



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 14, 2022

Ms. Kristina Kelchner
East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605
kkelchner@ebparks.org

Subject: Incidental Take Permit for 2081-2022-032-03 Roberts Pool Renovation Project, Alameda County

Dear Ms. Kelchner:

Enclosed you will find an electronic copy of the Incidental Take Permit 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 on the permit **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 will not take effect until the signed acknowledgement is received by CDFW. If you wish to discuss these instructions or have questions regarding the permit, please contact Marcia Grefsrud, Environmental Scientist, at (707) 644-2812 or Marcia.Grefsrud@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
Erin Chappell
Regional Manager
Bay Delta Region

Conserving California's Wildlife Since 1870



**California Department of Fish and Wildlife
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534**

California Endangered Species Act
Native Plant Protection Act
Incidental Take Permit No. 2081-2022-032-03

ROBERTS POOL RENOVATION PROJECT

I. Authority:

This California Endangered Species Act (CESA) and Native Plant Protection Act (NPPA) 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 and 786.9, subdivision (b). 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 The NPPA prohibits the take, possession, propagation, transportation, exportation, importation, or sale of any native plant that is designated by the California Fish and Game Commission as endangered or rare (Fish & G. Code, §§ 1904, 1908; Cal. Code Regs., tit. 14, §§ 670.2, 786.9., subd. (a)(2)). However, CDFW may authorize the take of any such species by permit pursuant to the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) and California Code of Regulations, Title 14, section 786.9, subdivision (b). (See Cal. Code Regs., tit. 14, § 783.4).

Permittee: East Bay Regional Park District
Principal Officer: Kristina Kelchner, Assistant General Manager
Contact Person: Kristina Kelchner, Kkelchner@ebparks.org, (510) 544-2601
Mailing Address: 2950 Peralta Oaks Court, Oakland, CA 94605

II. Effective Date and Expiration Date of this ITP:

This ITP shall become effective when signed by all parties and received by CDFW as described in the Notices section of this ITP. Unless renewed by CDFW, this ITP and its authorization to take the Covered Species shall expire on **December 31, 2030**.

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 5.7 of this ITP.

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

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

III. Project Location:

The Roberts Pool Renovation Project (Project) is located within Roberts Regional Recreation Area at 10570 Skyline Boulevard, Oakland, CA 94611 within the City of Oakland, Alameda County (See Figure 1). The Project is located approximately 1.2 miles east of State Route 13 at approximately 37.812816°, -122.174289°. The Project site is bounded by Joaquin Miller Park to the west and Redwood Regional Park to the east.

IV. Project Description:

The Project includes the renovation and expansion of the pool from four swim lanes (approximately 2,700 sq. ft.) to six competition-level swim lanes as well as two cool down lanes (approximately 5,600 sq. ft.). All construction activities will take place within the existing developed and fenced perimeter of the current pool facility. Construction of the new pool and pool deck will also include grading an adjacent vegetated slope, new retaining walls, planting, irrigation, a new entry kiosk, fences/gates, and parking.

The Project will also include construction of a replacement public changing room building with restrooms and space for lifeguard and park operations. The existing mechanical building will be replaced with a new building that will house all the pool's updated mechanical equipment, chemical treatments, and other equipment. Project activities include grubbing and grading of the adjacent vegetated slope within the Project site, tree removal, and other activities.

Current Conditions

In preparation for construction, the existing landscaped hillslope to the south of the pool was being cleared of overtopping and surrounding trees. Surrounding landscape shrubs were also removed. The slope appears to have been landscaped approximately 30 years ago and included horticultural manzanita, acacia (including trees and shrubby growth), Monterey pine, non-native cedar, eucalyptus, and coast live oak (that appeared to have been planted). The hillside is downslope of an irrigated lawn, which appears to provide some water to hillside vegetation. The clearing of vegetation ceased when a single pallid manzanita (*Arctostaphylos pallida*) was discovered on January 3, 2022. The pallid manzanita is estimated to be 5 to 10 years old and is approximately 4 feet high by 3 feet wide. Currently, a shade structure and exclusion fencing have been installed around the pallid manzanita to protect the plant.

To accommodate the enlarged pool, the surrounding areas for the proposed pool deck and lawn will correspondingly move into the existing landscaped hillslope to the south of the pool where the subject pallid manzanita is located. This will require re-grading the hillslope with a retaining wall that varies from 2 to 5 feet in height. The pallid manzanita is within the proposed grading footprint. The initial plan was to transplant the pallid manzanita to a new location on-site; however, the plant recently tested positive for *Phytophthora*, a soil-inhabiting pathogen, and should not be transplanted. Therefore, the Project will result in take of the pallid manzanita in the form of collection of cuttings and seeds, then removal and disposal of the plant, propagation and outplanting.

Cuttings from this plant will be taken at an appropriate time, if possible, to help maintain the genetic diversity of the Permittee's pallid manzanita populations. The cuttings will be taken by a qualified botanist for growing out in a phytosanitary nursery setting provided the cuttings are free of *Phytophthora*. Additional cuttings and seed collection from an offsite location may be required to meet the success criteria.

Leaving the plant at its current location until next winter is not a viable option due to the following factors: (1) its odds for long-term survival are challenged by its physiology and challenges posed by nearby pine roots, and (2) for the plant to survive at its current location until next winter, it would require ongoing care by a manzanita expert and would have a low chance of survival due to the removal of the surrounding landscaped vegetation and slope disturbance that has already occurred.

V. Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

<u>Name</u>	<u>CESA/NPPA Status</u> ³
1. Pallid manzanita (<i>Arctostaphylos pallida</i>)	Endangered ⁴

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

VI. Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include grading, clearing and excavation behind the exclusion fence, cutting, seed collection, transporting, propagating and outplanting (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 damage to root systems or above-ground branches or foliage and seeds. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of indirect take of the Covered Species from exposure to direct sunlight, exposure to the water mold, *Phytophthora* or other fungi, predation by goats or other mammals, or damage from recreational park users. The areas where authorized take of the Covered Species is expected to occur include: Roberts Pool hillside slope behind the exclusion fence, the outplanting location(s), as well as the phytosanitary nursery where cuttings may be grown (collectively, the Project Area).

