lands. The MFA, at a minimum:

- 9.4.1.1 Requires Permittee to fund the full annual costs of managing the HM lands from Permittee's annual budget;
 - 9.4.1.2 Requires Permittee to fund and maintain a perpetual security endowment (the Reserve Fund) equal to the cost of five (5) years of management funding for the HM lands for the Project, as calculated in the PAR required by Condition of Approval 9.4.3;
 - 9.4.1.3 Allows CDFW unilaterally to call upon the security endowment, after written notice and a reasonable opportunity to cure, in the event of non-performance of any management obligations by Permittee;
 - 9.4.1.4 Requires Permittee to replenish the security endowment in the event CDFW calls on those funds pursuant to Condition of Approval 9.4.1.3; and
 - 9.4.1.5 Requires Permittee to provide a full endowment fund pursuant to Condition of Approval 9.4.2 within ninety (90) days of receipt of written notice from CDFW of a material breach of the MFA by Permittee.
- 9.4.2 Endowment Fund. This section 9.4.2 applies only in the event CDFW provides notice of a material breach of the MFA pursuant to Condition of Approval 9.4.1.5 above and Section 7 of the MFA. A long-term management fund (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. In the event that funding is not provided through a Perpetual Funding Agreement in accordance with Condition of Approval 9.4.1 above, such activities shall be funded through the Endowment, and the following requirements shall apply.

9.4.2.1 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).;

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

9.4.3 Calculate the Long-Term Management Costs for the Reserve Fund or Endowment. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.

9.4.3.1 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.

9.4.3.2 Endowment Buffers/Assumptions. Permittee shall include in the PAR assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:

9.4.3.2.1 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.

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

9.4.3.2.3 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.

9.5. 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. Habitat Restoration. Permittee shall restore on-site the 0.62 acres of Covered Species habitat that will be temporarily 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 0.62 acres 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 and application methods. The plan shall also indicate the best time of year for seeding to occur. Plantings shall include regular watering to ensure adequate growth.

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 **\$719,915.21**. This amount is based on the cost estimates identified in Condition of Approval 9.1 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; and
 - Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

Amendment:

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

Stop-Work Order:

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 days to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 25 additional days. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and any other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

Compliance with Other Laws:

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

Notices:

The Permittee shall deliver a copy of ITP signed by all parties by email, 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
CESA@wildlife.ca.gov

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 2081-2014-062-03 in a cover letter

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

and on any other associated documents.

Original cover with attachment(s) to:

Erin Chappell, Regional Manager
California Department of Fish and Wildlife
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Telephone (707) 428-2002
R3CESA@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:

Marcia Grefsrud
California Department of Fish & Wildlife
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Telephone (707) 644-2812
Marcia.Grefsrud@wildlife.ca.gov

Compliance with CEQA:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, East Bay Regional Park District. (See generally Pub. Resources Code, §§ 21067, 21069). The lead agency's prior environmental review of the Project is set forth in the Vargas Plateau Regional Park Land Use Plan Mitigated Negative Declaration and Initial Study (SCH No.: 2007102135) dated April 2008 that the East Bay Regional Park District adopted for Vargas Plateau Regional Park on April 1, 2008. At the time the lead agency adopted the Mitigated Negative Declaration and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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

reduce to below a level of significance any such potential effects. CDFW consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

Findings Pursuant to CESA:

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

CDFW finds based on substantial evidence in the ITP application, Vargas Plateau Regional Park Land Use Plan Mitigated Negative Declaration and Initial Study, 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 30 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;
- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (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

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

- (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.

Issuance of this Amendment will not increase the amount of take of the Covered Species compared to the Project as originally approved, nor will this Amendment increase other Project impacts on the Covered Species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

- (9) CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).
- (10) Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).
- (11) None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.

Attachments:

FIGURE 1	Map of Project Location
FIGURE 2	Map of Project Area
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
ATTACHMENT 5	Tracked Changes in Amendment No. 1

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 4/5/2022.

DocuSigned by:

Craig Weightman
7988E6CAEDC24E2

Erin Chappell
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:

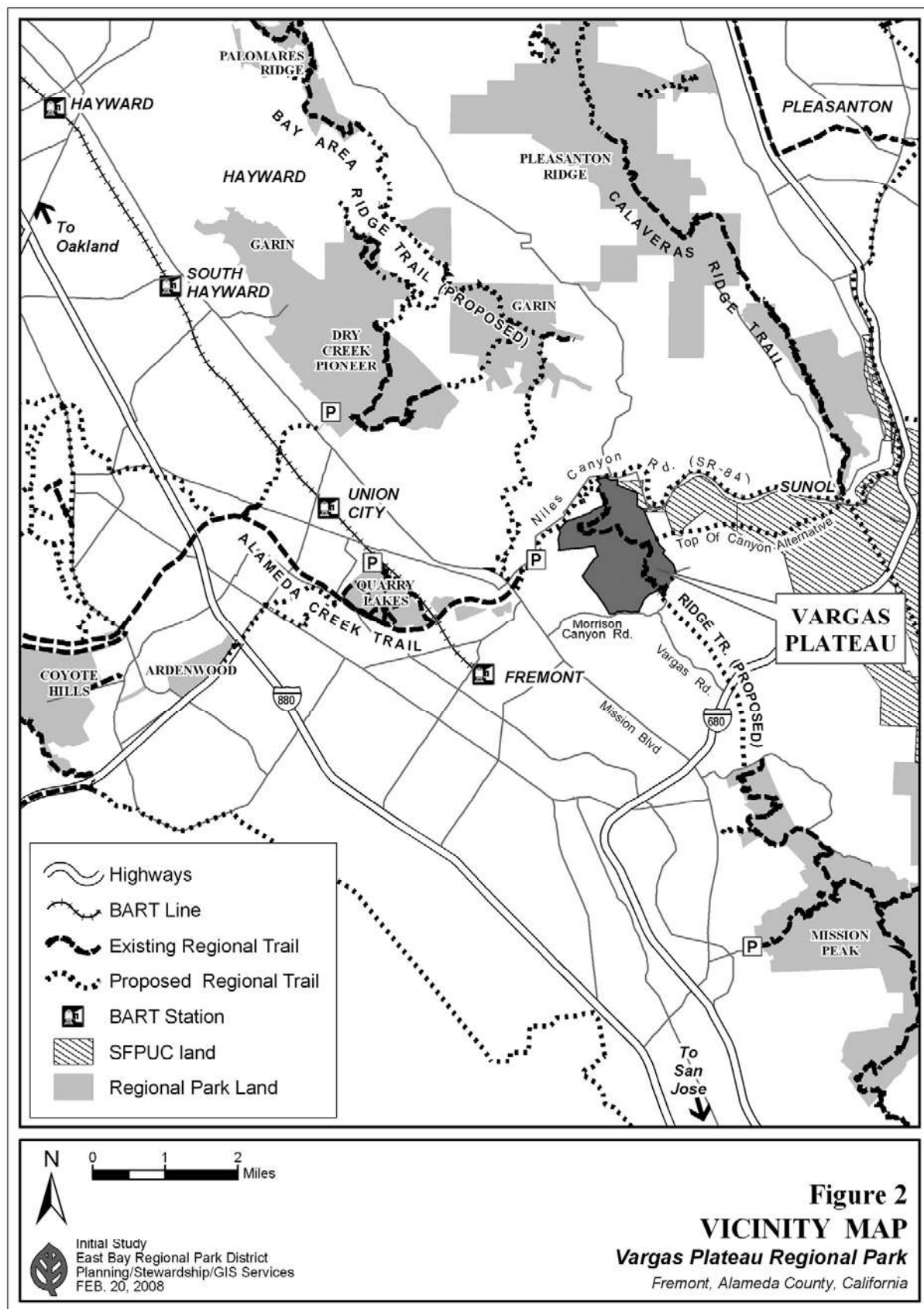
By: *Matthew Gaul*
1C2CE48DE3E84F9...

