



California Department of Fish and Wildlife
South Coast Region
3883 RUFFIN ROAD
SAN DIEGO, CA 92123

California Endangered Species Act
Incidental Take Permit No. 2081-2022-083-05

SAN JOSE CREEK BRIDGE REPLACEMENT PROJECT

I. Authority:

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

Permittee:	California Department of Transportation (Caltrans)
Principal Officer:	Morgan Robertson, Sr. Environmental Scientist, 559-908-4107
Contact Person:	Chris Zotovich, Environmental Scientist, 805-305-4802
Mailing Address:	50 Higuera Street San Luis Obispo, CA 93401

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, 2027**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.8 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 San Jose Creek Bridge Replacement Project (Project) is located on State Route 217 where it crosses San Jose Creek within the City of Goleta, Santa Barbara County (Figure 1). The project is located between postmile 0.9 to 1.4, and the coordinates are Latitude 34.420797, Longitude -119.829759. The project is located just east of the main campus of the University of Santa Barbara.



Figure 1. Map of Project Location

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IV. Project Description:

The project includes replacing San Jose Creek Bridge on State Route 217, reconstructing bridge approaches, and realigning the multiuse path. The project will consist of two construction stages and is expected to take two construction seasons to complete. Stage 1 will remove and replace the northbound lanes, and Stage 2 will remove and replace the southbound lanes. Instream construction season is June 1 to October 31.

Bridge Replacement

The existing 4-lane, 7-span reinforced concrete slab bridge will be replaced with a 4-lane, 2-span precast girder bridge. The new bridge will be longer, and the east abutment will be placed landward of the existing east abutment and the west abutment will be placed approximately 10 feet west of the existing west abutment. The existing sixty-six bridge columns will be removed and replaced with eight new columns. The new columns will be located within the ordinary high-water mark near the left bank.

Road and Multiuse Trail Realignment

To accommodate the increased deck depth of the new bridge and ensure the lowest soffit elevation meets the minimum elevation of 12 feet, the roadway approaches and multiuse path will be reconstructed to transition to the new elevated deck height. The multiuse path on the south side of the road will be realigned closer toward the road. The road shoulder on the north side of the bridge will be increased by 2 feet to increase safety for bicycle use.

Temporary Creek Diversion and Dewatering

A Temporary Creek Diversion System will be used to work within a dry environment. A temporary stream diversion will be constructed to dewater one side of the stream channel at a time, leaving approximately half the width of the stream unobstructed.

Night Work

Night work activity within the creek channel will be limited only to workers on foot in the dewatered area during the placement of girders.

Revegetation and Vegetation Enhancement

Although the project will not result in permanent impacts to riparian vegetation, 1.26 acres of temporary impacts will occur. All areas temporarily impacted by project activities will be restored or enhanced according to the San Jose Creek State Route 217 Bridge Replacement Project Landscaping Design Plans dated August 15, 2022 (Attachment 1). Brush layering and willow fascine have been incorporated into the riparian vegetation to expedite riparian vegetation restoration, increase organic and small woody debris contributions to the stream, add habitat complexity, and promote invertebrate food sources.

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

This ITP covers the following species:

<u>Name</u>	<u>CESA Status</u> ³
1. Southern California Steelhead (<i>Oncorhynchus mykiss</i>)	Candidate 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 in the form of relocation. The activities described above expected to result in incidental take of individuals of the Covered Species include dewatering Project work areas, installation of temporary creek diversion systems, sediment mobilization, contaminants, and temporary reduction in riparian vegetation (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 exposure to suspended sediments, contaminants released during demolition and construction of bridges, stranding during dewatering, and relocation. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species from exposure to suspended sediments, stranding, and relocation. The areas where authorized take of the Covered Species is expected to occur include the bed, bank, channel, and riparian habitat areas of San Jose Creek (Project Area).

The Project is not expected to cause permanent impacts to the Covered Species. There will be temporary impacts of 1.26 acres of stream channel habitat and riparian habitat to the Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation, and the Project’s incremental contribution to cumulative impacts (indirect impacts). These impacts include: capture and relocation; inadvertent construction related spills and turbidity; increased competition for food and space due to relocation; and temporary decreases in food source due to dewatering and riparian vegetation removal.

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

³ Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species.