The Project is expected to cause the permanent loss of approximately 300 square feet of habitat for the Covered Species. Impacts of the authorized taking also include adverse

³ Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species. Under the NPPA, a plant species may be designated as endangered or rare.

⁴See Cal. Code Regs. tit. 14 § 670.2, subd. (a)(16)(F)).

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). The authorized taking would also result in temporal adverse effects to the Covered Species such as the sudden exposure to direct sunlight resulting from the removal of the existing tree canopy and shading from new construction. Long-term adverse effects may result from overwatering and increased competition for light and soil moisture by existing landscaping, *Phytophthora* infection, fuel management practices, herbicide application, and possible hybridization with horticulturally introduced manzanitas. Indirect and cumulative adverse effects on the Covered Species may result from habitat fragmentation and edge effects of this and other projects in the vicinity.

VII. 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.

VIII. 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. 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 Roberts Pool Complex Replacement Project Mitigated Negative Declaration and Initial Study (SCH No.: 2022030740) adopted by East Bay Regional Park District on May 4, 2022 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
- 3. 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.
- 4. General Provisions:**

- 4.1. 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.
- 4.2. Designated Biologist(s), Biological Monitor(s).** Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) and Biological Monitor(s) using the Biologist Resume Form (Attachment 2) or another format containing the same information at least 14 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist(s) and Biological Monitor(s) are knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist(s) and Biological Monitor(s) 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(s) and Biological Monitor(s) in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist(s) or Biological Monitor(s) must be changed.
- 4.3. Designated Biologist Authority.** To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Site and otherwise facilitate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.
- 4.4. Education Program.** Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work near the Covered Species. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status

pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.

- 4.5. Construction Monitoring Documentation.** The Designated Biologist(s) and Biological Monitor(s) shall maintain construction-monitoring documentation on-site in either hard copy or digital format after exclusion fence is removed and until the Covered Species is removed from the hillside slope, 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 documentation is available for review at the Project site upon request by CDFW.
- 4.6. 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.
- 4.7. Delineation of Property Boundaries.** Before starting Covered Activities Permittee shall clearly delineate a buffer around the Covered Species with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to outside the buffer area until the Covered Species is removed from the hillside slope.
- 4.8. 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.
- 4.9. 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.
- 4.10. CDFW Access.** Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.

5. Monitoring, Notification and Reporting Provisions:

- 5.1. 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.

5.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW if 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 follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.

5.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur until the Covered Species is removed. 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) 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 monitoring activities required by this ITP.

5.4. Quarterly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 5.3 into a Quarterly 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. Quarterly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Marcia Grefsrud (Marcia.Grefsrud@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase or decrease 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.

5.5. 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 Quarterly Compliance Reports for that year identified in Condition of Approval 5.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; and (6) information about other Project impacts on the Covered Species.

- 5.6. CNDDDB Observations.** The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 5.7. Final Mitigation Report.** No later than 45 days after completion of all mitigation measures, including Condition of Approval 8.0, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 5.8. Notification of Take or Damage.** Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or damaged by a Project-related activity, or if the Covered Species is otherwise found dead or damaged within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (707) 428-2002. The initial notification to CDFW shall include information regarding the location, species, and number of plants taken or damaged and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the plant, and if possible, provide a photograph, explanation as to cause of take or damage, and any other pertinent information.

- 6. 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:

- 6.1. Disinfection of Vehicles and Construction Workers.** Permittee shall implement the following best management practices to prevent spread of *Phytophthora*. *Phytophthora* is a soil borne water mold that produces an infection which causes a condition in plants called "root rot" or "dieback."

Work Preparation

- Inform crews about the lifecycle and spread of *Phytophthora* and the risk to the vegetation.
- Inform crews about the Covered Species, its identification and ecology. Flag areas where recruitment is occurring and map using GPS. Record CNDDDB information.
- Work on *Phytophthora* -infected and susceptible species will occur only when soils are dry and minimal soil adhesion to tools and boots will occur.
- Sanitize shoes, pruning gear, and other equipment before working in an area with susceptible species. All mud clods must be cleaned off of gear. Demonstrate sanitation practices when they are working in infested areas – including precleaning and wiping down equipment after cuts in between different trees.
- Provide crews with sanitation kits to have on site in bucket. (Sanitation kits have disinfectant spray (bleach/Lysol), brush for cleaning tools, gloves and bucket).

During On-Site Work

- Work in disease-free areas before proceeding to infested areas.
- If any questions arise, leads for the Project should be notified and issues addressed. Professional input can be sought from Phytosphere or USDA if needed.
- All ground disturbance will be minimized. Tarps will be placed in high travel areas. No digging will occur to remove stumps or underground material.

After Work Completion

- Use all reasonable methods to sanitize personal gear and crew equipment before leaving a *Phytophthora* infested site. Scrape, brush, and/or hose off accumulated soil and mud from clothing, gloves, boots, and shoes. Remove mud and plant debris by blowing out or power washing chipper trucks, chippers, bucket trucks, fertilization and soil aeration equipment, cranes, and other vehicles.

- Materials to be removed from the Project Area must be removed in a covered container into a non-green waste bin. Material should be disposed in garbage.
- Monitor site for any changes in plant/vegetation health to assess work.
- Tools must be disinfected in between cuts on different individuals. Cutting should occur from top branches moving downward (towards soil) on the plant. All cutting tools must be clean.

6.2. Fog Drip. Permittee shall ensure that outplanted Covered Species are protected from fog drip from adjacent vegetation or structures unless otherwise approved by CDFW.

6.3. Irrigation of Landscaping. Irrigation of landscaping shall not occur within the root zone of outplanted Covered Species. The root zone is defined as two times the diameter of the canopy.