Date: 4/20/2022

Printed Name: Matthew Gaul

Title: Chief of Stewardship

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK





LEGEND

PARK BOUNDARY

EXISTING TRAILS

IMPROVEMENTS	IMPACT AREA (ACRES)	
	PERMANENT	TEMPORARY
① PROPOSED MORRISON CANYON STAGING AREA - SEE SHEET 6	0.75	0.25
② PROPOSED WATERCRESS LOOP TRAIL	0.30	0.1
③ PROPOSED MULTI-USE TRAIL	1.46	0.37
④ STREAM CROSSING - SEE SHEET 5	0.006	0.0046
⑤ REPAIR EROSION DAMAGE - SEE SHEET 5	0.035	0.05
SUM TOTAL IMPACT	2.55	0.77

POND RESTORATION AND ENHANCEMENT	RESTORED / ENHANCED AREA (ACRES)
POND WORK - #VPPND005 - SEE SHEET 3 DEWATER EXISTING STOCK POND AND REMOVE EXISTING BULLFROG POPULATION	0.21
POND WORK - #VPPND006 - SEE SHEET 4 DEWATER EXISTING STOCK POND AND REMOVE ALL EXISTING NON NATIVE FISH	0.48

MITIGATION	MITIGATED AREA (ACRES)
POND WORK - #VPPND001 - SEE SHEET 2 RAISE SPILLWAY, REMOVE INVASIVE PLANTS, MAINTAIN EXISTING VEGETATION	0.27
UPLAND CONSERVATION EASEMENT AREA CREATE CONSERVATION EASEMENT (335' RADIUS) AROUND EXISTING STOCK POND TO PROTECT EXISTING POPULATION OF CALLIPPE BUTTERFLY LARVAL FOOD PLANTS	8.15
SUM TOTAL MITIGATION	8.42

Attachment 1**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)
CALIFORNIA ENDANGERED SPECIES ACT****INCIDENTAL TAKE PERMIT NO. 2081-2014-062-03****PERMITTEE: East Bay Regional Park District****PROJECT: Vargas Plateau Regional Park****PURPOSE OF THE MMRP**

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

OBLIGATIONS OF PERMITTEE

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

VERIFICATION OF COMPLIANCE, EFFECTIVENESS

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

TABLE OF MITIGATION MEASURES

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

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
BEFORE DISTURBING SOIL OR VEGETATION					
1	To ensure compliance with the Conditions of Approval of the ITP, the Designated Biologist shall have authority to immediately stop any activity that is not in compliance with the ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species, or a species not covered by the ITP.	ITP Condition # 6.3	Entire Project	Permittee	
2	The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of the ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in the ITP and/or the MMRP. The Designated Representative shall report any non-compliance with the ITP to CDFW within 24 hours.	ITP Condition # 7.2	Entire Project	Permittee	
3	Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with the ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of the ITP.	ITP Condition # 6.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
4	Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed.	ITP Condition # 6.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
5	Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in the ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided for any new workers before their performing work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.	ITP Condition # 6.4	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
6	Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs. Plastic bags and plastic water bottles shall be picked up and removed daily.	ITP Condition # 6.6	Before commencing ground- or vegetation-disturbing activities/	Permittee	

			Entire Project		
7	Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.	ITP Condition # 6.7	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
8	Before starting Covered Activities along each part of the route in active construction, Permittee shall clearly <i>delineate the boundaries</i> of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.	ITP Condition # 6.9	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
9	Permittee shall clearly <i>delineate habitat</i> of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.	ITP Condition # 6.10	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
10	The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.	ITP Condition # 7.1	Before commencing ground- or vegetation-disturbing activities	Permittee	
11	At least thirty (30) days prior to the commencement of the pond restoration activities, the Permittee shall submit an Invasive Species Management Plan to the CDFW for review, comments and written approval. The plan shall include monitoring, management strategies, and success criteria for invasive aquatic and plant species in the area.	ITP Condition # 7.8	Before commencing ground- or vegetation-disturbing activities	Permittee	
12	All erosion and sediment control measures shall be installed prior to earth moving Covered Activities on any phase of the Project. Permittee shall utilize erosion control measures throughout all phases of Project where sediment runoff from exposed slopes could leave the Project Area and/or enter a stream or pond. Permittee, Designated Representative, or other trained staff shall monitor erosion control measures before, during, and after each storm event and repair and/or replace ineffective measures immediately.	ITP Condition # 8.7	Before commencing ground- or vegetation-disturbing activities	Permittee	
13	Prior to commencing any Covered Activities Permittee shall install a temporary barrier to prevent the Covered Species from dispersing into the Project Area. The barrier shall be designed to allow the Covered Species to leave the Project Area using a one-way funnel or other method approved by CDFW. The barrier shall consist of exclusion fencing with 36 inches above the soil surface, designed with a lip to prevent the Covered Species from climbing over the barrier. The exclusion fencing shall be secured to the ground in order to prevent Covered Species from gaining access to the Project Area. The soil shall be compacted against both sides of the fence to prevent the Covered Species from gaining access. The barrier shall remain in place until the Project is complete. The Designated Biologist, shall inspect the barrier daily, and during and after storm events. The Permittee shall maintain and repair the barrier immediately to ensure that it is functional and without defects. Permittee shall provide refuge opportunities, such as coverboards or straw wattles, along the exclusion fence on both sides of the fence. Permittee shall submit to CDFW for approval, the location and, if requesting approval of an alternative design than what is described above, the design of the barrier and refuge	ITP Condition # 8.9	Before commencing ground- or vegetation-disturbing activities	Permittee	

	opportunities no less than 30 days prior to the proposed start of Covered Activities. The Designated Biologist shall inspect refuge areas each morning during and after rain events. Covered Species found within the interior fence shall be relocated outside the fence line no more than 300 feet from the Project boundary and shall be relocated by the Designated Biologist per the Relocation Plan described in Condition of Approval 8.10.				
14	The Designated Biologist(s) shall prepare a California tiger salamander Relocation Plan (Relocation Plan). The Relocation Plan shall include, but not be limited to, pre-activity survey methodology appropriate for the season, hand excavation, capture, handling, and relocation methods; and identification of where the individuals will be relocated to. The relocation areas shall be identified by the Designated Biologist based upon best suitable habitat available and time of year and approved by CDFW prior to the start of Covered Activities. The Relocation Plan shall be submitted to CDFW for approval prior to the beginning of Covered Activities. Covered Activities anywhere within the Project Area may not proceed until the Relocation Plan is approved in writing by CDFW. Only the approved Designated Biologist(s) are authorized to capture and handle the Covered Species.	ITP Condition # 8.10	Before commencing ground- or vegetation-disturbing activities	Permittee	
15	The Designated Biologist shall inspect all ruts and holes near root structures, foundations, abutments, etc. for California tiger salamander immediately prior to and during excavation or removal. The Designated Biologist shall conduct pre-activity surveys per Condition of Approval 8.7. The Designated Biologist shall follow initial grading equipment to look for California tiger salamander. Grading activities should be done in a manner that allows Designated Biologists to safely survey the area for California tiger salamander. A Designated biologist shall survey the open areas adjacent to ongoing grading or scraping as the footprint expands. Multiple biologists may be necessary to survey the area appropriately. If a California tiger salamander is discovered by the Designated Biologist or anyone else, the Designated Biologist shall move the animal to a safe nearby location (e.g. mouth of ground-squirrel burrow outside of the temporary barrier) per the Relocation Plan described in Condition of Approval 8.10 and monitor it until it is determined that it is not imperiled by predators or other dangers.	ITP Condition # 8.13	Before commencing ground- or vegetation-disturbing activities/Entire Project	Permittee	
16	Permittee shall either purchase 30 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of 30 acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. 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 2.12 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.6 below.	ITP Condition # 9	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
17	CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands and restoration of temporarily disturbed habitat as follows: Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$17,060.70/acre for 30 acres: \$511,821.00. Land acquisition costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements and include real estate broker fees and escrow fees; 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 \$17,102.91;	ITP Condition # 9.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	<p>Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at \$8,065.20;</p> <p>Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$5,669.27/acre for 30 acres: \$170,078.10. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.</p> <p>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 \$12,000.00.</p> <p>Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.6, calculated at \$400.00/acre for 2.12 acres: \$848.00.</p>				
18	<p>Permittee shall purchase 30 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below.</p> <p>OR:</p>	ITP Condition # 9.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
19	To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall 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 Condition # 9.3.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
20	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	
21	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	ITP Condition # 9.3.3	Before commencing ground- or vegetation-disturbing	Permittee	

	conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services		activities (or within 18 months of issuance of the ITP if Security is provided)		
22	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	
23	Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see https://www.wildlife.ca.gov/Conservation/Planning/Banking); (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage.	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	
24	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.	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	
25	CDFW and Permittee entered into a Mitigation Funding Agreement (MFA), dated April 28, 2020, which is incorporated herein by reference, that ensures long-term funding for the perpetual management of the HM lands through a mechanism other than a long-term management endowment. Funding for perpetual management of compensatory habitat, pursuant to the MFA must be completed before starting Covered Activities, or within 18 months of the start of Covered Activities if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations. 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 long-term funding pursuant to the MFA.	ITP Condition # 9.4	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

