



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 6, 2023

Chris Elias, Executive Director
San Joaquin Area Flood Control Agency
22 East Weber Avenue, Room 301
Stockton, CA 95202
Chris.Elias@stocktonca.gov

Subject: Incidental Take Permit for 2081-2018-077-03 Smith Canal Gate Project,
San Joaquin County, Amendment No. 2

Dear Chris Elias:

Enclosed you will find an electronic copy of the Incidental Take Permit Amendment for the above referenced Project, which has been digitally signed by the California Department of Fish and Wildlife (CDFW). Please read the permit carefully, sign the acknowledgement, and return the original **no later than 30 days from CDFW signature**, and prior to continuation 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. Digital signatures facilitated by CDFW will be automatically returned. 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 and amendment in a secure location and distribute copies to appropriate project staff responsible for ensuring compliance with the conditions of approval of the permit. Note that you are required to comply with certain conditions of approval prior to initiation of ground-disturbing activities. Additionally, a copy of the permit must be maintained at the project work site and made available for inspection by CDFW staff when requested.

The permit amendment will not take effect until the signed acknowledgement is received by CDFW. If you wish to discuss these instructions or have questions regarding the permit, please contact Andrea Boertien, Environmental Scientist, at

Chris Elias
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(707) 317-0388 or Andrea.Boertien@wildlife.ca.gov; or Michelle Battaglia, Senior Environmental Scientist (Supervisory), at Michelle.Battaglia@wildlife.ca.gov.

Sincerely,

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

cc: CDFW Habitat Conservation Planning Branch – CESA@wildlife.ca.gov

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
BAY DELTA REGION
2825 CORDELIA ROAD, SUITE 100
FAIRFIELD, CA 94534



**AMENDMENT NO. 2
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2018-077-03
San Joaquin Area Flood Control Agency
Smith Canal Gate Project in San Joaquin County**

INTRODUCTION

On May 1, 2020, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2018-077-03 (ITP) to San Joaquin Area Flood Control Agency (Permittee) authorizing take of Delta smelt (*Hypomesus transpacificus*), longfin smelt (*Spirinchus thaleichthys*) and Chinook salmon - Central Valley spring-run (*Oncorhynchus tshawytscha*) (collectively, the Covered Species) associated with and incidental to the Smith Canal Gate Project in San Joaquin County, California (Project). The Project as described in the ITP originally issued by CDFW includes construction, operation, and maintenance of a fixed wall with a gate structure near the mouth of Atherton Cove. The wall and gate structure will be built to isolate the adjacent neighborhoods from the 100-year floodplain and meet the Federal Emergency Management Agency's minimum acceptable level of performance of withstanding a 100-year flood, which is the regulatory standard specified by the National Flood Insurance Program. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

On August 5, 2020, CDFW issued Amendment No. 1 (a minor amendment) for the Project. The minor amendment allowed pile driving in a wetted cofferdam.

A reason for this second ITP amendment request is to change the expiration date of the ITP. The warranty period testing for the gate will occur following construction completion and for a period of up to two (2) years post construction to inspect the project systems and components for damage and/or deficiencies to ensure that their proposed operation and maintenance is consistent with operations requirements of the Project. This necessitates a change to the original ITP expiration date from December 31, 2024 to December 31, 2026.

In addition, the second ITP amendment request allows for installation of concrete within 25 feet of a watercourse from October 31 through June 15. The Project schedule, as proposed, requires that near-water concrete placement occur outside the in-water work period listed in the ITP (July 15 through November 30). The near-water concrete tasks

that will occur outside of the in-water work period are limited to tremie plug installation within a wetted cofferdam; construction of the gate foundation, walls, and gate appurtenances, supports, and grouting (within the wetted cofferdam); and concrete pouring of the footpath along Dad's Point. The purpose of the tremie plug is to prevent water infiltration into the cofferdam due to hydrostatic pressure. Secondly, the tremie plug provides structural stability to the ring cofferdam footing prior to dewatering and gate foundation installation.

The second ITP amendment request also incorporates giant garter snake (*Thamnophis gigas*) and Swainson's hawk (*Buteo swainsoni*) as Covered Species under the ITP. Terrestrial work such as clearing, grubbing, excavation, rock slope protection (RSP) placement, sheetpile driving, and landscaping on Dad's Point and at the golf course are scheduled throughout the year and the work can result in incidental take of giant garter snake and will permanently impact approximately 0.06 acre of giant garter snake habitat. Project activities within the Project Area also have the potential to result in incidental take of Swainson's hawk and will temporarily impact 5.40 acres of Swainson's hawk foraging habitat.

An additional reason for the second ITP amendment request is to amend the Project Description to include cone penetrometer testing (CPT) at approximately 13 locations within the San Joaquin riverbed and evaluate take of Covered Species that may be present in or adjacent to the work areas. CPT work will occur at times that Covered Species (fish) may be migrating through the Project area. Consequently, CDFW has determined that this additional work has the potential to incidentally take threatened and endangered fish species. The total area temporarily affected by the in-water CPT borings will affect up to 0.03 acres.

The second ITP amendment request covers an additional 0.39 acres of RSP to be placed around the gate foundation and corrects the previous impacts to Covered Species aquatic habitat from 0.83 to 0.82 acres. This includes total permanent impacts to aquatic habitat in the San Joaquin River and includes the footprints of 1) the gate and cellular floodwall, 2) protection and fender piles, 3) fishing pier piles, and 4) RSP near the golf course and at the tip of Dad's Point. The new total of permanent impacts to Covered Species aquatic habitat caused by the Project will be 1.21 acres. This Amendment will also require mitigation for the 0.39 acres of additional permanent impacts to Covered Species aquatic habitat, a portion of which falls within the impacted areas previously contemplated in the original ITP.

The ITP amendment request also includes installation of a wooden temporary trestle bridge from the ring cofferdam enclosing the gate structure in the San Joaquin River to the tip of Dad's Point. The trestle bridge will be approximately 221 feet long and the bridge deck will be approximately 32 feet wide. A total of 21 support piles are required for the trestle bridge support, of which 17 will be installed in-water and four (4) will be

installed on land. The trestle bridge will be temporarily shading approximately 0.14 acres of in-water habitat and will temporarily impact less than 0.01 acres of Covered Species aquatic habitat. Construction of the south fixed wall will start at the ring cofferdam and proceed southward towards the tip of Dad's Point. The purpose of the trestle bridge is to create access to allow transport of labor and materials so that work can be completed outside of the in-water work window to complete the project within three (3) in-water work seasons. The trestle bridge will be removed prior to installation of the permanent south floodwall.

On November 11, 2021, the Permittee requested a second amendment to reflect the aforementioned changes to the existing ITP. An incomplete letter was issued on December 10, 2021. The Permittee continued to provide additional information to CDFW until July 14, 2023.

This Major Amendment No. 2 (Amendment) makes the following changes to the existing ITP:

First, this Amendment changes the expiration date from December 31, 2024 to December 31, 2026.

Second, this Amendment changes the near-water concrete work window to complete construction of the tremie plug in the wetted cofferdam from between July 15 through November 30 to between October 31 through June 15.

Third, this Amendment adds giant garter snake (*Thamnophis gigas*) as a Covered Species.

Fourth, this Amendment adds Swainson's hawk (*Buteo swainsoni*) as a Covered Species.

Fifth, this Amendment adds cone penetrometer testing at 13 locations (12 within the San Joaquin riverbed) during Spring 2023, with resulting temporary impacts of 0.03 acres of Covered Species aquatic habitat.

Sixth, this Amendment authorizes RSP to be placed around the gate foundation that will result in an additional 0.39 acres of permanent impact to Covered Species aquatic habitat and reduces the previously described permanent impacts in the ITP from 0.83 to 0.82 acres.

Seventh, this Amendment authorizes the installation of a wooden temporary trestle bridge from the ring cofferdam enclosing the gate structure in the San Joaquin River to the tip of Dad's Point. The bridge will temporarily impact approximately 0.14 acres of Covered Species aquatic habitat due to shading, and an area of less than 0.01 acres of direct impacts.

Major Amendment No. 2
Incidental Take Permit 2081-2018-077-03
SAN JOAQUIN AREA FLOOD CONTROL AGENCY
Smith Canal Gate Project

Eighth, this Amendment includes an approval process for Biological Monitors in addition to the Designated Biologist.

AMENDMENT

The ITP is amended as follows (amended language in ***bold italics***; deleted language in ~~strikethrough~~):

1. Effective Date and Expiration of this ITP on page 1 shall be amended to read:

Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on ~~December 31, 2024~~ ***December 31, 2026***.

2. The following will be added to the numbered list in the Project Description and within the Project Description on page 2:

17. Tremie plug installation to prevent water infiltration into the cofferdam.

18. Cone penetrometer testing (CPT) at approximately 13 locations.

19. Temporary trestle bridge installation.

Project activities include pile driving of sheet piles and steel piles, pouring of concrete, installing a cofferdam, dewatering of in-stream habitat, ***tremie plug installation, in-water cone penetrometer testing, trestle bridge installation***, grubbing and grading, excavating, adding fill, constructing new roads, dredging, placing rock slope protection (RSP), tree removal, modifying and removing riparian vegetation, closing the gate during high storm flows, maintaining of the gate structure, flood walls and in-stream wall and associated infrastructure, managing water hyacinth after construction, sampling for eDNA, trawl surveys, and other activities.