6.4. Landscape Planting. To avoid hybridization, Permittee shall not plant horticultural varieties of manzanitas within the Project Area. To prevent shading, crowding and summer fog drip, Permittee shall not plant trees or shrubs in proximity, as determined by the Designated Biologist, to the outplanted Covered Species unless approved by CDFW.

7. Habitat Enhancement, Propagation and Outplanting:

CDFW has determined that habitat enhancement and invasive plant removal within the Project Area, and offsite propagation with a minimum of five surviving individuals of the Covered Species as described in Condition of Approval 7.5, 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, and the extent to which the Covered Activities will impact the habitat.

7.1. Cost Estimates. CDFW has estimated the cost estimates for invasive plant removal, tree removal, propagation/outplanting and monitoring as follows:

7.1.1. Invasive plant removal, cutting, seed collection, germination, propagation and outplanting, developing performance standards, photo monitoring, and monitoring and reporting for the Covered Species as described in Conditions of Approval 7.2, 7.3, 7.4, 7.5 and 7.6 is estimated at \$6,000/year for 10 years: \$60,000.

7.2. Invasive Plant Removal. Any invasive plants that occur within the outplanting Project Area, such as Scotch broom (*Cytisus scoparius*), French broom (*Genista monspessulana*), English ivy (*Hedera helix ssp. helix*), firethorn (*Pyracantha angustifolia*), and any other species that are detected, shall be removed. Invasive

plant removal shall continue annually for ten years at the outplanting location(s) following initial removal within the Project Area.

- 7.3. Removal of Competing Trees and Shrubs.** Competing trees and shrubs, as determined by the Designated Biologist or other CDFW-approved expert in the Covered Species shall be removed from the outplanting site to produce an open canopy within remaining potential Covered Species habitat. Trees and shrubs selected for removal shall be those that are competing for water, air, sunlight, and nutrients with the outplanted Covered Species.
- 7.4. Propagation and Outplanting.** Permittee shall coordinate with a CDFW-approved, Nursery Phytophthora Best Management Practices (NPBMPs) accredited botanical garden or research facility to collect seeds and/or cuttings from the Covered Species or another off-site Covered Species in the event the on-site Covered Species cuttings test positive for Phytophthora or the plant does not survive prior to obtaining cuttings, or if additional cuttings are needed to meet the mitigation requirements. The Designated Biologist or other CDFW-approved expert in the Covered Species shall collect seeds and/or remove the cuttings from the host Covered Species (or another individual(s) approved by CDFW). Permittee shall provide funding for the seed germination, cutting, propagation and outplanting, and monitoring at a CDFW-approved location for a 10-year period. A Propagation and Outplanting Plan (Plan) shall be prepared by the CDFW-approved expert and provided for CDFW approval no less than 30 days prior to outplanting. The Plan shall include site-specific performance standards, such as those listed below, and a minimum of 10 years monitoring. Performance standards, in the context of this ITP, are observable or measurable attributes, such as survival and vigor, that can be used to determine if the compensatory mitigation meets its objectives. Performance standards shall include a minimum of five Covered Species individuals established at the offsite location within 10 years from the date of outplanting.

7.4.1. Individual Covered Species monitoring shall be conducted as follows:

- Tag and number Covered Species individuals using permanent metal tags.
- Record condition (percent senescence, presence of new growth, level of flower and fruit production) for each individual on a standardized data sheet.
- Record height and canopy (or crown) area for each Covered Species individual to assess growth rates and overall health.
- Measure crown diameter in two directions 90 degrees apart; estimate crown area by multiplying the two diameters. This will result in an overestimation of canopy area, but areas can be compared from year to year to assess relative changes.
- Record general health and vigor of all Covered Species individuals during

monitoring, including evidence of stress from excessive or inadequate water; evidence of disease; evidence of browsing or burrowing that is causing loss of plants; and evidence of soil erosion or exposure of roots.

- Percent survival shall be measured quantitatively by examining the condition of each Covered Species individual on an annual basis. The number of live manzanitas shall be divided by the total number of manzanitas documented during baseline monitoring and the result multiplied by 100 to obtain percent survival for the population or installation as a whole.
- Map Covered Species locations at a level of accuracy that will allow for identification of individuals during subsequent monitoring.
- Establish photopoints for each Covered Species individual to allow annual comparison of plant condition as well as immediate site conditions.

7.5. Photo Monitoring. Monitoring of the outplanted individuals of the Covered Species within the Project Area shall occur on an annual basis in spring (March, April, or May) provided that the soil is dry enough. Annual monitoring shall be conducted for 10 years. The goal of annual monitoring is to assess results of the propagation and out-plantings (ITP Condition of Approval 7.4), and to assess success of weed abatement (ITP Condition of Approval 7.6). Annual photographs of the propagated and outplanted Covered Species individual shall be taken from multiple angles and distances to illustrate the overall condition of the Covered Species, the surrounding ground and overhanging vegetation, and condition of the foliage. The objective shall be to illustrate shrub vigor, weed control, and light exposure. Close up photographs shall be taken to illustrate stem health or die-back, and leaf health, as demonstrated by the amount of leaf spotting or necrosis. Annual photographs shall be taken for at least 10 years. In order to be considered successful at the end of the 10-year monitoring period, a minimum of five of the outplanted Covered Species shall be alive and shall exhibit an increase of no more than 25 percent total dieback of stems.

7.6. Weed Abatement. Herbaceous weeds shall be removed by hand within a five-foot radius around the outplanted Covered Species and around any new seedlings for a minimum of ten years. During the 10-year monitoring period (see Condition of Approval 7.4), the Designated Biologist shall determine the frequency of weed eradication needed and the status of the population

7.7. Special Protection Area. Permittee shall designate the outplanting area as a Special Protection Area and, after success criteria are achieved, the Covered Species shall be managed under the East Bay Regional Park District Pallid Manzanita Management Plan.⁵

⁵ Naumovich, L. 2017. East Bay Regional Park District Pallid Manzanita Management Plan. Prepared for the East Bay Regional Park District. Alameda, CA.