26	<p>In recognition of Permittee's statutorily defined mission, staff expertise, and statutory authority and constraints, CDFW has determined that perpetual management funding for the Project may be accomplished by a mechanism other than a long-term management endowment. CDFW and Permittee have entered into the MFA, which sets forth the terms and conditions under which Permittee shall ensure funding for the long-term management of the HM lands. The MFA, at a minimum:</p> <p>Requires Permittee to fund the full annual costs of managing the HM lands from Permittee's annual budget;</p> <p>Requires Permittee to fund and maintain a perpetual security endowment (the Reserve Fund) equal to the cost of five (5) years of management funding for the HM lands for the Project, as calculated in the PAR required by Condition of Approval 9.4.3;</p> <p>Allows CDFW unilaterally to call upon the security endowment, after written notice and a reasonable opportunity to cure, in the event of non-performance of any management obligations by Permittee;</p> <p>Requires Permittee to replenish the security endowment in the event CDFW calls on those funds pursuant to Condition of Approval 9.4.1.3; and</p> <p>Requires Permittee to provide a full endowment fund pursuant to Condition of Approval 9.4.2 within ninety (90) days of receipt of written notice from CDFW of a material breach of the MFA by Permittee.</p>	ITP Conditions # 9.4.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
27	<p>This section 9.4.2 applies only in the event CDFW provides notice of a material breach of the MFA pursuant to Condition of Approval 9.4.1.5 above and Section 7 of the MFA. A long-term management fund (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.</p> <p>After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. In the event that funding is not provided through a Perpetual Funding Agreement in accordance with Condition of Approval 9.4.1 above, such activities shall be funded through the Endowment, and the following requirements shall apply.</p>	ITP Conditions # 9.4.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
28	<p>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</p>	ITP Conditions # 9.4.2.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	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).;				
29	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 Conditions # 9.4.2.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
30	<p>After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.</p> <p>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 the 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 Conditions # 9.4.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
31	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.	ITP Conditions # 9.5	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
32	Permittee shall restore on-site the 0.62 acres of Covered Species habitat that will be temporarily 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 0.62 acres 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	ITP Conditions # 9.6	Before commencing ground- or vegetation-disturbing activities (or within 18 months of	Permittee	

	restoring all temporarily disturbed areas, such as seed mixes and application methods. The plan shall also indicate the best time of year for seeding to occur. Plantings shall include regular watering to ensure adequate growth.		issuance of the ITP if Security is provided)		
33	<p>Permittee shall provide Security as follows:</p> <p>a) <u>Security Amount</u>. The Security shall be in the amount of \$719,915.21. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.</p> <p>b) <u>Security Form</u>. The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.</p> <p>c) <u>Security Timeline</u>. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.</p> <p>d) <u>Security Holder</u>. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.</p> <p>e) <u>Security Transmittal</u>. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.</p> <p>f) <u>Security Drawing</u>. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.</p> <p>g) <u>Security Release</u>. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:</p> <ul style="list-style-type: none"> • Written documentation of the acquisition of the HM lands; • Copies of all executed and recorded conservation easements; • Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and • Timely submission of all required reports. <p>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 (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

DURING CONSTRUCTION						
34	Permittee shall terminate all Covered Activities 30 minutes before sunset and shall not resume Covered Activities until 30 minutes after sunrise during the Covered Species migration/active season from November 1 to June 15. The Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for determining when Covered Activities shall terminate and resume.	ITP Condition # 8.15	Entire Project	Permittee		
35	<p>Covered Activities involving ground disturbing and heavy equipment use (such as excavation, grading, and contouring) during the wet season (November 1 to April 30) shall be subject to approval of CDFW. If approved by CDFW, Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the Project Area. Covered Activities involving ground disturbing activities and heavy equipment use shall cease 24 hours prior to a 40 percent or greater forecast of rain. Covered Activities may continue 24 hours after the rain ceases if and there is less than a 40 percent change of precipitation in the 24-hour forecast.</p> <p>8.16.1. If CDFW approves wet season work, a Designated Biologist(s) shall survey the Project site EACH day rain is forecast and the morning after all storm events. If rain exceeds 0.25 inches during a 24-hour period, work shall cease until there is a less than a 40 percent change of precipitation in the 24-hour forecast.</p>	ITP Condition #8.16	Entire Project	Permittee		
36	The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.	ITP Condition # 7.3	Entire Project	Permittee		
37	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 CDFW's Regional Office at the office listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative. At the time of this ITP's approval, the CDFW Regional Representative is Marcia Grefsrud (Marcia.Grefsrud@wildlife.ca.gov). CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.	ITP Condition # 7.4	Entire Project	Permittee		
38	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	ITP Condition # 7.5	Entire Project	Permittee		

	Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.				
39	The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDB) and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.	ITP Condition # 7.6	Entire Project	Permittee	
40	The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of the ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in the ITP and/or the MMRP. The Designated Representative shall report any non-compliance with the ITP to CDFW within 24 hours.	ITP Condition # 7.2	Entire Project	Permittee	
41	The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period which shall include a copy of the 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 # 6.5	Entire Project	Permittee	
42	Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as mono-filament netting (erosion control matting) or similar material, in potential Covered Species' habitat.	ITP Condition # 6.8	Entire Project	Permittee	
43	Permittee shall not plant, seed or otherwise introduce invasive exotic plant species. Prohibited exotic plant species include those identified in the California Exotic Pest Plant Council's database, which is accessible at: http://www.cal-ipc.org/pa/ .	ITP Condition # 8.8	Entire Project	Permittee	
44	Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.	ITP Condition # 6.11	Entire Project	Permittee	
45	Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.11 of the ITP.	ITP Condition # 6.12	Entire Project	Permittee	
46	Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.	ITP Condition # 6.13	Entire Project	Permittee	

47	Permittee shall provide CDFW staff with reasonable access to the Project [and mitigation lands under Permittee control], and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in the ITP.	ITP Condition # 6.14	Entire Project	Permittee	
48	Work period shall generally be confined between August 1 and October 31. Pond draining shall occur outside of any time when California tiger salamander is in a breeding, larval, or migratory season.	ITP Condition # 8.1	Entire Project	Permittee	
49	To prevent bullfrogs from escaping the pond areas during dewatering an exclusion fence shall be installed around pond VPPN005 prior to dewatering. All bullfrogs found shall be dispatched and disposed of in accordance with the law.	ITP Condition # 8.2	Entire Project	Permittee	
50	Unless annual pond survey information indicates bullfrogs/non-native fish are not present, all ponds in each Mitigation Site shall either be drained or allowed to dry naturally a minimum of once every 24 months in perpetuity. Any pumps used to drain ponds shall be screened with screens that meet CDFW screening criteria. Ponds that are drained or allowed to dry naturally shall be completely dry for a minimum of 30 days such that soils are not saturated to ensure bullfrog tadpoles do not survive. Dry ponds shall be surveyed visually for surviving bullfrogs after ponds have been completely drained. Each pond shall be 100% free of living bullfrogs of all life stages before allowing each pond to be re-filled.	ITP Condition # 8.3	Entire Project	Permittee	
51	Sediment-laden water from dewatering shall be held in a settling container or discharged in an upland location where it will not drain directly into a stream or into small mammal burrows.	ITP Condition # 8.4	Entire Project	Permittee	
52	All dewatering intake hoses and pump inlets shall be screened to prevent entrapment or intake of aquatic species. The screens shall be made of non-corrosive material and diameter/diagonal openings shall meet the criteria of CDFW and the National Marine Fisheries Service before water is pumped from within the coffer dams (see screening criteria at: http://www.westcoast.fisheries.noaa.gov/publications/reference_documents/reference_documents.html). The screen shall be kept in good repair and cleaned/checked as frequently as possible. All screens shall be supported above the channel bottom.	ITP Condition # 8.5	Entire Project	Permittee	
53	The Designated Biologists and trained construction foreman/manager, supervised by the Designated Biologist shall inspect all open holes, sumps, and trenches within the Project Area at the beginning of each day, completing within 30 minutes of sunrise and any Covered Species discovered within the barrier shall be relocated in accordance with the Covered Species Relocation Plan as described in Condition of Approval 8.10 below. To prevent inadvertent entrapment of Covered Species, the Designated Biologist(s) shall oversee the covering of all trenches, holes, sumps, or other excavations with a greater than 1:1 (45 degree) slope of any depth with barrier material (such as hardware cloth) at the close of each working day such that Covered Species are unable to dig or squeeze under the barrier and become entrapped. The outer two feet of excavation cover shall conform to solid ground so that gaps do not occur between the cover and the ground and secured with soil staples or similar means to prevent gaps. Each morning prior to beginning Covered Activities and immediately before trenches, holes, sumps, or other excavations are back-filled, the Designated Biologist(s) and/or construction foreman/manager shall thoroughly inspect them for Covered Species. Trenches, holes, sumps, or other excavations that are covered long-term shall be inspected at the beginning of each working day to ensure inadvertent entrapment has not occurred. Permittee shall cease all Covered Activities in the vicinity and notify the Designated Biologist(s) immediately if any worker discovers that Covered Species have become trapped. If at any time a trapped Covered Species is discovered by the Designated Biologist or anyone else, the	ITP Condition # 8.6	Entire Project	Permittee	