3. The section titled "Covered Species Subject to Take Authorization Provided by this ITP" on page 3 shall be amended to read:

4. Giant Garter Snake (*Thamnophis gigas*); Threatened [See *Id.*, subd. (b)(4)(E)].

5. Swainson's hawk (*Buteo swainsoni*); Threatened [See *Id.*, subd. (b)(5)(A)].

4. The section titled "Impacts of the Taking on Covered Species" on page 4, second paragraph, shall be amended to read:

The Project is expected to cause the permanent loss of approximately ***0.82*** acres and permanent conversion of 40 acres of aquatic habitat, permanent loss of approximately ***0.82*** acres of upland habitat (riparian/shaded riverine aquatic) for

the Covered Species, and temporary loss of ingress and egress to Atherton Cove during flood events for the Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). Indirect impacts include: creating in-water habitat for invasive predatory fish species, creating conditions that will result in water hyacinth establishment and spread, creating anoxic conditions via water hyacinth decomposition, significantly depleting phytoplankton and zooplankton food resources via water hyacinth establishment, and increased vulnerability to predation from the creation of a population sink via predatory fish occupancy in Atherton Cove. **Temporary impacts during Project construction may include increased turbidity, increased noise, elevated pH, introduction of hazardous materials to the environment, and disturbance to Covered Species and their habitat.** Direct and long-term effects include restricting or fully obstructing ingress and egress between the San Joaquin River and Atherton Cove, displacing from potential habitat, increasing competition for food and space.

5. In the General Provisions section of the ITP, Conditions of Approval 6.2 (Designated Biologist) and 6.3 (Designated Biologist Authority) shall be amended to read:

- 6.2 Designated Biologist/Biological Monitor. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of **proposed personnel to fulfill the duties of a Designated Biologist (Designated Biologist) and Biological Monitor(s) using the Biologist Resume Form (ATTACHMENT 2), or another format containing the same information** a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities.

~~Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist~~ **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 in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist must be changed.

- 6.2.2. A Designated Biologist is an individual who shall have a minimum of five (5) years of academic training and professional experience in biological sciences and related resource management activities with experience monitoring, surveying for, collecting, and handling the Covered Species.

6.2.3. A Biological Monitor is an individual who shall have a minimum of four (4) years of academic and professional experience in biological sciences and related resource management activities relevant to this project, has experience with construction level biological monitoring, has training and ability to recognize the Covered Species in the Project Area, and who is familiar with the habits, habitats, and behavior of the Covered Species.

6.3. Designated Biologist **and Biological Monitor** Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist(s) **and Biological Monitor(s)** shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species, in consultation with CDFW. ***Permittee shall provide unfettered access to the Project site and otherwise facilitate the Designated Biologist and/or Biological Monitor(s) in the performance of their duties. If the Designated Biologist and/or Biological Monitor(s) are 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, the Designated Biologist and/or Biological Monitor(s), 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 prohibited agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.***

6. In the General Provisions section of the ITP, the following Conditions of Approval shall be added to read (and each following Condition of Approval in the General Provisions section of the ITP shall be re-numbered to the next highest number):

6.4. Biological Monitoring. During all other Covered Activities where the Designated Biologist is not present, a Biological Monitor shall be present onsite. The Designated Biologist may appoint Biological Monitor(s) to monitor Covered Activities when a Designated Biologist is not needed onsite.

7. In the Monitoring, Notification, and Reporting Provisions section of the ITP, Conditions of Approval 7.2 (Notification of Non-Compliance), 7.3 (Compliance Monitoring), 7.4 (Monthly Compliance Report) and 7.8 (Notification of Take or Injury) shall be amended to read:

- 7.2. Notification of Non-Compliance. The Designated Representative, **Designated Biologist or Biological Monitor** shall immediately notify CDFW in writing if it **is** determined that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative, **Designated Biologist or Biological Monitor(s)** shall report any non-compliance with this ITP to CDFW within 24 hours.
- 7.3. Compliance Monitoring. The Designated Biologist or **Biological Monitor** shall be on-site daily when construction-related Covered Activities occur and a minimum of once a week during periods of inactivity (i.e., when Covered Activities are not occurring during the construction phase of the Project). The Designated Biologist **or Biological Monitor** shall conduct compliance inspections daily (or weekly during periods of inactivity) throughout the construction phase of the Project 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; (5) acquire photo documentation of conditions within the Project Area; and (6) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. **During in-water work, the Designated Biologist or Biological Monitor shall 1) check for turbidity impacts; (2) check for noise impacts; and (3) check for water quality (pH) impacts.** The Designated Representative, or Designated Biologist, **or Biological Monitor** 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 during the construction phase of the Project.
- 7.4. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Monthly Compliance Report and submit it to CDFW along with photo documentation and a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. **Proof of lawful disposal of any hazardous waste generated pursuant to Condition of Approval 8.15, including sludge removed from the settling tanks, shall be included with the Monthly Compliance Reports.** All Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Melissa Farinha (melissa.farinha@wildlife.ca.gov) **Andrea Boertien (Andrea.Boertien@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 CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

7.8 Notification of Take or Injury. Permittee **and/or the Biological Monitor(s)** shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (707) 428-2002. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph and an explanation as to cause of take or injury, and any other pertinent information.

8. In the Take Minimization Measures section of the ITP, the following Conditions of Approval shall be amended to read:

8.1. Seasonal Work Restrictions on Covered Activities. All project-related in-stream work, excluding dewatered areas, shall be limited to the period between July 1 to November 30. Use of impact hammers or impact driving of any kind to install piles or sheet piles (including those on Dad's Point) are restricted to the period between July 15 to November 30. Concrete pouring and setting, ~~including in~~ **required to install the tremie plug, and all other work within the confines of the wetted cofferdam and any** dewatered areas ~~shall be restricted to~~ **may be conducted during** the period between ~~June 15 to October 15~~ **October 31 through June 15 in the years 2022 and 2023**, unless otherwise approved in writing by CDFW. **All** Covered Activities ~~in dewatered areas shall be done~~ **conducted** in a manner so that any hazardous substances or equipment and loose construction materials that could be washed away in an overtopping event can be removed within a ~~72-hours~~ **72-hour timeframe** outside of the ~~June 15~~ **July 1 to October 15** ~~November 30~~ period **work window**. For purposes of this Condition of Approval, in-stream work does not include equipment mobilization, materials transport, and cofferdam maintenance, dewatering, discharge or leak inspection. **Work in upland areas is limited to May 1 through October 1 unless an exclusion barrier is in place per Condition of Approval 8.17.**

8.12. Daily Cofferdam Checks. The Designated Biologist *or Biological Monitor* shall check daily for stranded aquatic life in the dewatered areas. If any fish is found within the dewatering area the Designated Biologist *or Biological Monitor* shall immediately stop work until the fish can be identified to species and relocated outside of harm's way by the Fisheries Biologist. Capture methods may include fish landing nets, dip nets, buckets and by hand.

9. In the Take Minimization Measures section of the ITP, the following Conditions of Approval shall be added to read:

8.15. Tremie Plug, CPT, and Water Quality Monitoring. A CDFW-approved Designated Biologist shall monitor tremie plug placement within the cofferdam and shall have stop-work authority for noncompliant work or the potential for take of Covered Species. Water within the cofferdam that has contacted the curing tremie plug concrete shall not be allowed to come into contact with San Joaquin River water outside the cofferdam until processed via the settling tanks as provided below.

8.15.1 Injections of CO₂ shall be used within the cofferdam, if necessary, to adjust the pH of the cofferdam water to the aforementioned range prior to release of the cofferdam water to the San Joaquin River. Water shall be pumped from the cofferdam into a series of settling tanks (e.g., Baker tanks), where pH shall be monitored and adjusted. Once pH is determined to be within the target range in the settling tanks, water may be discharged from the tanks via hoses to an area outside of the cofferdam that is contained within a turbidity curtain. The pH shall also be monitored at established water quality monitoring stations when neutralized water has been released to the San Joaquin River. Results of the pH monitoring at all locations shall be included in the monthly and annual compliance reporting.

8.15.2 All settling tanks shall be inspected and cleaned after each use to remove particulate matter and sludge that may settle out on the bottom as part of the processing. Any particulate matter or sludge collected on the bottoms of the tanks shall be removed from the tanks once the treated water has met pH requirements and discharged. All sludge removed from the tanks shall be lawfully disposed of at an approved facility for hazardous waste. Proof of lawful disposal shall be included with Monthly Compliance Reports submitted pursuant to Condition of Approval 7.4.

8.15.3 CPT work shall be monitored and reported to CDFW daily. The CPT boring locations shall be sampled for pH and turbidity every four (4) hours and at least once a day during CPT boring activities. The reports shall be submitted daily to CDFW after CPT work is completed for the day. The report shall include total hours of CPT work for the day, data and results of turbidity testing, pH testing, and if hazardous materials were accidentally introduced to the water. If thresholds are exceeded, work shall be suspended until a solution is proposed to and accepted in writing by CDFW. If thresholds are exceeded, additional compensatory mitigation shall be required to fully mitigate impacts.

8.16. Pre-Construction Surveys. The Designated Biologist shall conduct pre-construction surveys immediately before installation of the temporary exclusion fencing (Condition of Approval 8.17 (Temporary Giant Garter Snake Exclusion Barrier)). The area encompassed by the temporary barrier shall be surveyed again prior to the removal of vegetation or conducting ground-disturbing activities if no vegetation removal is proposed. Permittee shall provide the survey methodology to CDFW for review and written approval prior to the start of Covered Activities. If a Covered Species is found, it shall be allowed to leave the Project Area on its own, or if it can be safely captured, it shall be relocated by the Designated Biologist to suitable location outside of the Project Area.

8.17. Temporary Giant Garter Snake Exclusion Barrier. The following criteria for a temporary exclusion fencing system shall be met:

8.17.1. The exclusion fencing shall be installed around the perimeter of Dad's Point, as delineated in Figure 1 of Permittee's submission titled "Smith Canal Gate Project Amendment 2 Support SWHA and GGS 20230714" (ATTACHMENT 3).