8. 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 7 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

8.1. Security Amount. The Security shall be in the amount of **\$60,000.00** or in the amount identified in Condition of Approval 7.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 7.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.

8.2. 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.

8.3. 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.

8.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.

8.5. Security Transmittal. 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 an escrow agreement, irrevocable letter of credit, or other.

8.6. 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.

8.7. Security Release. The Security 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:

- Invasive plant removal, photo monitoring, 10 years of monitoring and timely submission of all required reports including 10 years of monitoring reports;
 - Successfully propagation, outplanting, and survival of a minimum of five Covered Species
- and
- Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the required habitat enhancement, propagation and outplanting and funding not later than 18 months from the

effective date of this ITP. CDFW may require the Permittee to provide additional propagation 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.

IX. 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.

X. Stop-Work Order:

If CDFW determines the Permittee has violated any term or condition of this ITP or has engaged in unlawful take, CDFW may issue Permittee a written stop-work order instructing the Permittee to suspend any Covered Activity for an initial period of up to 30 days or risk suspension or revocation of this ITP. CDFW can issue a stop-work order 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, regardless of whether that species is a Covered Species under this ITP. 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 30 additional days.

If Permittee fails to remedy the violation or to comply with a stop-work order, CDFW may proceed with suspension and revocation of this ITP. 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.

XI. 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.

XII. Notices:

The Permittee shall sign and return this ITP to CDFW. A manual or digital signature is acceptable, provided a digital signature complies with Government Code section 16.5. Digital signatures facilitated by CDFW will be automatically returned. Manual (wet) signatures on duplicate original paper copies shall be returned by the Permittee via registered first-class mail or overnight delivery to the following address:

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

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email or registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2022-032-03) 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

and a copy to:

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

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 and Wildlife
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Telephone (707) 644-2812, Marcia.Grefsrud@wildlife.ca.gov

Incidental Take Permit
No. 2081-2022-032-03
EAST BAY REGIONAL PARK DISTRICT
ROBERTS POOL RENOVATION PROJECT

XIII. Compliance with the California Environmental Quality Act:

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 Roberts Pool Complex Replacement Project Mitigated Negative Declaration and Initial Study (SCH No.: 2022030740), dated March 2022, that the East Bay Regional Park District adopted for Roberts Pool Renovation Project on May 4, 2022 adopted. 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.

XIV. Findings Pursuant to CESA:

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

CDFW finds based on substantial evidence in the ITP application, Initial Study/Mitigated Negative Declaration , the results of 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) seed germination, cutting, propagation and outplanting, and monitoring for a 10-year period; (2) establishment of avoidance zones; (3) worker education; and (4) Quarterly 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 propagation (seed germination, cutting, propagation and outplanting, and monitoring for a ten-year period) 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; along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

XV. Attachments:

FIGURE 1	Map of Project
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Biologist Resume Form
ATTACHMENT 3	Letter of Credit Form
ATTACHMENT 4	Mitigation Payment Transmittal Form

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 6/14/2022.

DocuSigned by:

Erin Chappell

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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:

Kristina Kelchner

By:

9A012BDD92455...

Date: 6/17/2022

Printed Name: Kristina Kelchner

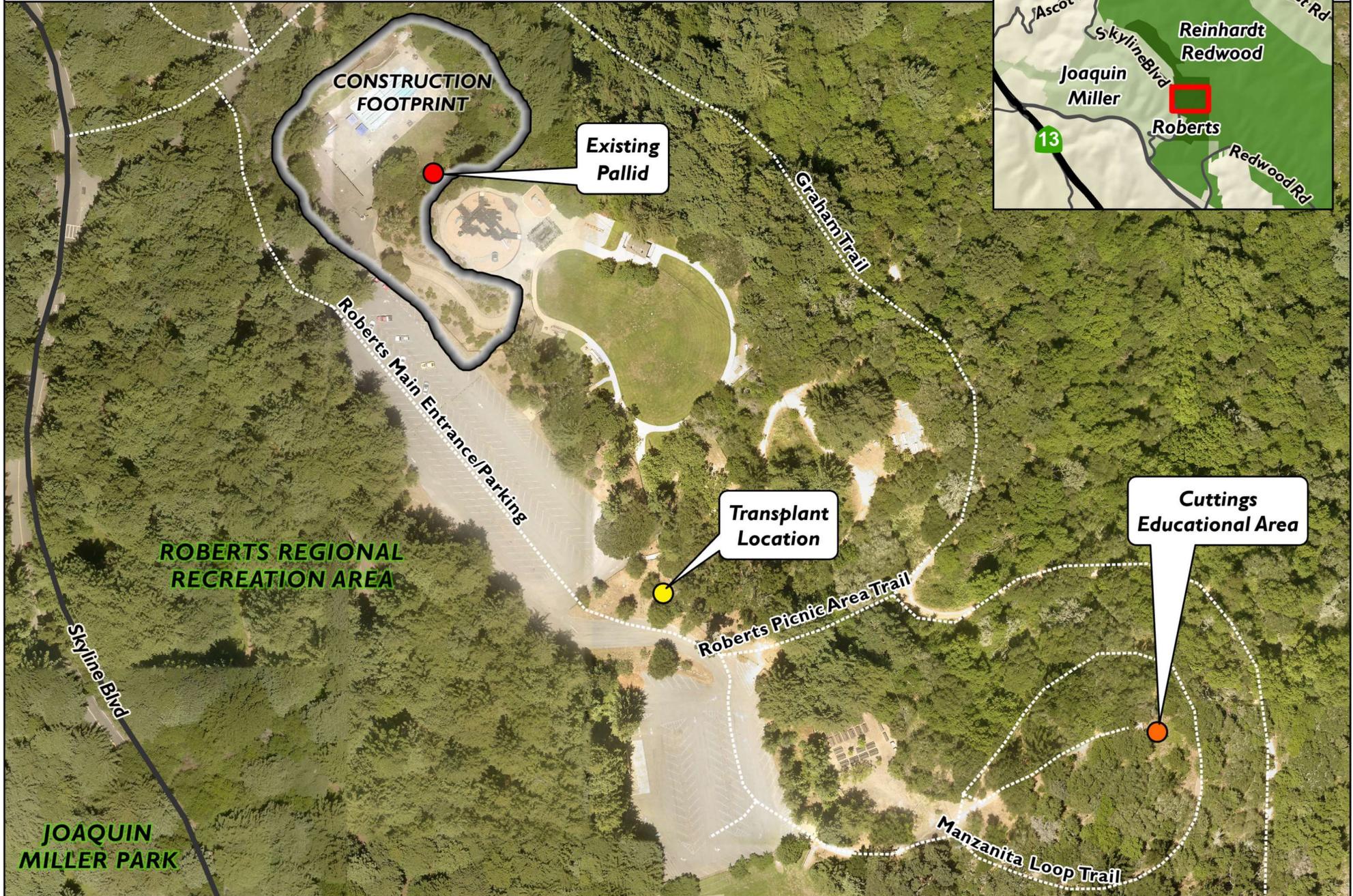
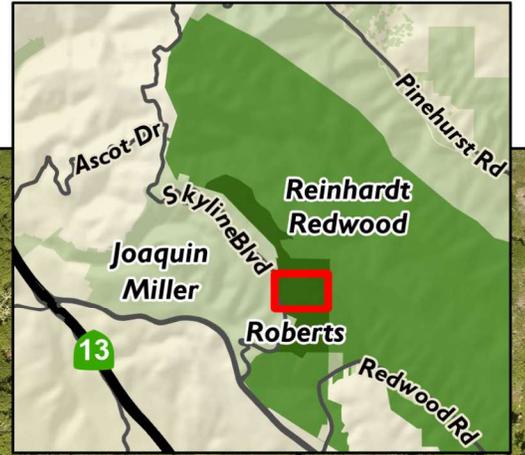
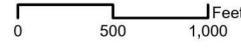
Title: Assistant General Manager