	<p>Designated Biologist shall capture and relocate the animal to a safe nearby location per the Relocation Plan described in Condition of Approval 8.10.</p> <p>8.6.1. If the open holes, sumps, trenches or excavations cannot be covered then the Designated Biologist shall inspect the open holes, sumps, trenches or excavations at the beginning of each day, completed within 30 minutes of sunrise and any Covered Species discovered within the barrier shall be relocated in accordance with the Covered Species Relocation Plan as described in Condition of Approval 8.10 below</p>				
54	<p>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, Designated Representative and Permittee shall be notified immediately. The Designated Biologist or Designated Representative shall immediately notify CDFW by calling the Regional Office at (707) 428-2002 and the CDFW Representative at (707) 644-2812. 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 of the discovery. The report shall include the date and time of the finding or incident, GPS location of the Covered Species, photographs of the location and the Covered Species, explanation as to cause of take or injury, and any other pertinent information.</p> <p>If the Covered Species (California tiger salamander) is found recently deceased, the carcass shall be immediately bagged, labeled, and preserved in a freezer. The label shall include time and date, GPS location, circumstances surrounding death (if known), and ITP tracking number. Specimens shall be delivered to the CDFW Wildlife Investigations Lab, Attention: Deana Clifford, 1701 Nimbus Road Suite D, Rancho Cordova, CA 95670 within two calendar days of the discovery.</p>	ITP Condition # 7.9	Entire Project	Permittee	
55	<p>The Designated Biologist shall relocate any California tiger salamander found within the Project Areas to be impacted to an active rodent burrow system located no more than 300 feet outside of the Project Area and in accordance with the Relocation Plan described in Condition of Approval 8.10 above unless otherwise approved by CDFW in writing. The Designated Biologist shall document both the capture and relocation areas by photographs and GPS positions. The Covered Species shall be photographed and measured (Snout-Vent) for identification purposes prior to relocation. All documentation shall be provided to the CDFW within 24 hours of Covered Species Relocation</p>	ITP Condition # 8.11	Entire Project	CDFW	
56	<p>The Designated Biologist shall survey all augering and excavation soils material for California tiger salamanders. The Permittee shall ensure auger bits are cleaned by shaking the soil loose and not cleaned by spinning. The Permittee shall ensure excavation is coordinated with the Designated Biologist to allow sufficient time to survey the excavated soil.</p>	ITP Condition # 8.12	Entire Project	Permittee	
57	<p>California tiger salamanders shall be handled and assessed according to the Restraint and Handling of Live Amphibians USGS, National Wildlife Health Center (D. Earl Greene, ARMI SOP NO. 100; 16 February 2001) (Attachment 2). If an injured Covered Species is found during the project term, the individual shall be evaluated by the Lead Designated Biologist who shall then immediately contact the CDFW Regional Representative, via email and telephone, to discuss the next steps. If the CDFW Regional Representative cannot be contacted immediately, the injured salamander shall be placed in a shaded container and kept moist. If the CDFW Regional Representative is not available or has not responded within 15 minutes of initial attempts then the following steps shall be taken by the Designated Biologist:</p>	ITP Condition # 8.14	Entire Project	Permittee	

	<p>a) If the injury is minor or healing and the salamander is likely to survive, the salamander shall be released immediately in accordance with the Condition of Approval 8.7.</p> <p>b) If it is determined that the Covered Species has major or serious injuries as a result of Project-related activities the Designated Biologist shall immediately take it to the Lindsay Wildlife Museum or another CDFW approved facility. If taken into captivity the individual shall remain in captivity and not be released into the wild unless it has been kept in quarantine and the release is authorized by the CDFW and Service. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The circumstances of the injury, the procedure followed and the final disposition of the injured animal shall be documented in a written incident report as described in Condition of Approval 7.9.</p>				
POST-CONSTRUCTION					
58	Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.	ITP Condition # 6.15	Post-construction	Permittee	
59	No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.	ITP Condition # 7.7	Post-construction and after completion of mitigation	Permittee	
60	CDFW accepts the Final Mitigation Report as complete.	ITP	Post-construction	CDFW	

ATTACHMENT 2A

CALIFORNIA 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 California 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.

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 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)

PROPOSED LANDS FOR ACQUISITION FORM ("PLFAF")

Date: _____

TO: Regional Representative

Facsimile:

FROM: _____

Applicant proposes that the following parcel of land be considered for approval by the CDFW as suitable for purposes of habitat management lands to replace the adverse environmental impacts of the Project:

<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Number of Acres</u>
----------------	-----------------	--------------	------------------------

_____	_____	_____	_____
-------	-------	-------	-------

Current Legal Owner(s), include Parcel Number(s):_____

Location of Parcel:

APPROVED ____

REJECTED ____

By: _____

DATE: _____

Region

Explanation: _____

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

Issue Date: [**date**]

Beneficiary:

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

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

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

Dear Sirs:

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

7. Upon presentation of a duly executed Certificate as above provided, payment shall be made to the CDFW, or to the account of the CDFW, in immediately available funds, as the CDFW shall specify.
8. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give the CDFW prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Credit, state the reasons therefore, and await further instruction.
9. Upon being notified that the demand for payment was not effected in conformity with the Credit, the CDFW may correct any such non-conforming demand for payment under the terms and conditions stated herein.
10. All drawings under this Credit shall be paid with our funds. Each drawing honored by us hereunder shall reduce, *pro tanto*, the Principal Sum. By paying to the CDFW an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.
11. This Credit will be cancelled upon receipt by us of Certificate of Cancellation, which:
(i) shall be in the form of Attachment B, which is attached hereto, and (ii) shall be completed and signed by an Authorized Representative of the CDFW, as defined in paragraph 12 below.
12. An "Authorized Representative" shall mean either the Director of the Department of Fish and Wildlife, the General Counsel of the Department of Fish and Wildlife, or a Regional Manager of the Department of Fish and Wildlife.
13. This Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof, unless at least sixty (60) days prior to any such date, we notify the CDFW in writing by registered mail, return receipt requested, or by overnight courier that we elect not to consider this Credit extended for any such period.
14. Communications with respect to this Credit shall be in writing and addressed to us at **[name and address of financial institution]**, specifically referring upon such writing to this credit by number. The address for notices with respect to this Credit shall be:
(i) for the CDFW: Department of Fish and Wildlife, Habitat Conservation Planning Branch, 1416 Ninth Street, 12th Floor, Sacramento, California 95814-2090 Attn: HCPB Mitigation Account Coordinator; and (ii) for the Applicant: **[name and address of applicant]**.
15. This Credit may not be transferred.
16. This Credit is subject to the International Standby Practices 1998 ("ISP 98"). As to matters not covered by the ISP 98 and to the extent not inconsistent with the ISP 98, this credit shall be governed by and construed in accordance with the Uniform Commercial Code, Article 5 of the State of California.

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

[*Name of financial institution*]

By: _____

Name: _____

Title: _____

ATTACHMENT A

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

To:

[Name and address of financial institution]

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

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

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

Therefore, the CDFW has executed and delivered this Certificate as of the ____ day of _____, _____.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: _____

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

ATTACHMENT B

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

To:

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

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

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

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

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

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: _____

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

California Department of Fish and Wildlife
Mitigation Payment Transmittal Form

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 FASB Mitigation Tracking Number (if available) on the attached payment type.