8.17.2. The exclusion fencing shall consist of material appropriate for the Covered Species.

8.17.3. The exclusion fencing shall either measure at least 36 inches tall above the soil surface or be of an appropriate height for exclusion of the Covered Species.

8.17.4. The Designated Biologist shall inspect the fencing immediately after every rain event to ensure it maintains structural integrity. Holes or burrows which appear to extend under the fencing shall be blocked inside the fence line to

prevent Covered Species from accessing work areas, except for 8.17.6. below.

8.17.5. The bottom of the exclusion fencing shall not allow wildlife to pass through gaps or holes with the bottom of the fencing buried six inches below grade, except for 8.17.6 below.

8.17.6. The exclusion fencing shall be taught between the supporting stakes and shall have the supporting stakes oriented on the inside edge toward the work area.

8.17.7. The exclusion fencing shall have one-way funnel exits to allow the Covered Species to move out of the work site and to exclude them from entering the work site.

8.17.8. If the exclusion fencing becomes damaged, it shall immediately be repaired upon detection and the Designated Biologist shall stop work in the vicinity of the fencing as needed to ensure Covered Species have not entered the construction area.

8.17.9. The exclusion fencing entry/exit points for vehicular and pedestrian traffic shall be constructed such that wildlife cannot access the work area during non-work hours.

8.17.10. The Designated Biologist shall inspect the Project Area prior to installation of the exclusion fencing. The exclusion fencing system shall remain in place until all construction activities have been completed. All components of the exclusion fencing shall be removed for storage or disposal off-site immediately upon completion of construction activities. Exclusion fencing shall be inspected daily by the Designated Biologist and repaired as necessary.

8.18 Daily Clearance Surveys. The Designated Biologist or Biological Monitor shall conduct an inspection of the fenced work area in advance of each day's work to ensure that the Covered Species are not in the work area. If Covered Species are observed within the active work area, no work shall be allowed in the work area until the Designated Biologist or Biological Monitor has stopped work and allowed the Covered Species to move out of the work area on their own volition. Work shall not commence until the Designated Biologist or Biological Monitor is certain that no Covered Species are in the work area. The Biological Monitor shall contact the Designated Biologist if the Covered Species

is detected to develop and implement a response to ensure the absence of the Covered Species prior to commencement of work in the active work area. Such events shall be included in monthly compliance reporting.

- 8.19. Snakes Discovered in Project Area.** *If a snake of any species is found by any person in the Project Area before or during implementation of Covered Activities, all activities that could potentially injure the snake shall stop immediately and the snake shall be allowed to leave the Project Area on its own. If the snake does not leave the Project Area or cannot move to an area with sufficient habitat outside of the Project Area, the Designated Biologist shall identify the species and move the snake to safety in Covered Species' habitat outside the Project Area. Covered activities may resume only after the snake has been confirmed to be out of the Project Area.*
- 8.20. Covered Species Relocation.** *If at any time a Covered Species is found within the Project Area, all work shall cease until the Covered Species leaves the area on its own or if it can be safely captured it shall be relocated by the Designated Biologist to a suitable location outside of the Project Area.*
- 8.21 No Monofilament Netting.** *Permittee shall not use erosion control materials containing plastic monofilament netting (erosion control matting) or similar material containing netting within the Project Area.*
- 8.22 Vehicle Speed Limit.** *While directly conducting Covered Activities, including accessing staging areas, no vehicle may exceed a speed of ten (10) miles per hour. Vehicles include, but are not limited to, tractors, excavators, skid-steers, personnel vehicles, pickup trucks, and dump trucks. This Condition of Approval does not apply to vehicles utilizing public roads posted with speed limit signage.*
- 8.23 Entrapment in Pipes or Other Structures.** *The Designated Biologist or Biological Monitor shall thoroughly inspect all construction pipes and similar structures with a diameter of 0.25 inches or greater that are stored for one or more overnight periods for the Covered Species before the pipe is subsequently moved, buried, or capped. If the Covered Species is detected during inspection, the Designated Biologist shall be notified and the animal allowed to safely escape that section of pipe before moving and utilizing the pipe. If the individual is found within the fenced Project site, the Designated Biologist shall move the individual outside of the area of construction.*

8.24 Vegetation Stockpiling. Vegetation stockpiles shall not be allowed to remain overnight and must be placed in a container or removed off site by the end of each workday.

8.25 Take or Injury to Giant Garter Snake. If a Covered Species sustains major or serious injuries because of Project-related activities, the Designated Biologist shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. If the injury is minor or healing and the Covered Species is likely to survive as determined by the Designated Biologist, it shall be released immediately in a nearby location out of harm's way and in its preferred habitat. Permittee shall notify CDFW of the injury to Covered Species immediately by telephone and e-mail followed by a written incident report. Notification shall include the name of the facility where the animal was taken. The initial notification to CDFW shall include information regarding the location and number of animals taken or injured, and the ITP number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The incident report shall include the date and time of the incident, location of the animal or carcass, and provide a photograph, if possible, explanation as to the cause of take or injury, and any other pertinent information.

8.26 Swainson's Hawk Nest Pre-Construction Survey. The Designated Biologist shall thoroughly survey all potential Swainson's hawk nesting trees within 0.25-mile radius of the Project Area within ten (10) days prior to construction. The Designated Biologist shall conduct a second monitoring of potential nesting trees to identify Swainson's hawk nests within the 72-hour period prior to beginning of construction work in the 2023 construction season. Results of each survey/monitoring effort shall be documented and submitted to CDFW within 24-hours of survey completion. Beginning in the year 2024, when Covered Activities occur during the Swainson's Hawk nesting season (March 1 through September 15) a Designated Biologist shall conduct protocol level nesting surveys for Swainson's hawk within a 0.25-mile radius of the Project Area. Surveys shall follow the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (2000), available online here: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>. The Designated Biologist shall submit survey/monitoring results within 24 hours of each survey completion.

8.27 Swainson's Hawk Nest Monitoring. Swainson's hawk nests that are either within the Project Area or visible within a 0.25-mile of the Project Area shall be monitored by the Designated Biologist. The Designated Biologist shall initially monitor nests daily prior to commencement of work to establish behavioral baselines of nesting pairs and to determine whether Covered Activities are disrupting nesting behaviors of nesting pairs. Once the Designated Biologist determines no behavior disruption is caused by ongoing Covered Activities, then the Designated Biologist shall monitor the nesting pairs twice weekly while Covered Activities are being conducted to document the status and success of the nests. If the Designated Biologist determines that the Project activities are disturbing the nest occupants, work shall be stopped for at least 30 minutes to allow disturbed hawks to settle. Work shall only resume when the Designated Biologist determines that the work will not result in disturbance to nesting behavior. If the Designated Biologist determines that a nesting Swainson's hawk is significantly disturbed by Covered Activities, to the point where nest abandonment is likely, the Designated Biologist shall have the authority to immediately stop project activities and work shall cease until the threat has subsided. The Designated Biologist shall notify CDFW if nests or nestlings are abandoned and, if the nestlings are still alive, to determine appropriate actions.

8.28 Swainson's Hawk Nest No-Work Buffer. No Covered Activities or personnel shall be conducted closer than within 350 feet of an active nest unless the Designated Biologist has monitored the active nest per Condition of Approval 8.27 (Swainson's Hawk Nest Monitoring) for at least 3 consecutive days and confirmed that the nest occupants are undisturbed by ongoing Covered Activities. If monitoring identifies stressed behavior of the nest occupants, the buffer shall be increased until behavior normalizes. Physical contact with an active nest tree shall be prohibited from the time of egg-laying to post fledging.

8.29 Limit Covered Activities Within 0.25-mile of a Nest. Covered Activities within 0.25-mile of an active nest shall be limited to the greatest extent possible from egg-laying to post-hatching; and, if construction must occur in that time frame, to the greatest extent possible initiate construction prior to egg-laying to allow for hawks to attenuate to Covered Activities prior to nesting.

8.30 Notification of Take or Injury of Swainson's Hawk. The Designated Biologist shall immediately notify CDFW if nesting Swainson's hawks abandon a nest or exhibit distress and/or abnormal nesting behavior.

Abnormal nesting behavior includes, but is not limited to, swooping/ stooping, excessive vocalization (distress calls), agitation, failure to remain on the nest, and failure to deliver prey items for an extended time period. If there is abandonment of a nest with eggs or young fledglings (take of the species) due to Covered Activities, the Permittee shall notify CDFW and initiate action to salvage any abandoned eggs or chicks and take them to an approved CDFW wildlife rehabilitation center for rearing and return to the wild.

8.31 Swainson's Hawk Injury. If a Swainson's hawk sustains injuries because of Project-related activities, the Designated Biologist shall immediately transport it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before initiating Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury immediately by telephone and e-mail followed by a written incident report. Notification shall include the name of the facility where the animal was taken. Following initial notification, Permittee shall send CDFW a written report within two calendar days via e-mail and a copy to the Regional Office listed in this ITP. The incident report shall include the date and time of the finding or incident, disposition of the Swainson's hawk, location of the animal or carcass, any photographs of the animal or the site it was found, explanation as to cause of take, injury, or nesting disturbance, and any other pertinent information.

8.32 Tree Trimming and Removal. Tree trimming and removal shall be timed to avoid the nesting period (February 15 to September 15). If trees must be trimmed or removed during the February 15 to September 15 nesting period, the Designated Biologist or Biological Monitor will complete a pre-activity survey within 48-hours of the trimming/removal activity to confirm that the subject tree(s) does not currently support active bird nesting. If nesting activity is documented, the subject tree(s) shall not be trimmed or removed until young have fledged and are no longer dependent on parental care.