⁴The species status may change following the decision of the Fish and Game Commission to designate the species as threatened or endangered, but if there is such designation, the species will remain a Covered Species. See 2022 Cal. Reg. Notice Register, No. 19-Z, pp. 541 (May 13, 2022).

of Covered Species outside of the Project Area, take of Covered Species resulting from violation of this ITP, or intentional take of Covered Species except for capture and relocation of Covered Species as authorized by this ITP.

CDFW cannot quantify the precise number of Covered Species that may be taken as a result of the proposed action but can estimate a range of take that would reasonably occur based on Project Activities and current knowledge of steelhead populations within the watershed. CDFW anticipates the overall potential for take to be low given the avoidance and minimization measures in place by the Project. CDFW must provide an initial limit for all forms of take because if significant amounts of Covered Species are encountered, it indicates that the assumptions about risk were not accurate. Therefore, if ten (10) Covered Species are captured and relocated, the extent of take authorized would be met. No lethal take is authorized by this Incidental Take Permit. If this occurs, Caltrans will need to contact and consult with CDFW immediately to ensure that no additional take could occur related to the Project. Covered Activities that may result in take shall cease during this consultation because additional take cannot be authorized without amendment of this ITP.

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, and noise and vibration generating activities that may cause take. CDFW's issuance of this ITP and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following Conditions of Approval:

- 1. Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
- 2. CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Mitigated Negative Declaration for the State Route 217 San Jose Creek Bridge Replacement Project (SCH No.: 2020049028) certified by the California Department of Transportation on September 21, 2020, as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
- 3. LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No. EPIMS-SBA-18681-R5) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
- 4. ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the San Jose Creek Bridge Replacement at SR-217 in Santa Barbara County (Biological Opinion No. WCR-2018-11011) for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered

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Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.

5. ITP Time Frame Compliance: Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 2 to this ITP.

6. General Provisions:

- 6.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
- 6.2. Designated Biologist(s) and 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). 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.
- 6.3. 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.

- 6.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall post a fact sheet handout containing this information for workers to carry in the Project Area. 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. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.
- 6.5. Construction Monitoring Documentation. The Designated Biologist(s) and Biological Monitor(s) shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project site upon request by CDFW.
- 6.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed, ideally at daily intervals but at least once a week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 6.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 6.8. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material. Tightly woven silt fencing material or woven organic materials such as coir logs (without mono-filament netting) shall be permitted.
- 6.9. Delineation of Property Boundaries. Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee

shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.

- 6.10. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area before Project Activities start with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 6.11. Project Access. Project-related personnel shall access the Project Area using designated routes. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas.
- 6.12. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas.
- 6.13. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall 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. Permittee shall report all spills within the stream channel immediately to CDFW.
- 6.14. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.15. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

7. Monitoring, Notification and Reporting Provisions:

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Covered Species Taken During Relocation. Permittee shall provide verbal notification to CDFW within 24 hours of Covered Species observation within the Project Area. A Relocation Report shall be submitted to CDFW within 5 days of any Covered Species

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relocation effort as described within the Relocation Plan. The report shall include number of Covered Species pursued, captured, and relocated; health status; and any other pertinent information of Covered Species pursued, captured, or relocated.

- 7.3. Notification of Non-compliance. The Designated Representative and/or Designated Biologist 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 or Designated Biologist 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.
- 7.4. Compliance Monitoring. The Designated Biologist shall be on-site daily during riparian vegetation removal or clearing, installation of exclusionary fencing, concrete pours and washouts, installation and removal of diversion. Otherwise, the Designated Biologist shall conduct inspections at least weekly and the Biological Monitor shall conduct inspections daily. The Designated Biologist and Biological Monitor shall conduct compliance inspections to:
- (1) minimize incidental take of the Covered Species;
 - (2) prevent unlawful take of species;
 - (3) check for compliance with all measures of this ITP;
 - (4) check all exclusion zones; and
 - (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area.

The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.

- 7.5. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.4 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall include details on temporary and permanent impacts to date; numbers of Covered Species taken to date; and monitoring results required by the terms of this ITP, including monitoring associated planning documents required per this ITP. Permittee shall submit Monthly Compliance Reports 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 Erika Cleugh (Erika.Cleugh@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If the reporting schedule requires changes, CDFW will notify Permittee in writing.