(1) **DATE:** _____

TO: _____

[CDFW Regional Manager]

 [CDFW Regional Office Address]

(2) **FROM:** _____

Name

 Mailing Address

 City, State, Zip

 Telephone Number/FAX Number

(3) **RE:** _____

[Project Name as appears on permit/agreement]

(4) **AGREEMENT/ACCOUNT INFORMATION:**

(Check the applicable type)

☐ 2081 Permit ☐ Conservation Bank ☐ 1802 Agreement

☐ 2835 NCCP ☐ Other _____

 [Project Tracking Number]

 [FASB Mitigation Tracking Number (if available)]

Index _____ PCA _____

(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: _____



**California Department of Fish and Wildlife
Bay Delta Region**

**2825 Cordelia Road, Suite 100
Fairfield, CA 94534**

Deleted: 7329 Silverado Trail
Napa

Deleted: 94558

California Endangered Species Act
Incidental Take Permit No. 2081-2014-062-03 **A-1**

VARGAS PLATEAU REGIONAL PARK

Authority:

This California Endangered Species Act (CESA) Incidental Take Permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

Permittee: East Bay Regional Park District
Principal Officer: Matthew Graul
Contact Person: Matthew Graul, (510) 544-2327
Mailing Address: 2950 Peralta Oaks Court, Oakland, CA 94605

Amended ITP³ Background

On August 18, 2014, East Bay Regional Park District (EBRPD)(Permittee) submitted a CESA ITP application pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations Title 14, section 783.0 et. seq. EBRPD sought take coverage authorization for CESA listed species associated with project related impacts from the Vargas Plateau Regional Park in Alameda County, California (Project). On November 19, 2020, CDFW received a request, from EBRPD to amend the ITP and on March 25, 2021, CDFW received the appropriate fee.

The original Project for the development of recreational facilities in Vargas Plateau Regional

¹ 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").

² "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.

³ When this incidental take permit and attachments refer to the "ITP", it means the "Amended ITP" unless the context dictates otherwise.

Park included the construction of Morrison Canyon Staging Area, the creation of a Multi-Use Connector Trail, construction of the Watercress Loop Trail with an armored ford stream crossing and repair of an ephemeral stream erosion, and the enhancement of three man-made stock ponds (VPPND001, VPPND005, and VPPND006). As described in the ITP, the Covered Activities associated with this Project were expected to result in 2.55 acres of permanent impact and 0.77 acres of temporary impact to annual grassland. The pond restoration component of the Project was expected to result in 0.013 acres of permanent impact and 0.799 acres of temporary impact to pond habitat. Moreover, the activities described above were expected to result in incidental take of California tiger salamander (*Ambystoma californiense*) and Alameda whipsnake (*Masticophis lateralis euryxanthus*). Based on the habitat in the Project Area, the proposed impacts and pursuant to CESA, CDFW required permanent protection and perpetual management of compensatory habitat as mitigation for the Project-related impacts. To meet this requirement, the Permittee identified an area around perennial pond VPPND001 to provide both the permanent protection and management of 8.42 acres of Habitat Management (HM) lands at Vargas Plateau Regional Park.

Completed Project Activities

During the late summer and fall of 2015, the Morrison Canyon Staging Area for the Vargas Plateau Regional Park was constructed. The staging area includes a 25-car gravel parking lot, a 15-foot traffic lane, a vault toilet, and picnic tables. Development of Morrison Canyon Staging Area resulted in 0.75 of permanent impacts and approximately 1.75 acres of temporary impacts to annual grassland habitat. The temporarily disturbed grassland was restored to its original contour and was re-seeded with native grass and flowers.

Future Project Activities

Future construction activities will include the development of the Multi Use Connector Trail. This activity will result in permanent disturbance to 1.46 acres of annual grassland habitat and temporary impacts to 0.37 acres of annual grassland habitat.

The Permittee will not proceed with construction of the Watercress Loop Trail with an armored ford stream crossing and repair of an ephemeral stream erosion, and enhancement of three man-made stock ponds (VPPND001, VPPND005, and VPPND006). Since the above activities are no longer proposed and the remainder of the Project is complete, the Conditions of Approval 6 through 8 are no longer required but will not be amended.

The Permittee requested that the ITP be amended to reflect these changes in the Project which will result in a decrease in permanent impacts and an increase in temporary impacts to annual grassland, and no impact to pond habitat. The Project will therefore result in 2.21 acres of permanent and 2.12 acres of temporary impacts to annual grassland.

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

The HM lands described above were not secured as required by the original ITP. This ITP Major Amendment also allows mitigation for Project impacts at an off-site location in lieu of establishing 8.42 acres of HM lands on-site. In order to account for temporal loss associated with the uncompleted obligations, the Permittee has proposed off-site mitigation within a 30-acre area located in the Ohlone Regional Wilderness, in Alameda County for the permanent protection and management of HM lands.

Effective Date and Expiration Date of this ITP:

The original ITP was executed in duplicate original form and became effective when a duplicate original was acknowledged by signature of the Permittee on the last page of the original ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. The original ITP's effective date was August 4, 2015. This remains the effective date for the original take authorization. The Amended ITP shall be executed in the same manner and shall become effective with CDFW's Habitat Conservation Planning Branch receives the signed Amended ITP. Unless renewed by CDFW, this Amended ITP's authorization to take the Covered Species shall expire on December 31, 2026. This Amended ITP shall become effective when 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.

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.

Project Location:

The Vargas Plateau Regional Park (Project) is located within the Vargas Plateau Regional Park (Figure 1), located south of State Route 84 (SR84) in the Fremont hills along Morrison Canyon Road, outside the city limits of Fremont, in the County of Alameda, State of California.

Project Description:

The Project includes the development of recreational facilities (the Morrison Canyon Staging Area, and the Multi Use Connector Trail), within the Park. Figure 2 shows the locations of existing and proposed trails, and staging area, (collectively, the Project Area).

Recreational Facilities Construction

Deleted: duplicate original form

Deleted: once

Deleted: Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on December 31, 2020.

Deleted: ,

Deleted: , the Watercress Loop Trail), and the enhancement of three man-made stock ponds (VPPND001, VPPND005, and VPPND006)...

Deleted: See

Deleted: for

Deleted: , proposed improvements,

Deleted: , and pond work,

There are two construction jobs proposed to create the new recreational facilities for the Park. These activities include the following:

- 1. Morrison Canyon Staging Area – located at the top of Morrison Canyon Road, this 0.75-acre staging area will provide a 25-car gravel parking lot with 15-foot-wide one-way traffic lane, vault toilet, picnic tables, information and interpretive signs, gates, fences and a 5,000-gallon water tank.

Multi-Use Connector Trails – the creation of these trails will require the construction of four new multi-use trail connectors totaling approximately 8,000 linear feet. These trails will consist of 8-foot-wide mowed trails that will tie into existing trails and access roads.

Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

Name	CESA Status
1. California tiger salamander (<i>Ambystoma californiense</i>)	Threatened ⁴
2. Alameda whipsnake (<i>Masticophis lateralis euryxanthus</i>) also known as Alameda striped racer (<i>Coluber lateralis euryxanthus</i>)	Threatened ⁵

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

Impacts of the Taking on Covered Species:

The Project will result in 2.21 acres of permanent impact and 2.12 acres of temporary impact to annual grassland.

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include vehicular traffic along Morrison Canyon Road and existing service roads in the Project vicinity, and at the Project site; grubbing; scraping; grading; trenching and backfilling; cutting and filling; stockpiling of material; ground compaction; compaction from equipment and materials storage; materials and equipment transport and laydown; heavy equipment operations; installation of fencing; construction of pit toilets, parking areas, and other public staging area infrastructure; construction of multi-use connector trails. (Covered Activities).

⁴ See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(3)(G).
⁵ See *Id.*, subd. (b)(4)(D).