10. Condition of Approval 9 (Habitat Management Land Acquisition) shall be amended to read:

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors

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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. ***CDFW recognizes that the Permittee has completed the purchase of 10.2 acres of Covered Species credits and 2.49 acres of riparian habitat credits from a CDFW-approved mitigation or conservation bank to meet the compensatory habitat requirements prior to execution of the second Amendment to this ITP.***

~~To meet this requirement, the Permittee shall either purchase 10.2 acres of Covered Species credits and 2.49 acres of riparian habitat credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) for the permanent loss and permanent conversion of 40.83 acres of aquatic habitat at a 0.25:1 ratio and the permanent loss of 0.83 acres of upland habitat (riparian/shaded riverine aquatic) at a 3:1 ratio OR, dependent upon location and habitat quality, shall provide for both the permanent protection and management of up to 12.69 acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below, and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.~~

To meet this requirement for changes made to the Covered Activities in the second Amendment to this ITP, Permittee shall purchase 0.06 giant garter snake credits, or ecologically functional equivalent, at a CDFW-approved mitigation or conservation bank that services the Project location for permanent impacts to 0.06 acres of giant garter snake habitats. Permittee shall also purchase 1.35 credits of Swainson's hawk foraging habitat credits at a CDFW-approved mitigation or conservation bank to offset 5.4 acres of temporary impacts to Swainson's hawk foraging habitat within less than 1-mile of an active nest tree. Permittee shall also purchase 0.39 smelt/salmonid credits, or the ecological equivalent, at a CDFW-approved mitigation or conservation bank to offset 0.39 acres of permanent impacts to Covered Species aquatic habitat of which a proportion was already mitigated for. All compensatory mitigation shall be complete within 14 days of CDFW execution of this ITP amendment. If the compensatory mitigation cannot be completed within 14 days of CDFW execution of this ITP amendment, then additional Security shall be provided pursuant to Condition of Approval 10 below.

11. Condition of Approval 9.1 shall be amended to read:

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

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- 9.1.1. ~~Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$10,227/acre for 12.69 acres: **\$129,780**. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;~~
- 9.1.2. ~~Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at **\$1,073,391**;~~
- 9.1.3. ~~Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at **\$6,021**;~~
- 9.1.4. ~~Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$11,512/acre for 12.69 acres: **\$146,087**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management;~~
- 9.1.5. ~~Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at **\$3,000.00**.~~

9.1.1. The acquisition cost of giant garter snake credits identified in Condition of Approval 9 is estimated at \$90,000/acre for 0.06 acres: \$5,400;

9.1.2. The acquisition cost of Swainson's hawk foraging habitat credits identified in Condition of Approval 9 is estimated at \$40,000/acre for 1.35 acres: \$54,000;

9.1.3. The acquisition cost of the smelt/salmonid credits to meet requirements for Covered Activities described in the second Amendment to this ITP and identified in Condition of Approval 9 is estimated at \$200,000/acre for 0.39 acres: \$78,000.

Acquisition costs are estimated using fair market current value for cost of credits at a CDFW-approved mitigation bank for obtaining mitigation credits for land with habitat values meeting mitigation requirements.

12. Condition of Approval 9.2 shall be amended to read:

9.2. Covered Species Credits. ~~Permittee shall purchase 10.2 acres of Covered Species credits and 2.49 acres of riparian habitat credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below.~~ **Permittee shall purchase 0.06 acres of giant garter snake credits, 1.35 acres of Swainson's hawk foraging habitat credits, and 0.39 acres of smelt/salmonid credits, or their ecological equivalents from a CDFW-approved mitigation or conservation bank within 14 days of execution of this ITP amendment or Security shall be provided prior to initiating Covered Activities in the year 2023 pursuant to Condition of Approval 10 below.**

13. **Condition of Approval 9.3. shall be amended to read:**

9.3.2. HM Lands Approval. Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, a formal Proposed Lands for Acquisition Form (see Attachment ~~24~~B) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;

9.3.3. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment ~~24~~A).

14. Condition of Approval 10, shall be amended to read:

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

10.1. Security Amount. The Security shall be in the amount of **\$137,400**. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.

10.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment ~~35~~) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.

- 10.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within **14** days after the effective date of **Amendment No. 2 (i.e., upon execution by CDFW)** this ITP, whichever occurs first.
- 10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 10.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 46) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.
- 10.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.
- 10.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:
- **Written approval from CDFW for each required credit purchase transaction;**
 - **Written documentation of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer(s) for the purchase of each credit purchase.**
~~Written documentation of the acquisition of the HM lands;~~
 - ~~Copies of all executed and recorded conservation easements;~~
 - ~~Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and~~
 - ~~Timely submission of all required reports.~~

Even if Security is provided, the Permittee must complete the required acquisition, ~~protection~~ and transfer of all HM lands and record any required conservation easements no later than **14 days** from the effective date of **Amendment No. 2** of this ITP, **as provided in Conditions of Approval 9.1 and 10.3.**

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.

15. The Attachments section shall be amended to read:

FIGURE 1	Project Location
FIGURE 2	Project Area
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Biologist Resume Form
ATTACHMENT 3	Smith Canal Gate Project Amendment 2 Support SWHA and GGS 20230714 submitted by Permittee on July 14, 2023
ATTACHMENT 4A , 4B	Habitat Management Lands Checklist; Proposed Lands for Acquisition Form
ATTACHMENT 5	Letter of Credit Form
ATTACHMENT 6	Mitigation Payment Transmittal Form

The corresponding MMRP measures shall be amended to read the same as above. All terms and conditions of the ITP and MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

FINDINGS

Issuance of this Amendment will increase the amount of take of the Covered Species compared to the Project as originally approved; however, by implementing water quality monitoring and reporting, take minimization measures such as exclusion fencing, daily clearance surveys, speed limits, additional Designated Biologist monitoring, nest monitoring, and additional Habitat Management Lands, it is not expected that this Amendment will increase Project impacts on these species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: This amendment reflects a change to the habitats, areas, and species covered by the ITP that will be impacted by Project activities. However, in all other respects, with the addition of avoidance and minimization requirements, these remain relatively unchanged.

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

Discussion: CDFW determined in May 2020 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because the Project and ITP as amended: (1) will have a trivial effect on the amount or severity of Project impacts on the Covered Species, as discussed above, (2) does not substantively alter the measures that will be undertaken to minimize and mitigate previously authorized impacts on the Covered Species, and (3) will adhere to take avoidance and minimization measures designed to protect Covered Species as amended and increase compensatory mitigation required for additional impacts. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP's Conditions of Approval and MMRP will minimize and fully mitigate impacts of the taking on the Covered Species.

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

Discussion: CDFW issued the ITP in May 2020 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the environmental impact report (EIR) certified by the San Joaquin Area Flood Control Agency as the lead agency for the Project. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment represents a major change in the Project as originally approved. However, for the reasons explained above, CDFW concludes this Amendment is not a change in the Project that has the potential to create new significant effects not previously analyzed, a substantial change in the circumstances under which the Project is being undertaken requiring major revisions to previous CEQA documents, or new information of substantial importance. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required by CEQA as part of CDFW's approval of this Amendment.

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

Discussion: This Amendment extends the term of the project, modifies the seasonal work period, expands the permanent Project footprint by 0.39 acre for RSP placement, and allows incidental take of two additional Covered Species. This in turn increases the

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SAN JOAQUIN AREA FLOOD CONTROL AGENCY
Smith Canal Gate Project

compensatory mitigation required, which constitutes a significant change to the scope of the Project. Therefore, this Amendment will significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or monitoring measures in the ITP. CDFW has determined that the change to the ITP constitutes a Major Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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

Alternatively, the Permittee shall email the digitally signed ITP to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5. Digital signatures facilitated by CDFW will be automatically returned.

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 9/6/2023

DocuSigned by:
Erin Chappell
B77E8A6211EF48C...
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 the original ITP and this Amendment, and (3) agrees on behalf of the Permittee to comply with all terms and conditions of the ITP as amended.

By: *Chris Elias* Date: 9/6/2023
A6F4843D8E1C424...
Printed Name: Chris Elias Title: X

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SAN JOAQUIN AREA FLOOD CONTROL AGENCY
Smith Canal Gate Project



TECHNICAL MEMORANDUM

TO: Michelle Battaglia/CDFW
Andrea Boertien /CDFW

FROM: Jeff Tupen/ECORP
Diane Moore/MBC

CC: Melissa Farinha/CDFW
Juan Neira/SJAFCA
Chris Elias/SJAFCA
Marin Meza/ECORP

DATE: July 14, 2023

RE: Revised ITP Conditions for SWHA and GGS at Smith Canal Gate Project

As a result of SJAFCA's phone call with CDFW on July 12, 2023, we are forwarding to CDFW proposed revisions to two conditions within the Smith Canal Gate Project's Administrative Draft ITP amendment #2. Included in this technical memorandum are justifications for SJAFCA's proposed revisions, as requested by CDFW during the noted call.

SWAINSON'S HAWK

Current Swainson's Hawk ITP Condition 8.28

8.28 Swainson's Hawk Nest No-Work Buffer. No Project activities or personnel shall be permitted closer than 350 feet of an active nest. If monitoring (see Condition of Approval 8.27 – Swainson's Hawk Nest Monitoring) identifies stressed behavior of the nest occupants, the buffer shall be increased until behavior normalizes. Physical contact with an active nest tree shall be prohibited from the time of egg-laying to post fledging.

Requested Revisions to Swainson's Hawk ITP Condition 8.28

8.28 Swainson's Hawk Nest No-Work Buffer. No Work Buffer Zones shall be established around active Swainson's hawk nests found within 350 feet of Covered Activities. The size of the buffer zone shall be determined by the Designated Biologist in consultation with CDFW. All construction personnel shall be notified of the existence of the nest buffer zone and instructed to avoid entering it during nesting season. If nest monitoring (see Condition 8.27) indicates that Covered Activities are disrupting nesting behaviors, no-work buffer zones may be increased in consultation with CDFW.