Incidental Take Permit
No. 2081-2022-032-03
**EAST BAY REGIONAL PARK DISTRICT
ROBERTS POOL RENOVATION PROJECT**



Roberts Regional Recreation Area

Pallid manzanita: Existing, Transplant, and Cuttings Locations



Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT NO. 2081-2022-032-03**

PERMITTEE: East Bay Regional Park District

PROJECT: Roberts Pool Renovation Project

PURPOSE OF THE MMRP

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

OBLIGATIONS OF PERMITTEE

Mitigation measures must be implemented within the time periods indicated in the table that appears below. Permittee has the primary responsibility for monitoring compliance with all mitigation measures and for reporting to CDFW on the progress in implementing those measures. 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	Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.	ITP Condition # 4.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	Designated Biologist(s), Biological Monitor(s). Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) and Biological Monitor(s) using the Biologist Resume Form (ATTACHMENT 2) or another format containing the same information at least 14 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist(s) and Biological Monitor(s) are knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist(s) and Biological Monitor(s) 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(s) and Biological Monitor(s) in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist(s) or Biological Monitor(s) must be changed.	ITP Condition # 4.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
3	Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work near the Covered Species. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.	ITP Condition # 4.4	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
4	Delineation of Property Boundaries. Before starting Covered Activities Permittee shall clearly delineate a buffer around the Covered Species with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to outside the buffer area until the Covered Species is removed from the hillside slope.	ITP Condition # 4.7	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
5	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.	ITP Condition # 4.8	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	

6	CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.	ITP Condition # 4.10	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
7	Notification of Non-compliance. The Designated Representative shall immediately notify CDFW if 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 follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.	ITP Condition # 5.2	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
8	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.	ITP Condition # 5.1	Before commencing ground- or vegetation-disturbing activities	Permittee	
9	<p>Disinfection of Vehicles and Construction Workers. Permittee shall implement the following best management practices to prevent spread of Phytophthora. Phytophthora is a soil borne water mold that produces an infection which causes a condition in plants called "root rot" or "dieback."</p> <p>Work Preparation</p> <ul style="list-style-type: none"> • Inform crews about the lifecycle and spread of Phytophthora and the risk to the vegetation. • Inform crews about the Covered Species, its identification and ecology. Flag areas where recruitment is occurring and map using GPS. Record CNDDDB information. • Work on Phytophthora -infected and susceptible species will occur only when soils are dry and minimal soil adhesion to tools and boots will occur. • Sanitize shoes, pruning gear, and other equipment before working in an area with susceptible species. All mud clods must be cleaned off of gear. Demonstrate sanitation practices when they are working in infested areas – including precleaning and wiping down equipment after cuts in between different trees. • Provide crews with sanitation kits to have on site in bucket. (Sanitation kits have disinfectant spray (bleach/Lysol), brush for cleaning tools, gloves and bucket). <p>During On-Site Work</p> <ul style="list-style-type: none"> • Work in disease-free areas before proceeding to infested areas. • If any questions arise, leads for the Project should be notified and issues addressed. Professional input can be sought from Phytosphere or USDA if needed. • All ground disturbance will be minimized. Tarps will be placed in high travel areas. No digging will occur to remove stumps or underground material. <p>After Work Completion</p> <ul style="list-style-type: none"> • Use all reasonable methods to sanitize personal gear and crew equipment before leaving a Phytophthora infested site. Scrape, brush, and/or hose off accumulated soil and mud from clothing, gloves, boots, and shoes. Remove mud and plant debris by blowing out or power washing chipper trucks, chippers, bucket trucks, fertilization and soil aeration equipment, cranes, and other vehicles. 	ITP Condition # 6.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	