Deleted: five

Deleted: ¶
Watercress Loop Trail – located approximately 300 feet west of the Staging Area, this will be an approximate 2,000-linear foot trail with one small stream crossing. The trail will range be 4 to 8 feet wide but will average 6 feet in most locations.¶
¶
Stream Crossing – in association with the creation of the Watercress Loop Trail, a 12-foot x 20-foot articulated ford will be installed consisting of pre-cast interlocking articulated concrete pavers (e.g.; Conlock II pavers).¶
¶
Repair Erosion Damage – in association with the creation of the Watercress Loop Trail, a 20-foot x 80-foot section of an existing eroded slope will be repaired. These repairs will require the fill and compaction of native soil and rock.¶
¶
Pond Restoration¶
The Project also involves the enhancement of three ponds within the Park boundary. The pond enhancement activities include the following:¶
¶
Pond VPPND001. This spring-fed perennial pond (VPPND001) is the headwaters to a seasonal high gradient tributary to Alameda Creek. The diameter of the pond at the top of the bank is 93 feet (north by south) and 127 feet (east by west) encompassing 11,811 square feet (0.27 acres). The eastern edge of the pond has an established population of native rushes (*Juncus spp.*) and other native aquatic vegetation that will be retained in place. A coast live oak (*Quercus agrifolia*) is located at the southwest corner of the pond and an infestation of non-native thistles has become established around the pond’s southern perimeter. ¶
¶
The enhancement objective for VPPND001 includes deepening the pond to increase the capacity and inundation period to benefit California red-legged frogs (*Rana draytonii*), other native aquatic species, and to improve the lentic water habitat conditions adjacent to the pond perimeter. California red-legged frog reproduction has been documented in this pond. This pond also supports California newt (*Taricha torosa*) and Pacific tree frog (*Pseudacris regilla*) breeding populations. The increased inundation period should improve the reproductive success of lentic breeding amphibians and diminish the adverse effects during dry years or extended periods of drought. ¶
¶
The work will involve: 1) raising the spillway 12 to 18 inches at the highest point over a 975-square foot area (0.02 acres); and 2) spot treating non-native thistle, *Centaurea* spp. with Round-Up Custom aquatic herbicide to eradicate thistle population within approximately 2,178 square feet (0.05 acres) area surrounding (...)

Deleted: 55

Deleted: 0.77

Deleted: The pond restoration component of the Project will result in 0.013 acres of permanent impact and 0.799 acres of temporary impact to pond habitat.

Deleted: installation of coffer dams; desilting; dewatering with pumps; ...

Deleted: ; installation of an articulated ford trail stream crossing; and erosion damage repair

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as vehicle/equipment strikes during site preparation and hauling materials and spoils; collapse or excavation of occupied burrows that results in crushing or suffocation of underground individuals during vegetation removal, grubbing, cut/fill, grading, excavation, compaction, and trenching; entombment of individuals from deposition of stockpiled material or spoils over occupied burrows; crushing due to movement of construction vehicles, compaction of soils; and entrapment and burial within trenches or open excavations.

Deleted: , installation of coffer dams, bank repair, and bank crossing activities;

Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species from entrapment in holes or trenches, by uncovering through the excavation of burrow systems, and by capture and relocation efforts. The area where authorized take of the Covered Species is expected to occur is within the Project Area.

Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise and vibrations; stress resulting from capture and relocation; and long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

Incidental Take Authorization of Covered Species:

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

Conditions of Approval:

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular, ingress and egress, staging and parking, and noise and vibration generating activities that may/will 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:

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

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 Vargas Plateau Regional Park Land Use Plan Mitigated Negative Declaration and Initial Study (SCH No.: 2007102135) adopted by East Bay Regional Park District on April 1, 2008 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No. 1600-2014-0257-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 Programmatic Biological Opinion for U.S. Army Corps of Engineers (Corps) Permitted Projects Utilizing the East Alameda County Conservation Strategy that May Affect Federally Listed Species in East Alameda County, California (Corps File Number 2011-00230S) (No.08ESMFOO-2012-F-0092-1) as appended, 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 biological monitors

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

(collectively, Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed.

- 6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity 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. If the Designated Biologist is unable to comply with the ITP due to a conflict with Project construction, then the Designated Biologist shall notify the CDFW representative immediately.
- 6.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.
- 6.5. Construction Monitoring Binder. The Designated Biologist shall maintain a construction-monitoring binder 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 binder is available for review at the Project site upon request by CDFW.
- 6.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project.

Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs. Plastic bags and plastic water bottles shall be picked up and removed daily.

- 6.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.
- 6.8. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 6.9. Firearms and Dogs. Permittee shall prohibit firearms and domestic dogs from the Project Area and site access routes during Covered Activities, except those in the possession of authorized security personnel or local, State, or federal law enforcement officials.
- 6.10. Delineation of Property Boundaries. Before starting Covered Activities along each part of the route in active construction, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 6.11. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 6.12. Project Access. Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other

reasons, if additional take of Covered Species will occur as a result of the Project modification.

- 6.13. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.12 of this ITP.
- 6.14. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 6.15. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.16. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

7. Monitoring, Notification and Reporting Provisions:

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

- 7.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Designated Biologist shall conduct compliance inspections a minimum of one day per week during periods of inactivity longer than 5 days.
- 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 also include an accounting of the number of acres that have been temporarily disturbed within the Project Area, both for the prior month and a total since ITP issuance and estimate the expected acreage to be disturbed in the successive month; a summary of all pre-activity surveys conducted; and the ground disturbing activities authorized under the covered activities within the Project Area which occurred during the previous month. Monthly Compliance Reports shall be submitted by the 5th working day of the month to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative. At the time of this ITP's approval, the CDFW Regional Representative is Marcia Grefsrud (Marcia.Grefsrud@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 acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.

- 7.6. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next monthly 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 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. Invasive Species Management Plan. At least thirty (30) days prior to the commencement of the pond restoration activities, the Permittee shall submit an Invasive Species Management Plan to the CDFW for review, comments and written approval. The plan shall include monitoring, management strategies, and success criteria for invasive aquatic and plant species in the area.
- 7.9. Notification of Take or Injury. 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, Designated Representative and Permittee shall be notified immediately. The Designated Biologist or Designated Representative shall immediately notify CDFW by calling the Regional Office at (707) [428-2002](#) and the CDFW Representative at (707) 644-2812. 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 of the discovery. The report shall include the date and time of the finding or incident, GPS location of the Covered Species, photographs of the location and the Covered Species, explanation as to cause of take or injury, and any other pertinent

Deleted: 944-5500

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

information.

- 7.9.1. California tiger salamander. If the Covered Species is found recently deceased, the carcass shall be immediately bagged, labeled, and preserved in a freezer. The label shall include time and date, GPS location, circumstances surrounding death (if known), and ITP tracking number. Specimens shall be delivered to the CDFW Wildlife Investigations Lab, Attention: Deana Clifford, 1701 Nimbus Road Suite D, Rancho Cordova, CA 95670 within two calendar days of the discovery.

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. Pond Work Period. The work period for pond restoration activities shall be confined to between August 1 and October 31.
- 8.2. Bullfrog Eradication. To prevent bullfrogs from escaping the pond areas during dewatering an exclusion fence shall be installed around pond VPPN005 prior to dewatering. The Permittee shall consult with CDFW to obtain a Permit to Destroy Harmful Species of Fish in Private Waters for Management Purposes and shall dispatch and dispose of all bullfrogs in accordance with Fish and Game Code Section 6855 and Section 226.5 of Title 14, California Administrative Code.
- 8.3. Non-native Aquatic Species Control. Unless annual pond survey information indicates bullfrogs or other non-native fish are not present, all ponds in each Mitigation Site shall either be drained or allowed to dry naturally a minimum of once every 24 months in perpetuity. Any pumps used to drain ponds shall be screened with screens that meet CDFW screening criteria. Ponds that are drained or allowed to dry naturally shall be completely dry for a minimum of 30 days such that soils are not saturated to ensure bullfrog tadpoles do not survive. Dry ponds shall be surveyed visually for surviving bullfrogs after ponds have been completely drained. Each pond shall be 100% free of living bullfrogs of all life stages before allowing each pond to be re-filled.
- 8.4. Dewatering. Sediment-laden water from dewatering shall be held in a settling container or discharged in an upland location where it will not drain directly into a stream or into small mammal burrows.
- 8.5. Screen According to Existing Standards. All dewatering intake hoses and pump inlets shall be screened to prevent entrapment or intake of aquatic species. The screens

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

shall be made of non-corrosive material and diameter/diagonal openings shall meet the criteria of CDFW and the National Marine Fisheries Service before water is pumped from within the coffer dams (see screening criteria at: http://www.westcoast.fisheries.noaa.gov/publications/reference_documents/reference_documents.html). The screen shall be kept in good repair and cleaned/checked as frequently as possible. All screens shall be supported above the channel or pond bottom.