Justification for Proposed Changes to ITP Condition 8.28

Over the course of the last three years of Project construction, Swainson's hawks have on occasion occupied nests on at the Stockton Golf and Country Club (golf course), on Atherton Island, and in Louis Park (though not on Dad's Point) at distances ranging from 350 to 900 feet from the current Smith Canal Gate structure. Nesting success has generally been poor, as determined by monitoring completed by Moore Biological Consulting (MBC). Nestling predation is thought to be responsible for observed nest failures over the period noted. This is consistent with observations of Swainson's Hawk throughout the region, which have been subject to intensive predation during the past several years. It is not MBC's view that project activities thus far have had any impact on the establishment or success of these nests, nor that activity within 350 feet would have an impact.

Existing activities and current land uses of the areas surrounding the Gate Project can be intensive. The Port of Stockton, Louis Park, and the Stockton Golf and Country Club accommodate business during all days of the year. Industrial uses at the Port of Stockton and shipping activity in the San Joaquin River are particularly intensive with regard to noise, odor, and vibration. Residential activity on Atherton Island may also be intensive, with motorized yard equipment commonly used directly below active nest trees. Nevertheless, Swainson's hawks continue to establish nests year-over-year at these locations, and they appear habituated to these background activities.

No Swainson's hawk nests were established in 2023 within 350 feet of Project Covered Activities. SJAFCA is concerned that hawks may establish active nests at the golf course in future project years (2024-2026) within 350 feet of planned Covered Activities, conflicting with ITP Condition 8.28. Pile driving and other potentially disruptive Covered Activities will likely be completed in 2023. Covered Activities planned for future project years include site grading for landscaping restoration, concrete walkway forming and pouring, landscape installation/restoration, gate warranty testing and repairs, and electrical work. These activities are expected to have minimal potential to adversely impact Swainson's hawks if they establish nests within 350 feet of Covered Activities in future years. Revising Condition 8.28, as proposed by SJAFCA, provides flexibility to avoid stop-work circumstances associated with the kinds of Covered Activities anticipated for implementation.

SJAFCA's proposed revisions to Condition 8.28 are taken in part from the Navy Drive Bridge Replacement Project ITP (2081-2017-067-03), signed in 2018. The Navy Drive project, which also included pile driving in an urban setting, was located on the San Joaquin River approximately 1.3 miles upstream from Smith Canal. MBC monitored the ITP conditions of approval for Navy Drive Bridge, which included Swainson's hawk nest monitoring within 100 feet of Covered Activities. Monitoring indicated no project-related disturbance to the active nest situated in a busy, urban setting (i.e., high background disturbance). We have attached the Navy Drive Bridge ITP here as **Attachment A**. SJAFCA's current revision request is consistent with CDFWs authorized approach at Navy Drive Bridge.

GIANT GARTER SNAKE

Current GGS ITP Condition 8.1

8.1 Seasonal Work Restriction on Covered Activities. All Project-related in-stream work, excluding dewatered areas, shall be limited to the period between July 1 to November 30. Use of impact hammers or impact driving of any kind to install piles or sheet piles (including those on Dad's Point) are restricted to the period between July 15 to November 30. Concrete pouring and setting required to install the tremie plug, and all other work within the confines of the wetted cofferdam and any dewatered areas, shall be restricted to the period between June 15 to October 15 unless otherwise approved in writing by CDFW. All Covered Activities shall be conducted in a manner such that any hazardous substances or equipment and loose construction materials that could be washed away in an overtopping event can be removed within a 72-hour timeframe outside of the June 15 to October 15 work window. For purposes of this Condition of Approval, in-stream work does not include equipment mobilization, materials transport, and cofferdam maintenance, dewatering, discharge or leak inspection. Work in upland areas is limited to May 1 through October 1 unless an exclusion barrier is in place per Condition of Approval 8.17.

Requested Revisions to GGS Condition 8.1

Please modify the last sentence of Condition 8.1 by inserting the underlined text below:

Work in upland areas adjacent to identified GGS habitat is limited to May 1 through October 1 unless an exclusion barrier is in place per Condition of Approval 8.17.

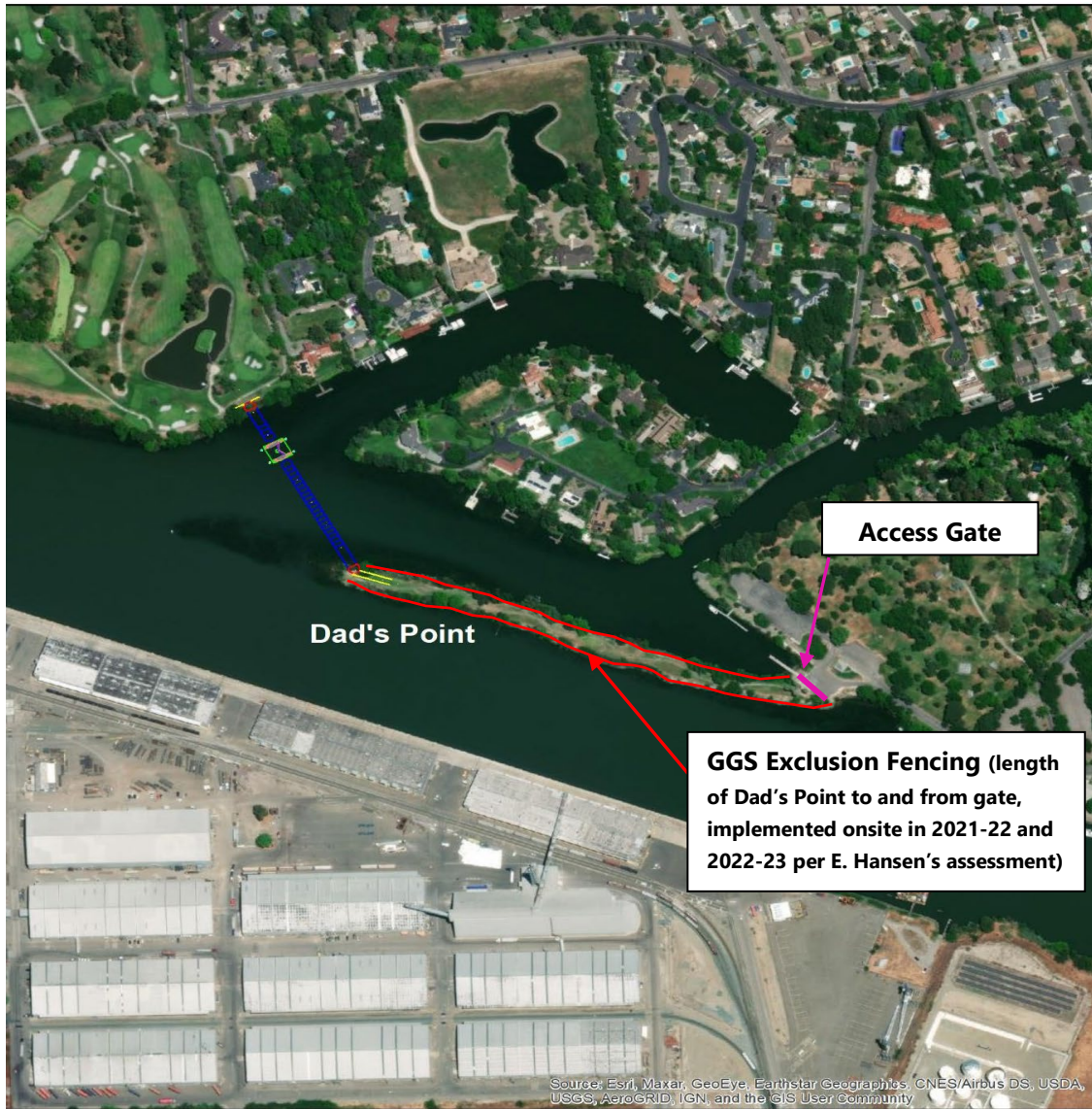
Justification for Proposed Changes to Condition 8.1

SJAFCA has applied for Giant Garter Snake (GGS) (and Swainson's hawk) coverage under the California ESA under Section 2081 of Fish and Game Code.

SJAFCA retained Eric Hansen in 2021 to assess GGS habitat at the Project area, and to develop and implement GGS impact avoidance and minimization measures (AMMs) in and near suitable GGS habitat. Mr. Hansen identified low-value GGS habitat around the margin of Dad's Point, and prescribed and directed the installation of exclusion fencing with GGS escape ports to prevent incidental take of GGS along the roadway atop Dad's Point. SJAFCA has implemented and monitored this GGS AMM approach during the GGS inactive period for the last 2 seasons. No GGS have been observed at the Project site since the start of the Project in 2019. The GGS AMM report prepared by Eric Hansen is attached as **Attachment B**.

SJAFCA will commit to installation, maintenance, and monitoring of effectiveness of GGS AMMs on Dad's Point during the GGS inactive period through Project completion. The location and alignment of the GGS protective fencing is shown in **Figure 1**. SJAFCA, and its retained subject-matter experts (MBC and Eric Hansen) believe the AMMs, as specified, will be protective of GGS in the highly unlikely circumstance that GGS may occur in the vicinity of the Project.

Figure 1. Smith Canal Gate Project GGS Exclusion Fencing at Dad's Point



Attachment A – Navy Drive Bridge Project ITP



California Department of Fish and Wildlife
 Bay Delta Region
 7329 SILVERADO TRAIL
 NAPA, CA 94558

California Endangered Species Act
 Incidental Take Permit No. 2081-2017-067-03

NAVY DRIVE BRIDGE REPLACEMENT PROJECT

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

Permittee:	Port of Stockton
Principal Officer:	Juan Villanueva
Contact Person:	Jeff Tupen, CH2M (916) 286-0273
Mailing Address:	Post Office Box 2089 Stockton, CA 95203

Effective Date and Expiration Date of this ITP:

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **December 31, 2022**.