	<ul style="list-style-type: none"> Materials to be removed from the Project Area must be removed in a covered container into a non-green waste bin. Material should be disposed in garbage. Monitor site for any changes in plant/vegetation health to assess work. Tools must be disinfected in between cuts on different individuals. Cutting should occur from top branches moving downward (towards soil) on the plant. All cutting tools must be clean. 				
10	CDFW has determined that habitat enhancement and invasive plant removal within the Project Area, and offsite propagation with a minimum of five surviving individuals of the Covered Species as described in Condition of Approval 7.5, 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, and the extent to which the Covered Activities will impact the habitat.	ITP Condition # 7	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
11	<p>Cost Estimates. CDFW has estimated the cost estimates for invasive plant removal, tree removal, propagation/outplanting and monitoring as follows:</p> <p>Invasive plant removal, cutting, seed collection, germination, propagation and outplanting, developing performance standards photo monitoring, and monitoring and reporting for the on-site Covered Species as described in Conditions of Approval 7.2, 7.3,7.4, 7.5 and 7.6 is estimated at \$6,000/year for 10 years: \$60,000.</p>	ITP Condition # 7.1	Before commencing ground- or vegetation-disturbing activities	Permittee	
12	<p>The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 7 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:</p> <p>8.1. Security Amount. The Security shall be in the amount of \$60,000.00 or in the amount identified in Condition of Approval 7.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 7.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.</p> <p>8.2. 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.</p> <p>8.3. 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.</p> <p>8.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.</p> <p>8.5. Security Transmittal. 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 an escrow agreement, irrevocable letter of credit, or other.</p> <p>Even if Security is provided, the Permittee must complete the required habitat enhancement, propagation and outplanting and funding not later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional propagation 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 # 8.0-8.5	Before commencing ground- or vegetation-disturbing activities	Permittee	

13	Invasive Plant Removal. Any invasive plants that occur within the outplanting Project Area, such as Scotch broom (<i>Cytisus scoparius</i>), French broom (<i>Genista monspessulana</i>), English ivy (<i>Hedera helix</i> ssp. <i>helix</i>), firethorn (<i>Pyracantha angustifolia</i>), and any other species that are detected, shall be removed. Invasive plant removal shall continue annually for ten years at the outplanting location(s) following initial removal within the Project Area.	ITP Condition # 7.2	Before outplanting	Permittee	
14	Removal of Competing Trees and Shrubs. Competing trees and shrubs, as determined by the Designated Biologist or other CDFW-approved expert in the Covered Species shall be removed from the outplanting site to produce an open canopy within remaining potential Covered Species habitat. Trees and shrubs selected for removal shall be those that are competing for water, air, sunlight, and nutrients with the outplanted Covered Species.	ITP Condition # 7.3	Before outplanting		
15	Propagation and Outplanting. Permittee shall coordinate with a CDFW-approved, Nursery Phytophthora Best Management Practices (NPBMPs) accredited botanical garden or research facility to collect seeds and/or cuttings from the Covered Species or another off-site Covered Species in the event the on-site Covered Species cuttings test positive for Phytophthora or the plant does not survive prior to obtaining cuttings, or if additional cuttings are needed to meet the mitigation requirements. The Designated Biologist or other CDFW-approved expert in the Covered Species shall collect seeds and/or remove the cuttings from the host Covered Species (or another individual(s) approved by CDFW). Permittee shall provide funding for the seed germination, cutting, propagation and outplanting, and monitoring at a CDFW-approved location for a 10-year period. A Propagation and Outplanting Plan (Plan) shall be prepared by the CDFW-approved expert and provided for CDFW approval no less than 30 days prior to outplanting. The Plan shall include site-specific performance standards, such as those listed below, and a minimum of 10 years monitoring. Performance standards, in the context of this ITP, are observable or measurable attributes, such as survival and vigor, that can be used to determine if the compensatory mitigation meets its objectives. Performance standards shall include a minimum of five Covered Species individuals established at the offsite location within 10 years from the date of outplanting.	ITP Condition # 7.4	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
DURING CONSTRUCTION					
16	Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Site and otherwise facilitate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.	ITP Condition # 4.3	Entire Project	Permittee	
17	Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur until the Covered Species is removed. The Designated Biologist shall conduct compliance inspections to: (1) minimize incidental take of the Covered Species;	ITP Condition # 5.3	Entire Project	Permittee	

	<p>(2) prevent unlawful take of species;</p> <p>(3) check for compliance with all measures of this ITP;</p> <p>(4) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area.</p> <p>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 monitoring activities required by this ITP.</p>				
18	<p>Quarterly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 5.3 into a Quarterly 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. Quarterly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Marcia Grefsrud (Marcia.Grefsrud@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase or decrease 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.</p>	ITP Condition # 5.4	Entire Project	Permittee	
19	<p>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 Quarterly Compliance Reports for that year identified in Condition of Approval 5.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; and (6) information about other Project impacts on the Covered Species.</p>	ITP Condition # 5.5	Entire Project	Permittee	
20	<p>CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation.</p>	ITP Condition # 5.6	Entire Project	Permittee	
21	<p>Construction Monitoring Documentation. The Designated Biologist(s) and Biological Monitor(s) shall maintain construction-monitoring documentation on-site in either hard copy or digital format after exclusion fence is removed and until the Covered Species is removed from the hillside slope, 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 documentation is available for review at the Project site upon request by CDFW.</p>	ITP Condition # 4.5	Entire Project	Permittee	