- 7.6. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 7.5; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; (7) amount of take to date; (8) information about other Project impacts on the Covered Species.
- 7.7. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within sixty calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 7.8. Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 7.9. Notification of Injury or Mortality. Permittee shall immediately (within 24 hours) notify the Designated Biologist if a Covered Species is injured or killed by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project.

The Designated Biologist or Designated Representative shall provide initial notification to CDFW by emailing Erika Cleugh at Erika.Cleugh@wildlife.ca.gov and Headquarters CESA Program at CESA@wildlife.ca.gov. The initial notification to CDFW shall include information regarding the location, species, and number of individuals injured or killed and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph, explanation as to cause of injury or mortality, and any other pertinent information.

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

- 8.1. Seasonal In Channel Work Window. Project activities in and around the stream channel shall limited between June 1 and October 31 to avoid impacts to migrating steelhead. Vegetation trimming (without root removal, ground disturbance, or implemented by heavy equipment), revegetation, restoration, and erosion control work can occur outside of the above stated work window.
- 8.2. Work in Wetted Stream. No work shall occur in wetted portions of the creek channel, including but not limited to ponded, flowing or wetland areas. Water shall be diverted around work area and/or dewatered in accordance with an approved diversion/dewatering plan prior to initiating work consistent with Condition of Approval 8.8.
- 8.3. Erosion Control. All erosion and sediment control measures shall be installed prior to start of Covered Activities. Permittee shall utilize erosion control measures throughout all phases of the Project where sediment runoff from exposed slopes could leave the Project Area and/or enter a drainage, stream, or ponded area. Permittee shall consult 72-hour weather forecasts from the National Weather Service to avoid starting any phase of the Project that may result in sediment runoff to a drainage, stream, or ponded area. The Designated Biologist shall monitor erosion control measures before, during, and after each storm event and Permittee shall repair and/or replace ineffective measures immediately. Following completion of the Project, Permittee shall implement erosion control measures for all disturbed areas.
- 8.4. Hours of Operation and Lighting. Construction activities shall take place during daylight hours (30 minutes before sunrise to 30 minutes after sunset). If night work is necessary, it shall be limited and light shall be shielded from adjacent habitat.
- 8.5. Weather Limitations. Permittee shall restrict work to periods of dry weather. The Permittee shall monitor the National Weather Service 72-hour forecast daily for the project area. When ¼ inch or more of precipitation is forecasted to occur, the Permittee shall stop work

before precipitation commences. Work shall not restart until runoff ceases and there is less than 40 percent chance of rain forecasted for the following 24-hour period.

- 8.6. Post Storm Inspection. After any storm event, Permittee shall inspect all sites within 72 hours. Permittee shall repair or correct any insufficient erosion control measures.
- 8.7. Relocation Plan. Permittee shall prepare and submit to CDFW for approval 30 days before start of Covered activities, a plan to relocate the Covered Species from the area proposed for dewatering. The Relocation Plan shall include at minimum the following:
- 8.7.1. The name(s) of Designated Biologist(s) supervising the relocation. The CDFW-approved Designated Biologist shall be present during capture and relocation efforts as required by Condition of Approval 6.2.
- 8.7.2. Prior to installation of the Temporary Creek Diversion System, the Designated Biologist shall capture and relocate Covered Species to the nearest predetermined release location, approved in advance by CDFW. Release locations shall provide suitable habitat for Covered Species.
- 8.7.3. All dip nets used to capture Covered Species shall be made of a soft braided nylon material that is non-abrasive. Mesh sizing shall be matched to life stages likely encountered.
- 8.7.4. Relocation activities shall be conducted in the morning if maximum daytime air temperatures are expected to exceed 23 degrees Celsius (75 degrees Fahrenheit).
- 8.7.5. If used, electroshocking shall be conducted using the National Marine Fisheries Service Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act, June 2000. <https://media.fisheries.noaa.gov/dam-migration/electro2000.pdf>.
- 8.7.6. Capture Covered Species must be kept in a closable container in an adequate amount of cool, clean, well-oxygenated water (e.g., a cooler with lid containing stream water and a battery-operated air stone). Water temperature shall be monitored and kept below 60 degrees Fahrenheit. If necessary, water shall be cooled with ice without introducing ice-borne chemical contaminants. Transport containers shall have a water volume of no less than 5 gallons. Covered Species density in the transport container shall not exceed 10 Covered Species (40-80mm in length) per gallon of water. Collected Covered Species shall not be anesthetized at any point during relocation.
- 8.7.7. The Designated Biologist shall reduce stress on the Covered Species to the maximum extent possible. This includes reducing the time that live Covered Species are being captured, handled, and transported.