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 7.6 (Final Mitigation Report) of this ITP.

Project Location:

The Navy Drive Bridge Replacement Project (Project) is located at the Port of Stockton where Navy Drive crosses over the San Joaquin River at approximately 37.946389 latitude and -121.338611 longitude, in the City of Stockton, County of San Joaquin (See Figure 1).

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.

Project Description:

The Project includes two primary components: 1) replacement of the existing Navy Drive Bridge crossing of the San Joaquin River near Rough and Ready Island, and 2) improvements to the Navy Drive roadway approaches to the replaced bridge. Portions of the Project have either already been completed or are partially constructed.

Construction Phasing**Phase 1 - Construct Upstream Portion of New Bridge and Start Approach Roadways:**

- Construct Phase 1 trestle platforms (2 total) upstream from existing bridge near abutments 1 and 4 extending from the levee to near the position of new bents 2 and 3, respectively;
- Install three permanent 48-inch cast-in-steel-shell (CISS) piles at bent 2 and three at bent 3 (six total), and install three permanent 48-inch CISS-piles at abutment 1 and abutment 4 (six total);
- Build the road approach on the north and south sides of bridge;
- Construct upstream portions of abutments and bent caps at abutments 1 and 4, and bents 2 and 3, and install reinforcing rebar cages in each shell;
- Remove upstream portion of the existing wooden fender on the center swing pier;
- Remove portions of temporary trestles;
- Build road approach on north and south side of bridge;
- Install storm drain line in south roadway, base, curb and gutter and pave (in part) north and south side of bridge;
- Construct upstream portion of new bridge deck;
- Install base, curb, and gutter on south east side, and tie into existing bridge;
- Switch traffic in phase 1 south side east lane from existing bridge;
- Start southwest side of road approach at gun range, grading, storm drain and soil lime treatment for Phase 1 bridge transition;
- Install base, curb and gutter on south approach west side, and tie (in part) Phase 1 road work to new bridge;
- Install and operate nesting swallow avoidance measures;
- Finish Phase 1 roadwork tie-in to bridge, complete lighting poles, underground electrical, and striping;
- Hydroseed slopes from Phase 1 work;
- Electrical lighting work with high mast booms on bridge decking;
- Re-route traffic from old bridge to upstream portion of new bridge;
- Rip rap installation for storm drain outfalls;
- Remove road surfacing with grinder north of old bridge.

Phase 2: Remove Old Bridge and Continue Approach Roadway Work:

- Remove existing bridge superstructure;
- Remove remaining portions of Phase 1 trestle platforms;
- Construct Phase 2 trestle platforms (2 total) downstream from existing bridge near abutments 1 and 4 extending from the levee to near the position of new bents 2 and 3, respectively;
- Install two permanent 48-inch cast-in-steel-shell piles at bent 2 and two at bent 3 (four total);
- Construct downstream portions of new bridge abutments 1 and 4;
- Remove downstream portion of the existing wooden fender on the center pier;
- Remove old bridge abutments, and center pier;

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- If demolition of old bridge abutments and/or the center pier is unable to be compliant with water quality limitations within the 401 Certification, then isolate the demolition area(s) with cofferdams and complete removal of old bridge abutments and/or center pier.

Phase 3: Construct Downstream Portion of New Bridge and Complete Approach Roadwork:

- Place rock slope protection (RSP) on levee slopes above Mean High Water (MHW) elevation;
- Construct downstream portion of new bridge deck;
- Tie Phase 2 road work to abutments 1 and 4;
- Electrical, light poles and striping for Phase 2 roadwork;
- Swallow nesting avoidance measures from February to September 2019;
- Remove Phase 2 trestle platforms;
- Place RSP on levee slopes above the MHW elevation where trestles were previously in the way;
- Remove cofferdams, if installed;
- Hydro seed the finished grading and install fences and gates for Phases 2 and 3.

Bridge Replacement

This component of the Project includes construction of a new four-lane removable span bridge and demolition of the existing bridge. The replacement bridge will be located about 80 feet upstream and to the west of the existing Navy Drive Bridge. The replacement bridge includes the following features:

- Concrete construction, with a lightweight concrete deck removable center span;
- Four 12-foot-wide traffic lanes, and two 8-foot-wide shoulders with light standards located on the bridge railing;
- 15 feet of vertical clearance above MHW elevation in the closed position;
- Two in-channel bents, each made of five 48-inch diameter CISS piles and either drop bent caps or integral bent caps;
- Abutments each supported by five 48-inch diameter CISS piles;
- Wing walls that extend 20 feet behind the abutments;
- RSP installation above the MHW elevation.

The new bridge abutments will be located slightly behind the existing riverbanks. The sequence of construction includes site preparation, installation of the upstream half of the bridge (two lanes of travel), removal of the old bridge, and installation of the downstream half of bridge (two lanes of travel). Bridge replacement will be completed over two or three seasons.

Construction of New Bridge Piers

The new bridge piers, including supporting CISS piles and in-channel bent caps, will be installed by constructing and working from temporary trestles. This requires that two short trestles be constructed between the north and south river banks and the two in-channel bents, for each of two seasons (i.e. 4 trestles total). The trestles will be approximately 96 feet long by 60 feet wide with six temporary steel pile bents in the channel. The contractor will design the temporary pile bents. There will be 19 temporary 20-inch-diameter steel piles supporting each temporary trestle (38 piles total). The temporary steel piles will be either driven or vibrated into the bottom of the river channel to support the anticipated construction loads.

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A temporary deck structure will be constructed above the bents to support cranes and concrete trucks needed for the CISS pile and bent cap installation. The 48-inch steel casings for the bent piles will be driven to depth using an impact hammer and reinforced concrete will be poured into the shells to create the permanent bridge bents. Any water within the pile casings that had the potential to contact concrete will be tested to ensure pH is between 6.5 and 8.0 pH units prior to being discharged into waters of the State. Water outside of this pH range will not be discharged.

Following completion of the piers, either the center span girders will be placed or the temporary trestles will be dismantled and removed. The contractor may take advantage of the temporary trestles to construct the removable center span. Alternatively, the contractor will remove the temporary trestles, construct the side spans, and use the side spans to construct the removable center span. The timeframe required to construct and dismantle the temporary trestles may require that the trestles remain in the channel during the duration of the bridge construction and removed upon completion.

Construction of New Bridge Abutments

The new bridge abutments will be built on dry land, since they will be located above the high-water level of the San Joaquin River. Each abutment will be supported by five 48-inch diameter CISS piles. The steel shells will either be vibrated or driven, reinforcement cages installed and concrete placed, similar to the in-channel piles. Liquefiable soils at the bridge abutments require treatment of the soil using compaction grouting or deep soil mixing. Approximately 2,178 square feet of riparian scrub vegetation downstream of the existing bridge may be disturbed during demolition.

Cofferdams and Rock Slope Protection

RSP will be placed along both river banks above the MHW elevation, from 50 feet upstream to 50 feet downstream of the new bridge abutments. The RSP will be installed, backfilled and compacted per Reclamation District 403/404 specifications. Cofferdams may be installed to isolate center pier demolition and/or abutment demolition from flowing water if water quality thresholds in the 401 Certification cannot be met. A vibratory hammer will be used to place cofferdam sheet piles.

Demolition of the Existing Bridge

Construction specifications will require the contractor to prevent all superstructure debris from entering the channel during demolition of the existing bridge and fenders, and will prohibit the use of blasting. The construction staging area will be located south of the San Joaquin River and east of the existing Navy Drive Bridge. The contractor will use a system of barges that either float down river to the Project Area, or be assembled from Flexi-Floats that are trucked to the site to facilitate demolition.

Demolition of the existing Navy Drive Bridge will begin by removing the bridge control house, guardrails, lights, stairs, and any other appurtenances to reduce weight. The concrete deck may also be demolished to remove weight. The debris will be trapped by the floats and brought to shore for off-site disposal. The truss will be cut into segments, which will be lifted out and set on land for dismantling and removal. The mechanical elements will be removed from the center pier of the existing bridge. Construction specifications will require the existing substructure to be removed and all debris to be removed from the channel. A timber fender system is located around the central pier of the existing bridge. The fender system will be demolished and removed from the site. Construction specifications will require that the demolished timber to be off-loaded from floats and trucked to an off-site disposal area. Removal elevation of the existing bridge piers and fender system will be determined by the Coast Guard.

Demolition of the center pier will begin by removing the interior walls of the center pier down to the top of the center pier footing. Demolished concrete will be removed from the center of the pier using an excavator or clamshell operating from Flexi-Floats or from a trestle bridge. Once the inside of the center pier is demolished, the exterior of the center pier will be demolished. Initially an excavator fitted with a chipping tool will work the sides down with debris falling into the center of the pier. Divers using jackhammers will complete the demolition. The concrete debris will be removed from the center of the pier using a clamshell as the demolition progresses. The side piers will be demolished to just below the top of the existing bank using an excavator with a chipper. Any concrete debris will be removed from the river using a clamshell bucket attached to a crane. Wood piles that need to be removed will be removed with divers and cables with a crane based on either the trestle or barge. Any void in the river bottom resulting from removal of the center pier foundation will be left to fill on its own through natural river transport of sediments. Turbidity curtains will be used to meet water quality thresholds in the 401 Certification. If water quality thresholds cannot be met, the center pier will be isolated with a ring cofferdam and the demolition work will be completed.