22	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.	ITP Condition # 4.6	Entire Project	Permittee	
23	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.	ITP Condition # 6.9	Entire Project	Permittee	
24	Notification of Take or Damage. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or damaged by a Project-related activity, or if the Covered Species is otherwise found dead or damaged within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (707) 428-2002. The initial notification to CDFW shall include information regarding the location, species, and number of plants taken or damaged and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the plant, and if possible, provide a photograph, explanation as to cause of take or damage, and any other pertinent information.	ITP Condition # 5.8	Entire Project	Permittee	
25	Fog Drip. Permittee shall ensure that the outplanted Covered Species are protected from fog drip from adjacent vegetation or structures unless otherwise approved by CDFW.	ITP Condition # 6.2	During monitoring period	Permittee	
26	Irrigation of Landscaping. Irrigation of landscaping shall not occur within the root zone of r outplanted Covered Species. The root zone is defined as two times the diameter of the canopy.	ITP Condition # 6.3	During monitoring period and perpetuity	Permittee	
27	Individual Covered Species monitoring shall be conducted as follows: <ul style="list-style-type: none"> • Tag and number Covered Species individuals using permanent metal tags. • Record condition (percent senescence, presence of new growth, level of flower and fruit production) for each individual on a standardized data sheet. • Record height and canopy (or crown) area for each Covered Species individual to assess growth rates and overall health. • Measure crown diameter in two directions 90 degrees apart; estimate crown area by multiplying the two diameters. This will result in an overestimation of canopy area, but areas can be compared from year to year to assess relative changes. • Record general health and vigor of all Covered Species individuals during monitoring, including evidence of stress from excessive or inadequate water; evidence of disease; evidence of browsing or burrowing that is causing loss of plants; and evidence of soil erosion or exposure of roots. • Percent survival shall be measured quantitatively by examining the condition of each Covered Species individual on an annual basis. The number of live manzanitas shall be divided by the total number of manzanitas documented during baseline monitoring and the result multiplied by 100 to obtain percent survival for the population or installation as a whole. 	ITP Condition # 7.4.1	During monitoring period	Permittee	

	<ul style="list-style-type: none"> Map Covered Species locations at a level of accuracy that will allow for identification of individuals during subsequent monitoring. Establish photopoints for each Covered Species individual to allow annual comparison of plant condition as well as immediate site conditions. 				
28	Photo Monitoring. Monitoring of the outplanted individual of the Covered Species within the Project Area shall occur on an annual basis in spring (March, April, or May) provided that the soil is dry enough. Annual monitoring shall be conducted for 10 years. The goal of annual monitoring is to assess results of the propagation and out-plantings (ITP Condition of Approval 7.4), and to assess success of onsite weed abatement (ITP Condition of Approval 7.6). Annual photographs of the propagated and outplanted Covered Species individual shall be taken from multiple angles and distances to illustrate the overall condition of the Covered Species, the surrounding ground and overhanging vegetation, and condition of the foliage. The objective shall be to illustrate shrub vigor, weed control, and light exposure. Close up photographs shall be taken to illustrate stem health or die-back, and leaf health, as demonstrated by the amount of leaf spotting or necrosis. Annual photographs shall be taken for at least 10 years. In order to be considered successful at the end of the 10-year monitoring period, a minimum of five of the outplanted Covered Species shall be alive and shall exhibit an increase of no more than 25 percent total dieback of stems.	ITP Condition # 7.5	During monitoring period	Permittee	
29	Weed Abatement. Herbaceous weeds shall be removed by hand within a five-foot radius around the outplanted individual of the Covered Species and around any new seedlings for a minimum of 10 years. During the 10-year monitoring period (see Condition of Approval 7.4), the Designated Biologist shall determine the frequency of weed eradication needed and the status of the population	ITP Condition # 7.6	Before planting and during monitoring period	Permittee	
30	Landscape Planting. To avoid hybridization, Permittee shall not plant horticultural varieties of manzanitas within the Project Area. To prevent shading, crowding and summer fog drip, Permittee shall not plant trees or shrubs in proximity, as determined by the Designated Biologist, to the outplanted Covered Species unless approved by CDFW.	ITP Condition # 6.4	Entire Project	Permittee	
POST-CONSTRUCTION					
31	Final Mitigation Report. No later than 45 days after completion of all mitigation measures, including Condition of Approval 8.0, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.	ITP Condition # 5.7	After completion of mitigation	Permittee	
32	Special Protection Area. Permittee shall designate the outplanting area as a Special Protection Area and, after success criteria are achieved, the Covered Species shall be managed under the East Bay Regional Park District Pallid Manzanita Management Plan	ITP Condition # 7.7	After completion of mitigation	Permittee	

33	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.	ITP Condition # 8.6		CDFW	
34	<p>Security Release. The Security 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"> • Invasive plant removal, photo monitoring, 10 years of monitoring and timely submission of all required reports including 10 years of monitoring reports; • Successfully propagation, outplanting, and survival of a minimum of five additional Covered Species • and • Timely submission of all required reports. 	ITP Condition # 8.7	After completion of mitigation	CDFW	



Department of Fish and Wildlife

BIOLOGIST RESUME FORM

This form requests information about the qualifications of the Qualified Biologist, Designated Biologist and Biological Monitor specified in California Endangered Species Act Incidental Take Permits (ITP) and Lake or Streambed Alteration (LSA) Agreements issued by California Department of Fish and Wildlife (CDFW).

Completing this form will ensure the receipt of adequate information and expedite CDFW review of qualifications.

SECTION I. NAME AND CONTACT INFORMATION

Name:		Title:	
Company Name & Address:		Phone:	
		Email:	

SECTION II. EDUCATION

College/University & Degree Type Related to Natural Resource Science:	
Other Relevant Workshops & Training:	

SECTION III. ROLE(S) AND PERMIT REQUIREMENTS

Requested Role(s):	
Relevant LSA Agreement Measures or ITP Conditions ² :	

SECTION IV. SPECIES AND RESOURCE EXPERIENCE – SUMMARY

This section summarizes experience by special status species and other resource. Use one row for each species or other resource where surveys or special protections are required in the CESA ITP or LSA Agreement for which biologist approval is requested.³ If more space is needed, add rows to this table. Provide details in Section 5.