- 8.7.8. The Designated Biologist shall record the species name, length, date, time, location, gear type, water temperature, and any other pertinent observations to be included in the Monthly Compliance Report.
- 8.7.9. Permittee shall preserve dead individuals by freezing or placing in sealed container with 10 percent formalin solution. Information on time and exact location of any incidental take, method of take, length of time from death to preservation, water temperature, and any other relevant information will be recorded in writing. Permittee shall contact the CDFW regional representative for instructions on transmitting the preserved individuals. Any take of non-covered species shall be documented and included in the Mitigation Reports.
- 8.7.10. After completing the relocation, the Designated Biologist shall prepare a relocation documentation report. The report shall include information on the personnel conducting the relocation; methods used in capture and relocation; numbers and length data of each species collected and relocated; coordinates and habitat description of release location(s); and estimate of the survival immediately after release. Photographs of the site and relocation operations shall be included. The report shall be provided by the Permittee to CDFW in the next Monthly Compliance Report.
- 8.8. Temporary Creek Diversion Plan. Permittee shall submit for approval a water diversion plan to CDFW at least 30 days prior to implementing diversion plan. Permittee shall resolve all CDFW comments prior to initiation of project activities. The Permittee may not commence diversion of water without the explicit approval from CDFW. The diversion plan shall include the following:
- 8.8.1. Permittee shall describe location of diversion points including detailed drawings and geographic coordinates. Plans should include protection at the outlet if scour is possible.
- 8.8.2. Permittee shall describe the step-by-step installation and removal method.
- 8.8.3. Permittee shall describe materials to be used in the temporary diversion system. The Permittee shall construct temporary dams to redirect flows using non-erodible materials made out of burlap or woven synthetic material. The durability of the burlap shall be rated as 10-oz burlap. Bags should contain clean gravel that does not contain soil or fine sediment and should be sufficient size or strength to hold a minimum of 1.0 cubic foot when they are filled to 50 percent of full capacity.
- 8.8.4. When the Temporary Creek Diversion System is being constructed, maintained, or placed in operation, sufficient water shall be allowed to pass downstream of the

excavation to maintain aquatic life downstream. Flow shall be of sufficient quality, quantity and temperature to support fish and other aquatic species both above and below the diversion.

- 8.8.5. If pumps are necessary for dewatering, appropriate fish screening shall be implemented to avoid entrainment. Screen material may be constructed of any rigid woven, perforated, or slotted material that provides water passage while physically excluding fish. Round openings in the screen shall not exceed 3/32-inch diameter, square openings shall not exceed 3/32-inch measured diagonally. Approach velocity shall not exceed 0.33 feet per second.
- 8.8.6. Permittee shall inspect Temporary Creek Diversion System daily and immediately repair any insufficiencies.
- 8.8.7. Turbidity levels in the stream, resulting from project related activities, shall not exceed 20 percent over background turbidity if background is 0-50 NTU or 10 percent over natural turbidity levels if turbidity levels are over 50 NTU as measured 200 feet upstream of the project site. Turbidity levels shall be routinely monitored and evaluated. If turbidity exceeds the above turbidity thresholds, Covered Activities shall be halted until effective measures have been implemented in coordination with CDFW.
- 8.8.8. The Designated Biologist and Biological Monitor shall monitor the Temporary Creek Diversion System as described in Condition of Approval 7.4. The Designated Biologist and Biological Monitor shall look for entrainment or stranding of Covered Species through the project reach as well as up and downstream.
- 8.8.9. Temporary Creek Diversion Systems shall remain in place and functional throughout the construction period. If the diversion fails, Permittee shall repair it immediately. Permittee shall remove the diversion and restore natural flows immediately upon completion of work at that location.
- 8.8.10. Reintroduction of stream flows shall be gradual to the isolated work area to prevent stranding, channel instability, and scour. The Designated Biologist shall monitor upstream and downstream to ensure no Covered Species are stranded or in distress during reintroduction of flows.
- 8.9. Concrete Curing. All concrete used shall be excluded from the wetted channel or areas where it may come into contact with water for a period of 30 days after it is poured/sprayed. Commercial sealants may be applied to the poured concrete surface where difficulty in excluding flow for a long period may occur. If sealant is used, the proponent shall follow the instructions as noted on the product label. As an alternative, water quality testing and analysis may be conducted in coordination with CDFW. Results

shall be submitted and accepted by CDFW prior to removal of the temporary diversion system that will re-introduce flows to new concrete.