The old bridge abutments will be demolished to just below the top of the bank using conventional demolition equipment. All concrete, steel, and timber foundation material will be removed down to the bottom of the elevations required by the U.S. Coast Guard and U.S. Army Corps of Engineers. The removal of the abutment foundations may require the establishment of a stable benched area with a gradual incline, so that construction equipment can be brought into position to remove the abutment foundations. As excavation is performed to expose the subsurface portions of the abutments, the abutment foundations will either be removed by hand or by equipment from the bench area. All demolished structure material will be removed off-site. To maintain the integrity of the levee, piles below the bottom of the footings will not be removed. After the abutment foundations are removed to the bottom of the footing, the areas that were excavated to remove the abutment foundations will be backfilled. To the extent practicable, the backfill will consist of the soil removed during excavation. Backfill will be placed in uniform layers not exceeding 0.67 feet of thickness. The material will be compacted per Reclamation District specifications. Turbidity curtains will be used to meet water quality thresholds in the 401 Certification. If water quality thresholds cannot be met, the old abutments will be isolated with cofferdams and the demolition work will be completed.

Roadway Approach Improvements

Navy Drive will be widened from two lanes to four lanes, from the State Route 4 Crosstown Freeway Extension limits (just east of the Navy Drive/railroad underpass) to just west of the Navy Drive and Washington Street intersection. The Project will also reconfigure and signalize the Navy Drive and Washington Street intersection to make Navy Drive the primary through movement.

Currently, Navy Drive ties in to McCloy Avenue approximately 990 feet north of the existing bridge. Navy Drive will be modified to connect with McCloy Avenue approximately 150 feet west of its current connection point to accommodate the new location of the Navy Drive Bridge. In addition, the new bridge approach and alignment of Navy Drive will be approximately 830 feet long. The new alignment will begin at the end of the new bridge and will end just west of the Washington Street and Navy Drive intersection. Additionally, the entrance to the Stockton Police Department Firing Range will be relocated to accommodate the new alignment.

Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

Name	CESA Status
1. Swainson's hawk (<i>Buteo swainsonii</i>)	Threatened ³
2. Delta smelt (<i>Hypomesus transpacificus</i>)	Endangered ⁴
3. Longfin smelt (<i>Spirinchus thaleichthys</i>)	Threatened ⁵

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

Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above that are expected to result in incidental take of individuals of the Covered Species include: vegetation removal, pile driving, pile removal, pier removal, installation of steel casings, pouring of concrete, dewatering, bridge demolition, bridge construction, trestle installation and removal, grading, trenching, back filling, compaction, excavation, scraping, materials and equipment transport and laydown, personnel walking the area, fence installation, heavy equipment operation, and vehicle traffic (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as vehicle or equipment strikes, nest abandonment from presence of personnel and motorized equipment or barotrauma from pile driving. 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 the attempt to capture and relocate the Covered Species. The areas where authorized take of the Covered Species is expected to occur include: the entire Project limits (see Figure 1) from the intersection of Washington Street and Navy Drive to the intersection of Navy Drive and McCloy Avenue (collectively, the Project Area).

The Project is expected to cause the permanent loss of 0.01 acres of riparian shaded riverine habitat, temporary loss of 0.02 acres of smelt habitat and 0.23 acres of permanent loss of smelt habitat. The Project is also expected to cause the permanent loss of 1.48 acres and temporary loss of 17.62 acres of Swainson's hawk foraging habitat (see Figures 1 and 2). Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise and vibrations from pile installation and removal, noise and vibrations from roadway, trestle and bridge construction/dismantling, trenching, backfilling, excavation, grading, compaction, demolition, vehicle traffic, capture and relocation, and long-term effects due to increased pollution, displacement from habitat, increased competition for food and space, and increased vulnerability to predation.

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

⁴See Cal. Code Regs. tit. 14 § 670.5, subd. (a)(2)(O).

⁵See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(2)(E).

Incidental Take Authorization of Covered Species:

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

Conditions of Approval:

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicle and personnel ingress and egress, staging 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. **California Environmental Quality Act (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 (SCH No.: 2013042040) adopted by the Port of Stockton on September 19, 2013 as the lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No. 1600-2013-0445-R3) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Formal Consultation on the Navy Drive Bridge Replacement Project, San Joaquin County, California (81420-2008-F-0078-1) for the Project pursuant to the federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
5. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
6. **General Provisions:**
 - 6.1. **Designated Representative.** Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting

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Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.

- 6.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, capturing, and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
- 6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.
- 6.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.
- 6.5. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 6.6. 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.
- 6.7. Erosion Control. All erosion and sediment control measures shall be installed prior to earth moving 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 stream or pond. Permittee, Designated Representative, or other trained staff shall monitor erosion control measures before, during, and after each storm event and repair and/or replace ineffective measures immediately.

- 6.8. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 6.9. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat within areas designated as Active Nest Buffer Zones as specified in Condition of Approval 8.16 (Active Nest Buffer Zones) of this ITP.
- 6.10. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 6.11. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project Area(s) 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.
- 6.12. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, temporary fencing, 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 five calendar days before starting Covered Activities in a seasonal work period and shall document compliance with all pre-project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.
- 7.3. Compliance Monitoring. The Designated Biologist shall be on-site daily during: all initial clearing, grubbing, and mass grading activities; as necessary to determine appropriate nest buffer zone; and to oversee installation of temporary fencing/markings around nest buffer

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zones. The Designated Biologist shall conduct compliance inspections (including taking representative photos) of all portions of the Project Area a minimum of twice a month throughout the duration of Covered Activities. Compliance inspections shall (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 nest buffer zones; (5) ensure that any signs, stakes, and fencing are intact as required in this ITP; (6) document any instances of capture and relocation of fish and wildlife and (7) capture photos of Project Area conditions and Covered Activities and to ensure 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 behaviors and any monitoring activities required by this ITP.

- 7.4. Quarterly Compliance Reports. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.3 (Compliance Monitoring) 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. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.
- 7.5. 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.
- 7.6. 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 Quarterly Compliance Reports; (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.
- 7.7. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (707) 944-5500. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following

initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

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. In-water Seasonal Work Period. All project-related in-water work shall be limited to the period between June 1 to October 31.
- 8.2. Weather Work Restriction. The Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the Project Area. If 0.10 inches or more rain is predicted in the 24-hour forecast, no ground-disturbing activities shall occur on the Project site on the day the rain is predicted to occur. Unless otherwise authorized by CDFW, no work shall occur until 24 hours after rain has ceased.
- 8.3. Time of Day Work Restriction. Permittee shall terminate all Covered Activities 30 minutes before sunset and shall not resume Covered Activities until 30 minutes after sunrise unless otherwise authorized in writing by CDFW. Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for the geographic area where the project is located.
- 8.4. On-Site Specialist. Permittee shall have on site a person properly trained in spill containment/clean up to implement spill control devices in the event a spill occurs.
- 8.5. Emergency Spill Contingency Plan Required. Permittee shall submit for acceptance an emergency spill response plan to CDFW prior to commencement of construction. The plan shall identify the location of containment and abatement materials on site, the actions which shall be taken in the event of a spill of hazardous or other material harmful to aquatic or plant life, the emergency materials which shall be kept at the Project Area to allow the rapid containment and clean-up of any spilled material, and the notification and cleanup procedures to be followed by Permittee in the event of a spill.
- 8.6. Spill of Material Deleterious to Fish and Wildlife. In the event of a hazardous materials spill into a stream (e.g., concrete), Permittee shall immediately notify the California Office of Emergency Services State Warning Center by calling (800) 852-7550 and immediately provide written notification to CDFW by email at R31600Program@wildlife.ca.gov. Permittee shall take all reasonable measures to document the extent of the impacts and affected areas including photographic documentation of affected areas, injured fish and wildlife. If dead fish or wildlife are found in the affected area, Permittee shall collect carcasses and immediately deliver them to CDFW. Permittee shall meet with CDFW within ten days of the reported spill in order to develop a resolution including: site clean-up, site remediation and compensatory mitigation for the harm caused to fish, wildlife and the habitats on which they depend as a result of the spill. The Permittee shall be responsible for all spill clean-up, site remediation

and compensatory mitigation costs. Spill of materials to waters of the state that are deleterious to fish and wildlife are in violation of Fish and Game Code Section 5650 et. seq. and are subject to civil penalties for each person responsible. CDFW reserves the right to refer the matter to the District Attorney's Office if a resolution cannot be agreed upon and achieved within a specified timeframe, generally six months from the date of the incident.

8.7. Containment of Concrete Leachate. Containment of concrete leachate shall adhere to the following practices:

- 8.7.1. Any and all concrete structures that may come in contact with channel flows (e.g., piers, abutments) shall be poured by September 30. All other concrete pouring twenty-five (25) feet from the top of the bank or over the watercourse (e.g., bridge surfaces, upland structures) shall be completed by October 31.
- 8.7.2. Water that has come in contact with uncured concrete or other cement products shall not be allowed to enter the main stream channel until the pH of the water is between 6.5 and 8.0 pH units. Water shall be diverted around uncured concrete structures, and the areas around poured concrete shall be dewatered.
- 8.7.3. Unsealed structures shall be allowed to cure (dry) for at least 28 days before flows are reintroduced.
- 8.7.4. To shorten the curing period, Permittee may use a non-toxic sealant designed for use in aquatic environments. Prior to use, Permittee shall submit the product Material Safety Data Sheet (MSDS), including information about environmental toxicity, to CDFW for review and approval. If a sealant is to be applied, concrete structures shall be allowed to cure for at least seven days prior to application and for an additional three days following application of the sealant before flows are reintroduced.
- 8.7.5. Concrete curing compounds shall not be used within 25 feet of the a stream without written acceptance from CDFW.
- 8.7.6. Wash-down water from concrete delivery trucks, concrete pumping equipment, and other tools and equipment shall not be allowed to enter the stream channel and should be removed from the site for treatment following work. No dry concrete shall be placed in a location where it could either fall into or be carried into the channel by wind or storm water runoff.