- 8.6. Trench Escape and Inspection. The Designated Biologists and trained construction foreman/manager, supervised by the Designated Biologist shall inspect all open holes, sumps, and trenches within the Project Area at the beginning of each day, completing within 30 minutes of sunrise and any Covered Species discovered within the barrier shall be relocated in accordance with the Covered Species Relocation Plan as described in Condition of Approval 8.10 below. To prevent inadvertent entrapment of Covered Species, the Designated Biologist(s) shall oversee the covering of all trenches, holes, sumps, or other excavations with a greater than 1:1 (45 degree) slope of any depth with barrier material (such as hardware cloth) at the close of each working day such that Covered Species are unable to dig or squeeze under the barrier and become entrapped. The outer two feet of excavation cover shall conform to solid ground so that gaps do not occur between the cover and the ground and secured with soil staples or similar means to prevent gaps. Each morning prior to beginning Covered Activities and immediately before trenches, holes, sumps, or other excavations are back-filled, the Designated Biologist(s) and/or construction foreman/manager shall thoroughly inspect them for Covered Species. Trenches, holes, sumps, or other excavations that are covered long-term shall be inspected at the beginning of each working day to ensure inadvertent entrapment has not occurred. Permittee shall cease all Covered Activities in the vicinity and notify the Designated Biologist(s) immediately if any worker discovers that Covered Species have become trapped. If at any time a trapped Covered Species is discovered by the Designated Biologist or anyone else, the Designated Biologist shall capture and relocate the animal to a safe nearby location per the Relocation Plan described in Condition of Approval 8.10.

- 8.6.1. If the open holes, sumps, trenches or excavations cannot be covered then the Designated Biologist shall inspect the open holes, sumps, trenches or excavations at the beginning of each day, completed within 30 minutes of sunrise and any Covered Species discovered within the barrier shall be relocated in accordance with the Covered Species Relocation Plan as described in Condition of Approval 8.10 below.

- 8.7. Erosion Control. All erosion and sediment control measures shall be installed prior to earth moving Covered Activities on any phase of the Project. Permittee shall utilize

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

erosion control measures throughout all phases of Project where sediment runoff from exposed slopes could leave the Project Area and/or enter a stream or pond. Permittee, Designated Representative, or other trained staff shall monitor erosion control measures before, during, and after each storm event and repair and/or replace ineffective measures immediately.

- 8.8. Prohibited Plant Species. Permittee shall not plant, seed or otherwise introduce invasive exotic plant species. Prohibited exotic plant species include those identified in the California Exotic Pest Plant Council's database, which is accessible at: <http://www.cal-ipc.org/paf/>.
- 8.9. Temporary Covered Species Barrier. Prior to commencing any Covered Activities Permittee shall install a temporary barrier to prevent the Covered Species from dispersing into the Project Area. The barrier shall be designed to allow the Covered Species to leave the Project Area using a one-way funnel or other method approved by CDFW. The barrier shall consist of exclusion fencing with 36 inches above the soil surface, designed with a lip to prevent the Covered Species from climbing over the barrier. The exclusion fencing shall be secured to the ground in order to prevent Covered Species from gaining access to the Project Area. The soil shall be compacted against both sides of the fence to prevent the Covered Species from gaining access. The barrier shall remain in place until the Project is complete. The Designated Biologist shall inspect the barrier daily, and during and after storm events. The Permittee shall maintain and repair the barrier immediately to ensure that it is functional and without defects. Permittee shall provide refuge opportunities, such as coverboards or straw wattles, along the exclusion fence on both sides of the fence. Permittee shall submit to CDFW for approval, the location and, if requesting approval of an alternative design than what is described above, the design of the barrier and refuge opportunities no less than 30 days prior to the proposed start of Covered Activities. The Designated Biologist shall inspect refuge areas each morning during and after rain events. Covered Species found within the interior fence shall be relocated outside the fence line no more than 300 feet from the Project boundary and shall be relocated by the Designated Biologist per the Relocation Plan described in Condition of Approval 8.10.
- 8.10. Covered Species Relocation Plan. The Designated Biologist(s) shall prepare a Covered Species Relocation Plan (Relocation Plan). The Relocation Plan shall include, but not be limited to, pre-activity survey methodology appropriate for the season, hand excavation, capture, handling, and relocation methods; and identification of where the individuals will be relocated to. The relocation areas shall be identified by the Designated Biologist based upon best suitable habitat available and time of year and approved by CDFW prior to the start of Covered Activities. The Relocation Plan shall be submitted to CDFW for approval prior to the beginning of

Covered Activities. Covered Activities anywhere within the Project Area may not proceed until the Relocation Plan is approved in writing by CDFW. Only the approved Designated Biologist(s) are authorized to capture and handle the Covered Species.

- 8.11. Covered Species Relocation. The Designated Biologist shall relocate any Covered Species found within the Project Areas to be impacted to an active rodent burrow system located no more than 300 feet outside of the Project Area and in accordance with the Relocation Plan described in Condition of Approval 8.10 above unless otherwise approved by CDFW in writing. The Designated Biologist shall document both the capture and relocation areas by photographs and GPS positions. The Covered Species shall be photographed and measured (Snout-Vent) for identification purposes prior to relocation. All documentation shall be provided to the CDFW within 24 hours of Covered Species Relocation.
- 8.12. Augering and Excavation. The Designated Biologist shall survey all auguring and excavation soils material for Covered Species. The Permittee shall ensure auger bits are cleaned by shaking the soil loose and not cleaned by spinning. The Permittee shall ensure excavation is coordinated with the Designated Biologist to allow sufficient time to survey the excavated soil.
- 8.13. Pre-activity Surveys. The Designated Biologist shall inspect all ruts and holes near root structures, foundations, abutments, etc. for Covered Species immediately prior to and during excavation or removal. The Designated Biologist shall follow initial grading equipment to look for Covered Species and grading activities shall be done in a manner that allows Designated Biologists to safely survey the area. A Designated biologist shall survey the open areas adjacent to ongoing grading or scraping as the footprint expands. Multiple biologists may be necessary to survey the area appropriately. If a Covered Species is discovered by the Designated Biologist or anyone else, the Designated Biologist shall move the animal to a safe nearby location (e.g., mouth of ground-squirrel burrow outside of the temporary barrier) per the Relocation Plan described in Condition of Approval 8.10 and monitor it until it is determined that it is not imperiled by predators or other dangers.
- 8.14. Inspection of Pipes and Culverts. All construction pipes, culverts, or similar structures that are stored at the Project site for one or more overnight periods shall be securely capped prior to storage or inspected by the Designated Biologist before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a Covered Species is discovered inside a pipe by the Designated Biologist or anyone else, the Covered Species shall be allowed to leave its own accord, or if it can be safely captured, it shall be relocated by the Designated Biologist to a suitable location outside of the Project Area and in accordance with the Conditions of Approval 8.10 and 8.11 above.

Deleted: Auguring

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

8.15. Vehicle and Equipment Inspection. Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall wait for the Covered Species to move unimpeded to a safe location. Alternatively, the Permittee shall contact the Designated Biologist to determine if the Designated Biologist can safely move the Covered Species in Accordance with Conditions of Approval 8.10 and 8.11 above.

8.16. Covered Species Handling and Injury. Covered Species shall be handled and assessed according to the Restraint and Handling of Live Amphibians USGS, National Wildlife Health Center (D. Earl Greene, ARMI SOP NO. 100; 16 February 2001) (Attachment 2). If an injured Covered Species is found during the project term, the individual shall be evaluated by the Designated Biologist who shall then immediately contact the CDFW Regional Representative, via email and telephone, to discuss the next steps. If the CDFW Regional Representative cannot be contacted immediately, the injured Covered Species shall be placed in a shaded container and kept moist. If the CDFW Regional Representative is not available or has not responded within 15 minutes of initial attempts then the following steps shall be taken by the Designated Biologist:

- a) If the injury is minor or healing and the Covered Species is likely to survive, the Covered Species shall be released immediately in accordance with the Condition of Approval 8.10.
- b) If it is determined that the Covered Species has major or serious injuries as a result of Project-related activities the Designated Biologist shall immediately take it to the Lindsay Wildlife Museum or another CDFW approved facility. If taken into captivity, the individual shall remain in captivity and not be released into the wild unless it has been kept in quarantine and the release is authorized by the CDFW and U.S. Fish and Wildlife Service. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The circumstances of the injury, the procedure followed and the final disposition of the injured animal shall be documented in a written incident report as described in Condition of Approval 7.9.