- 8.10. Pollutants. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream channel shall be positioned over drip pans. Any equipment or vehicles driven and/or operated within or adjacent to the stream channel must be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. No equipment maintenance or fueling shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas unless the appropriate spill prevention measures are in place such as catch basins or drip pans, lined with an impermeable layer that has been placed under the equipment. Building materials and/or construction equipment shall not be stockpiled or stored where they may be washed into the water or cover aquatic or riparian vegetation. Stockpiles shall be covered when measurable rain is forecasted. All removed spoils and construction debris shall be moved to areas where it may not permit to pass into, or place where it can pass into waters of the State in accordance with Fish and Game Code Section 5652.
- 8.11. Preventing Spread of Deleterious Organisms. Permittee shall conduct Project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), from one Project site and/or waterbody to another. Prevention BMPs and guidelines for invasive plants can be found on the Cal-IPC's website at: <http://www.calipc.org/ip/prevention/index.php> and for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: <http://www.protectyourwaters.net/>.
- 8.12. Decontamination of Clothing and Equipment. Any equipment that will be entering the channel shall be cleaned and decontaminated to spread aquatic diseases. Workers entering the riparian area, bed, bank, or channel shall decontaminate waders, boots, and other clothing that will come in direct contact with the water. Repeat decontamination is required if the equipment is used on a different water body between uses at the project site. Decontamination of clothing and equipment will be done by one of the following:
- 8.12.1. Thoroughly drying equipment in an upland location. Drying times will be at least 7 days if average temperatures exceed 80 F. If average temperatures are below 80 F, drying times will be at least 30 days.
- 8.12.2. A water wash with water temperatures of at least 140°F with varying high- and low-pressure spray to dislodge pathogens, vegetation, and contaminated sediment.
- 8.12.3. Freezing at a temperature of less than 32°F for more than 72 hours.

8.12.4. Soaking in a CDFW-approved disinfectant solution for at least two minutes (or longer depending upon the disinfectant used), then thoroughly rinsed in a water bath before entering stream.

8.13. Spill Containment and Clean Up. Prior to entering the work site, all field personnel shall know the location of spill kits and trained in their appropriate use. All activities performed in or near a river, stream, or lake shall have absorbent materials designated for spill containment and cleanup activities on-site for use in an accidental spill. Permittee shall notify CDFW within 24 hours of all spills.

9. Habitat Restoration and Enhancements: CDFW has determined that habitat restoration of temporary impacts and enhancement of habitat onsite is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result from implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat and Covered Species, and CDFW's estimate requirements for adequate compensation.

To meet this requirement, the Permittee shall restore temporarily impacted streambed (0.71 acre), adjacent pickleweed dominated habitat (0.05 acre), native willow riparian (0.09 acre), unvegetated banks (0.10 acre), and restore native willow riparian habitat where non-natives (ice plant dominated) exist (0.30 acre) onsite. Restored, created, and managed habitats are collectively referred to as Habitat Management Lands (HM Lands). Funding for monitoring and management of enhanced Covered Species habitat must be secured before starting Covered Activities.

9.1. Cost Estimates. For the purposes of determining the Security amount for the riparian habitat improvements, CDFW has estimated the cost of habitat enhancement, restoration, and management of the HM lands and restoration of temporarily disturbed habitat as follows:

9.1.1. Habitat restoration costs for restoring 0.44 acre of riparian habitat is estimated at **\$940,973.00.**

9.1.2. Management and Monitoring funding for ten (10) years as described in Condition of Approval 9.2, estimated at **\$600,897.00.** Management funding is estimated initially for the purpose of providing Security to ensure implementation of habitat creation, restoration, monitoring, and management.

9.1.3. All costs associated with CDFW engaging an outside contractor to complete the mitigation tasks, including but not limited to installation, monitoring, and management of the HM lands and restoration of temporarily disturbed habitat. These costs include

but are not limited to the cost of issuing a request for proposals, transaction costs, contract administration costs, and costs associated with monitoring the contractor's work **\$75,000.00**.