Species or Resource	Number of Field Seasons & Hours, Life Stages Observed <i>Provide project details in Section 5</i>	Life History Knowledge <i>Describe formal workshops & training with dates, or informal training details</i>	CDFW SCP, MOU, & USFWS 10a1a Authorization Number & Authorized Activities <i>This form does not fulfill SCP, MOU, & USFWS 10a1a reporting requirements</i>
Insert Species or Resource 1	Field seasons: Hours: Life Stages:		Issued to: Expiration: Agency contact:
Insert Species or Resource 2	Field seasons: Hours: Life Stages:		Issued to: Expiration: Agency contact:
Insert Species or Resource 3	Field seasons: Hours: Life Stages:		Issued to: Expiration: Agency contact:

² List all measures and conditions from the LSA Agreement or ITP requiring biological staff (i.e., Qualified Biologist, Designated Biologist, or Biological Monitor).

³ Often LSA Agreements/ITPs require surveys and other protections for multiple species and other resources. Include only those for which the biologist has experience and is requesting approval.

SECTION V. SPECIES AND RESOURCE EXPERIENCE – DETAILS

This section details experience from the three most recent and relevant projects for each species and resource identified in Section 4. If more space is needed, attach additional pages in the same table format (i.e., copy/paste format).

A. Species or Resource:			
Project 1 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s) ⁴ :	
Survey Type(s) ⁵ :		Construction Monitoring ⁶ :	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB ⁷ (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 2 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 3 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:

⁴ Insert the role as described in the associated LSA Agreement, ITP or other agency permit. If these permits were not issued, describe the role based on the duties, e.g., "lead biologist with handling authorization" or "biological monitor."

⁵ For example, pre-construction survey or description of the protocol or guideline followed.

⁶ Include the number of days and describe the types of activities monitored (e.g., heavy equipment operation).

⁷ CNDDDB is the abbreviation for California Natural Diversity Database.

Project Name:
LSA Agreement/ITP Number(s):

Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Additional Information:			

B. Species or Resource:			
Project 1 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 2 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 3 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:

Project Name:
LSA Agreement/ITP Number(s):

Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Additional Information:			

C. Species or Resource:			
Project 1 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 2 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 3 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:

Project Name:
LSA Agreement/ITP Number(s):

Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why: CDFW and Other Agency Email:			
Additional Information:			

[Financial institution letterhead]

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

Issue Date: **[date]**

Beneficiary:

California Department of Fish and Wildlife
Habitat Conservation Planning Branch
Post Office Box 944209
Sacramento, CA 94244-2090
Attn: HCPB Contract Coordinator

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

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

Dear Sirs:

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

6. The Certificate shall be completed and signed by an Authorized Representative of CDFW as defined in paragraph 12 below. Presentation by CDFW of a completed Certificate may be made in person or by registered mail, return receipt requested, or by overnight courier.
7. Upon presentation of a duly executed Certificate as above provided, payment shall be made to CDFW, or to the account of CDFW, in immediately available funds, as CDFW shall specify.
8. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give CDFW prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Credit, state the reasons therefore, and await further instruction.
9. Upon being notified that the demand for payment was not effected in conformity with the Credit, CDFW may correct any such non-conforming demand for payment under the terms and conditions stated herein.
10. All drawings under this Credit shall be paid with our funds. Each drawing honored by us hereunder shall reduce, *pro tanto*, the Principal Sum. By paying to CDFW an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.
11. This Credit will be cancelled upon receipt by us of Certificate of Cancellation/Reduction, which: (i) shall be in the form of Attachment B, which is attached hereto, and (ii) shall be completed and signed by an Authorized Representative of CDFW, as defined in paragraph 12 below.
12. An Authorized Representative shall mean the Director of CDFW; the General Counsel of CDFW; a Regional Manager of CDFW; or the Branch Chief of CDFW's Habitat Conservation Planning Branch.
13. This Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof, unless at least sixty (60) days prior to any such date, we notify CDFW in writing by registered mail, return receipt requested, or by overnight courier that we elect not to consider this Credit extended for any such period.
14. Communications with respect to this Credit shall be in writing and addressed to us at [***name and address of financial institution***], specifically referring upon such writing to this credit by number. The address for notices with respect to this Credit shall be: (i) for CDFW: Department of Fish and Wildlife, Habitat Conservation Planning Branch, Post Office Box 944209, Sacramento, CA 94244-2090, Attn: HCPB Contract Coordinator; and (ii) for the Applicant: [***name and address of applicant***].

15. This Credit may not be transferred.

16. This Credit is subject to the International Standby Practices 1998 ("ISP 98"). As to matters not covered by the ISP 98 and to the extent not inconsistent with the ISP 98, this credit shall be governed by and construed in accordance with the Uniform Commercial Code, Article 5 of the State of California.

17. This Credit shall, if not canceled, expire on [**expiration date**], or any extended expiration date.

18. We hereby agree with CDFW that documents presented in compliance with the terms of this Credit will be duly honored upon presentation, as specified herein.

19. This Credit sets forth in full the terms of our undertaking. Such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which this Credit is referred to or to which this Credit relates and any such reference shall not be deemed to incorporate herein by reference any document or instrument.

[Name of financial institution]

By: _____

Name: _____

Title: _____

Telephone: _____

ATTACHMENT A

CERTIFICATE FOR DRAWING

[*CDFW Letterhead*]

[*Date*]

[*Name and address of financial institution*]

Re: Irrevocable Standby Letter of Credit No. [*number issued by financial institution*]

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

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

Therefore, CDFW has executed and delivered this certificate as of this ___ day of [*month*], [*year*].

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

[*Insert one of the following:* "Director" **or** "General Counsel" **or** "Regional Manager, [*Name of Regional Office*]" **or** "Chief, Habitat Conservation Planning Branch"]

ATTACHMENT B

CERTIFICATE FOR CANCELLATION/REDUCTION

[*CDFW Letterhead*]

[*Date*]

[*Name and address of financial institution*]

Re: Irrevocable Standby Letter of Credit No. [*number issued by financial institution*]

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

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

Therefore, CDFW has executed and delivered this certificate as of this ____ day of [*month*], [*year*].

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

[*Insert one of the following:* “Director” **or** “General Counsel” **or** “Regional Manager, [*Name of Regional Office*]” **or** “Chief, Habitat Conservation Planning Branch”]

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: _____