8.17. Time of Day Work Restriction. Permittee shall terminate all Covered Activities 30 minutes before sunset and shall not resume Covered Activities until 30 minutes after sunrise during the Covered Species migration/active season from November 1 to June 15. The Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for determining when Covered Activities shall terminate and resume.

8.18. Wet Season Work Restriction. Covered Activities involving ground disturbing and heavy equipment use (such as excavation, grading, and contouring) during the wet

season (November 1 to April 30) shall be subject to the written approval of CDFW. If approved by CDFW, Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the Project Area. Covered Activities involving ground disturbing activities and heavy equipment use shall cease 24 hours prior to a 40 percent or greater forecast of rain. Covered Activities may continue 24 hours after the rain ceases if and there is less than a 40 percent change of precipitation in the 24-hour forecast.

- 8.18.1. If CDFW approves wet season work, a Designated Biologist(s) shall survey the Project site EACH day rain is forecast and the morning after all storm events. If rain exceeds 0.25 inches during a 24-hour period, work shall cease until there is a less than a 40 percent change of precipitation in the 24-hour forecast.

9. Habitat Management Land Acquisition and Restoration:

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

To meet this requirement, the Permittee shall either purchase 30 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of 30 acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. 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 2.12 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.6 below.

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

- 9.1.1. Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$17,060.70/acre for 30 acres: \$511,821.00. Land acquisition costs are estimated using local fair market current value for lands

Deleted: 8.42

Deleted: 8.42

Deleted: 0.77

Deleted: 8.42

Deleted: 143,651.09

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

with habitat values meeting mitigation requirements and include real estate broker fees and escrow fees;

9.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at **\$17,102.91**;

9.1.3. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at **\$8,065.20**;

9.1.4. Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$5,669.27/acre for 30 acres: ~~\$170,078.10~~. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.

Deleted: 8.42

Deleted: 47,735.25

9.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at **\$12,000.00**.

9.1.6. Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.6, calculated at \$400.00/acre for 2.12 acres: ~~\$848.00~~.

Deleted: for 0.77

Deleted: 308

9.2. Covered Species Credits. Permittee shall purchase 30 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below.

Deleted: 8.42

OR:

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

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

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>); (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting

litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;

- 9.3.6. **Interim Management (Initial and Capital).** Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, 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. ~~Funding for Perpetual Management of HM Lands. CDFW and Permittee entered into a Mitigation Funding Agreement (MFA), dated April 28, 2020, which is incorporated herein by reference, that ensures long-term funding for the perpetual management of the HM lands through a mechanism other than a long-term management endowment. Funding for perpetual management of compensatory habitat, pursuant to the MFA must be completed before starting Covered Activities, or within 18 months of the start of Covered Activities if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.~~

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 long-term funding pursuant to the MFA.

9.4.1. ~~Perpetual Management Funding Agreement. In recognition of Permittee's statutorily defined mission, staff expertise, and statutory authority and constraints, CDFW has determined that perpetual management funding for the Project may be accomplished by a mechanism other than a long-term management endowment. CDFW and Permittee have entered into the MFA, which sets forth the terms and conditions under which Permittee shall ensure~~

Deleted: Endowment Fund. If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 9.3, ...

Deleted: a

funding for the long-term management of the HM lands. The MFA, at a minimum:

9.4.1.1 Requires Permittee to fund the full annual costs of managing the HM lands from Permittee's annual budget;

Deleted: (

9.4.1.2 Requires Permittee to fund and maintain a perpetual security endowment (the Reserve Fund) equal to the cost of five (5) years of management funding for the HM lands for the Project, as calculated in the PAR required by Condition of Approval 9.4.3;

9.4.1.3 Allows CDFW unilaterally to call upon the security endowment, after written notice and a reasonable opportunity to cure, in the event of non-performance of any management obligations by Permittee;

9.4.1.4 Requires Permittee to replenish the security endowment in the event CDFW calls on those funds pursuant to Condition of Approval 9.4.1.3; and

9.4.1.5 Requires Permittee to provide a full endowment fund pursuant to Condition of Approval 9.4.2 within ninety (90) days of receipt of written notice from CDFW of a material breach of the MFA by Permittee.

9.4.2 Endowment Fund. This section 9.4.2 applies only in the event CDFW provides notice of a material breach of the MFA pursuant to Condition of Approval 9.4.1.5 above and Section 7 of the MFA. A long-term management fund (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.

Deleted:). The

Deleted: (s)

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. In the event that funding is not provided through a Perpetual Funding Agreement in accordance

with Condition of Approval 9.4.1 above, such activities shall be funded through the Endowment, and the following requirements shall apply.

- 9.4.2.1 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).;

Deleted:).

- 9.4.2.2 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.

Deleted: ¶
Calculate the Endowment Funds Deposit.

- 9.4.3 Calculate the Long-Term Management Costs for the Reserve Fund or Endowment. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee

shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.

9.4.3.1 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.

9.4.3.2 Endowment Buffers/Assumptions. Permittee shall include in the PAR assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:

9.4.3.2.1 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.

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

9.4.3.2.3 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.

9.5. 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. Habitat Restoration. Permittee shall restore on-site the 0.62 acres of Covered Species habitat that will be temporarily 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 0.62 acres 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 and application methods. The plan shall also indicate the best time of year for seeding to occur. Plantings shall include regular watering to ensure adequate growth.

Deleted: <#>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.¶

Deleted: 77

Deleted:]

Deleted: 77

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 ~~\$719,915.21~~. This amount is based on the cost estimates identified in Condition of Approval 9.1 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; and
 - Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the required acquisition,

Deleted: 228,862.45

protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

Amendment:

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

Stop-Work Order:

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 days to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 25 additional days. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and any other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

Compliance with Other Laws:

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

Notices:

The Permittee shall deliver a copy of ITP signed by all parties by email, registered first class mail, or overnight delivery to the following address:

Habitat Conservation Planning Branch
California Department of Fish and Wildlife

Deleted: fully executed duplicate original

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

Attention: CESA Permitting Program
Post Office Box 944209
Sacramento, CA 94244-2090
CESA@wildlife.ca.gov

Deleted: 1416 Ninth Street, Suite 1266¶
Deleted: 95814
Field Code Changed

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 2081-2014-062-03 in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Erin Chappell, Regional Manager
California Department of Fish and Wildlife
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Telephone (707) 428-2002
R3CESA@wildlife.ca.gov

Deleted: Scott Wilson
Deleted: 7329 Silverado Trail¶
Napa
Deleted: 94558
Deleted: 944-5517
Deleted: Fax (707) 944-55

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

Marcia Grefsrud
California Department of Fish & Wildlife
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Telephone (707) 644-2812
Marcia.Grefsrud@wildlife.ca.gov

Deleted: 7329 Silverado Trail¶
Napa
Deleted: 94558

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, East Bay Regional Park District. (See generally Pub. Resources Code, §§ 21067, 21069). The lead agency's prior environmental review of the Project is set forth in the Vargas Plateau Regional Park Land Use Plan Mitigated Negative Declaration and Initial Study (SCH No.: 2007102135) dated April 2008 that the East Bay Regional Park District adopted for Vargas Plateau Regional Park on April 1, 2008. At the time the lead agency adopted the Mitigated Negative Declaration and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

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

Findings Pursuant to CESA:

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

CDFW finds based on substantial evidence in the ITP application, Vargas Plateau Regional Park Land Use Plan Mitigated Negative Declaration and Initial Study, 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 30 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;
- (3) The take avoidance and mitigation measures required pursuant to the conditions of

Deleted: 8.42

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

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.

Issuance of this Amendment will not increase the amount of take of the Covered Species compared to the Project as originally approved, nor will this Amendment increase other Project impacts on the Covered Species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

(9) CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

(10) Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

(11) None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.

Attachments:

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK

FIGURE 1	Map of Project Location
FIGURE 2	Map of Project Area
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
<u>ATTACHMENT 5</u>	<u>Tracked Changes in Amendment No. 1</u>

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on _____.

Erin Chappell
Regional Manager
Bay Delta Region

Deleted: Scott Wilson ¶

ACKNOWLEDGMENT

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

By: _____ Date: _____

Printed Name: _____ Title: _____

Incidental Take Permit
No. 2081-2014-062-03
EAST BAY REGIONAL PARK DISTRICT
VARGAS PLATEAU REGIONAL PARK