9.2. Riparian Habitat Restoration and Enhancement. The Permittee shall restore and enhance 0.44 acre of riparian habitat onsite. All temporarily disturbed land shall be restored to pre-project or better conditions.

9.2.1. Riparian Habitat Enhancement and Monitoring Plan. The Permittee shall prepare a Riparian Habitat Enhancement and Monitoring Plan that shall be submitted thirty days prior to the initiation of construction. Restoration shall include specific yearly success criteria for ten (10) years. Criteria shall be defined within the plan for survivorship, species diversity, percent native cover, and percent non-native cover. The enhancement site shall be stable without additional water for at least two years. All disturbed areas shall be monitored and controlled at 0 percent invasive species rated as moderate through high by the California Invasive Plant Council's database, which is accessible at: <https://www.calipc.org/plants/inventory/>. Reference site analysis and final approval of an enhancement site as having all obligations met may be accepted upon written request and written approval from CDFW. Alternative concepts for enhancement, such as land acquisition or permanent protection may be considered upon written request and written approval by CDFW. All temporary irrigation systems shall be removed upon completion of site enhancements or at such a time when supplemental watering is no longer required.

9.2.2. Riparian Habitat Enhancement Monitoring and Reporting. The Permittee shall submit the Riparian Habitat Enhancement Monitoring Report to CDFW by January 31 for the ten-year period, as well as any additional years. The report shall include quantitative summary of success criteria, photos from designated photo stations, a summary of site conditions, and a list of wildlife observed on site. The report shall also include a list of corrective actions that has occurred in the Enhancement Area.

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

10.1. Master Funding Agreement. Security for this ITP shall be governed by the Master Funding Agreement between the California Department of Fish and Wildlife and the California Department of Transportation, dated September 3, 2021.

10.2. Funding Memorandum. Permittee has prepared, and CDFW has approved, the project-specific Funding Memorandum required by the Master Funding Agreement and attached to this ITP as Attachment 3.

- 10.3. Security Amount. The Security shall be in the amount of **\$1,616,870.00**. This amount is based on the cost estimates identified in Condition of Approval 9.1 above and the Funding Memorandum.
- 10.4. Funding of the Child EA. Permittee has created and funded the Child EA with funds equivalent to the Security Amount.
- 10.5. Compliance with Master Funding Agreement. Permittee shall complete all requirements set forth in the Master Funding Agreement and shall at all times comply with the terms and conditions of that Agreement.
- 10.6. Completion of Mitigation Requirements. Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all Habitat Management(HM) lands and record any required conservation easements no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

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 (2081-2022-070-05) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Rich Burg, Acting Regional Manager
South Coast Region
California Department of Fish and Wildlife
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4210
Rich.Burg@wildlife.ca.gov

and a copy to:

Habitat Conservation Planning Branch
California Department of Fish and Wildlife
Attention: CESA Permitting Program now
Post Office Box 944209

Incidental Take Permit
No. 2081-2022-083-05
CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)
SAN JOSE CREEK BRIDGE REPLACEMENT PROJECT

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:

Erika Cleugh, Sr. Environmental Scientist (Specialist)
South Coast Region
California Department of Fish and Wildlife
3030 Old Ranch Parkway, Ste. 400
Seal Beach, CA 90740
(562) 619-5228
Erika.Cleugh@wildlife.ca.gov

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, California Department of Transportation, District 5. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the State Route 217 San Jose Creek Bridge Replacement Project (SCH No.: 2020049028) dated September 3, 2020, that the Department of Transportation certified on September 21, 2020. At the time the lead agency certified 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 certified 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, State Route 217 San Jose Creek

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Bridge Replacement Project Mitigated Negative Declaration, 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) seasonal restrictions; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the necessary activities to provide for adequate compensation. Based on this evaluation, CDFW determined that the restoration of 0.44 acre of riparian vegetation is of higher quality than the impacts of Project activities and temporary relocation of Covered Species, 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.

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XV. Attachments:

ATTACHMENT 1	Landscape Plans
ATTACHMENT 2	Mitigation, Monitoring, and Reporting Program
ATTACHMENT 3	Funding Memorandum

6/16/2023

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE ON _____

DocuSigned by:

Richard Burg

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Richard G. Burg, Acting Regional Manager
South Coast 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:

Morgan Robertson

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6/16/2023

By: _____ Date: _____

Printed Name: Morgan Robertson Title: Senior Environmental Planner

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