8.8. Underwater Sound Monitoring During Pile Driving. Underwater sound monitoring shall be performed during pile-driving activities to ensure that single-strike peak sound pressure level does not exceed 208 decibels and the single-strike peak sound exposure level (SEL) does not exceed 187 decibels measured at 10 meters from the source. The Designated Biologist shall include a monitoring report in the Quarterly Compliance Report required in Condition of Approval 7.4, using the Fisheries Hydroacoustic Working Group's *Underwater Noise Monitoring Template*, available online at: http://www.dot.ca.gov/hq/env/bio/fisheries_bioacoustics.htm.

- 8.9. Barotrauma Monitoring During Pile Driving. The underwater sound monitor shall conduct visual monitoring of the water surface concurrent with pile driving activities to ensure that the SEL exceedance does not adversely affect fish motor functions and cause fish die-off. The Designated Biologist shall notify CDFW immediately if fish are observed to be in distress during the pile driving activities. If fish are observed to be in distress then Permittee shall cease pile-driving activities for 3 hours, and subsequent pile driving shall be done using the 'ramping up' technique defined in Condition 8.10.
- 8.10. Underwater Sound Reduction. Underwater sound reduction measures shall be used as needed to ensure that sound levels do not exceed above threshold levels. Sound reduction measures may include: use of an impact hammer cushion block; use of impact hammers during daylight hours only; 'ramping up' technique where pile strikes gradually increase energy and frequency of impacts until full force and frequency are achieved; pipe caissons installed with a vibratory hammer to isolate the piles from the water; and the use of a bubble curtain surrounding the pile to be driven.
- 8.11. Turbidity Curtain. A turbidity curtain shall be used to reduce turbidity caused by demolition of the existing center swing-pier, and demolition of existing bridge abutments below the MHW elevation. After installation of a turbidity curtain, the Permittee or their contractor shall monitor turbidity during demolition activities consistent with the 401 Water Quality Certification for the Project. If water quality compliance cannot be achieved with turbidity curtains, then Permittee shall isolate the in-water demolition area(s) with cofferdams.
- 8.12. Cofferdam Installation. If water quality thresholds cannot be achieved using turbidity curtains then Permittee shall isolate the work area from the flowing river using cofferdams. The cofferdam installation shall be limited to the period between June 1 and November 30. Cofferdams shall remain in place and functional during Covered Activities as necessary to meet water quality thresholds. Cofferdams that fail for any reason shall be repaired immediately. All materials used in cofferdam construction shall be removed from the Project Area once the cofferdams are no longer needed.
- 8.13. Stranded Aquatic Life. A CDFW-approved biologist shall be present to capture and relocate fish that may become visible behind the cofferdams as water level drops. During the period of active dewatering, the Designated Biologist shall check daily for stranded aquatic life as the water level in the dewatering area drops and until active dewatering ceases. All stranded aquatic life in the dewatered areas shall be immediately relocated to suitable habitat. A fish relocation plan shall be prepared and submitted to the CDFW Regional Representative at the contact information below for written approval.
- 8.14. Swainson's Hawk Pre-Construction Surveys. The Designated Biologist(s) shall conduct nesting surveys for Covered Activities related to the construction, grading, vegetation trimming, tree removal, or other Covered Activities occurring during the raptor nesting season (February 15 to August 15). If Covered Activities are to be conducted during the nesting season, a focused survey for active Swainson's hawk nests shall be conducted by the Designated Biologist(s) within 7 days prior to the beginning of Covered Activities. If a lapse in Covered Activities of 7 days or longer occurs, another focused survey shall be performed and the survey results sent to CDFW prior to resuming work. After the pre-construction nesting

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survey occurs the Designated Biologist shall conduct additional surveys within and adjacent to the Project Area every other week (i.e. during compliance checks). Initial nesting surveys shall be conducted within the Project Area and within a 0.25-mile buffer of the Project Area to identify active nests. The Designated Biologist(s) shall use the methodology outlined in the "Swainson's Hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley", for all nesting surveys, available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>. If any active Swainson's hawk nests are found within 0.25-mile of the Project Area or within the Project Area, CDFW shall be contacted to establish appropriate no-work buffers to avoid nest abandonment as described in Condition of Approval 8.15 (Active Nest Buffer Zones).

- 8.15. Active Nest Buffer Zones. If active Swainson's hawk nests are found, Covered Activities near active nests shall be avoided by establishment of nest buffers zones, unless under the direct observation of the Designated Biologist. The size of the buffers shall be determined by the Designated Biologist in consultation with CDFW. The Permittee shall clearly delineate the buffer zone around an active nest within the Project Area with posted signs demarcating the area to avoid and using stakes, fencing, flags, and/or rope or cord to minimize the disturbance of Swainson's hawk nesting behaviors. All construction personnel shall be notified of the existence of the nest buffer zone and instructed to avoid entering it during nesting season.
- 8.16. Acclimation to Disturbance. Covered Activities within 600 feet of an active nest should be limited to the greatest extent possible from the time eggs are laid until they hatch. If construction must occur in that time frame, to the greatest extent possible, Permittee shall initiate construction prior to egg-laying. This allows Swainson's hawks time to acclimate to disturbance before eggs are laid, reducing the potential for nest abandonment.
- 8.17. Stop Work for Abnormal Nesting Behavior. A biologist, who is experienced in raptor behavior and approved by CDFW, shall be assigned to monitor the behavior of actively nesting hawks within the nest buffer zone. The Designated Biologist(s) shall stop all work activities within the buffer zone if the birds exhibit abnormal nesting behavior which may cause nest abandonment and loss of eggs/young. Abnormal nesting behaviors include, but are not limited to, swooping/stooping excessive vocalization (distress calls), agitation, standing up from a brooding position, failure to remain on the nest, and failure to deliver prey items for an extended time-period. Project activities within the buffer zone shall not resume until the Designated Biologist(s) has consulted with CDFW and both the Designated Biologist and CDFW confirm that the bird's behavior has normalized or the young have left the nest. On a weekly basis, the Designated Biologist shall report directly to CDFW the status of each active Swainson's hawk nest, observations of abnormal nesting behaviors and any significant changes in ambient conditions due to Covered Activities. Significant changes would include noise levels and visual conditions such as an increase in the number of personnel walking around the Project Area or mobilization of large equipment into the Project Area.
- 8.18. No Nest Tree Contact. Physical contact with an active nest tree shall be prohibited from the time of egg-laying to fledging. To the greatest extent possible, Project personnel shall remain away from and out of sight of active Swainson's hawk nests. If Project personnel must approach closer than 90 feet to an active nest tree for more than 15 minutes while adults are brooding, the nesting adults shall be monitored per Condition of Approval 8.17 (Stop Work for

Abnormal Nesting Behavior) for abnormal behavior. If stressed or abnormal behavior is identified, personnel shall be removed outside the nest buffer zone until behavior normalizes.

8.19. **No Breaks Near Nest Trees.** If Covered Activities within the Swainson's hawk nest buffer zone need to occur, all Project personnel shall not be closer than 600 feet to an active nest site while taking breaks. To the greatest extent possible, personnel shall remain in their equipment, vehicles or out of the line of sight of active Swainson's hawk nests during breaks. Breaks shall not be permitted under active nest trees or within nest buffer zones.

8.20. **Nest Abandonment.** If the Project results in nest abandonment and nestling(s) are still alive, the Designated Biologist(s) shall recover the hatchling(s) or egg(s) and immediately take it to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall bear any cost associated with recovery of nestling(s) and hacking (controlled release of captive reared young) of the nestling(s).

9. **Habitat Management Land Acquisition:**

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

To meet this requirement, the Permittee will purchase 19.1 acres of Swainson's hawk credits, 0.05 acres of riparian shaded riverine aquatic credits and 0.71 acres of smelt credits from CDFW-approved mitigation banks prior to conducting Covered Activities.

Amendment:

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

Stop-Work Order:

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

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Compliance with Other Laws:

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

Notices:

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

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

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2017-067-03) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Gregg Erickson, Regional Manager
California Department of Fish and Wildlife
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
Telephone (707) 944-5500

and a copy to:

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

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

Melissa Farinha
California Department of Fish and Wildlife
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
Telephone (707) 944-5579
E-mail Melissa.Farinha@wildlife.ca.gov

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Compliance with CEQA:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, Port of Stockton. (See generally Pub. Resources Code, §§ 21067, 21069). The lead agency's prior environmental review of the Project is set forth in Navy Drive Bridge Replacement Project Initial Study with Mitigated Negative Declaration/Environmental Assessment and Programmatic Section 4(f) Evaluation with Finding of No Significant Impact, (SCH No.: 2013042040) dated September 2013 that the Port of Stockton adopted for the Navy Drive Bridge Replacement Project on September 19, 2013. At the time the lead agency adopted the Mitigated Negative Declaration and approved the Project, it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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

Findings Pursuant to CESA:

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

CDFW finds based on substantial evidence in the ITP application, Navy Drive Bridge Replacement Project Initial Study with Mitigated Negative Declaration/Environmental Assessment and Programmatic Section 4(f) Evaluation with Finding of No Significant Impact, the Lake and Streambed Alteration Agreement (LSAA) (Notification No. 1600-2013-0445-R3, and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) 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 protection and management in perpetuity of 19.86 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and is of higher quality than the habitat being destroyed by

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the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

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

Attachments:

- FIGURE 1 Map of Project Limits
- FIGURE 2 Exhibit D-2, Potential Swainson's Hawk Foraging Habitat within the Project Area
- ATTACHMENT 1 Mitigation Monitoring and Reporting Program

California Fish and Game Commission
 1400 L Street, Sacramento, CA 95833
 (916) 227-2300
 www.dfw.ca.gov

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ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 4-17-18.



Gregg Erickson, Regional Manager
Bay Delta Region

ACKNOWLEDGMENT

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

By:  _____ Date: 4/23/2018 _____

Printed Name: Juan G. Villanueva Title: Development and Planning Manager

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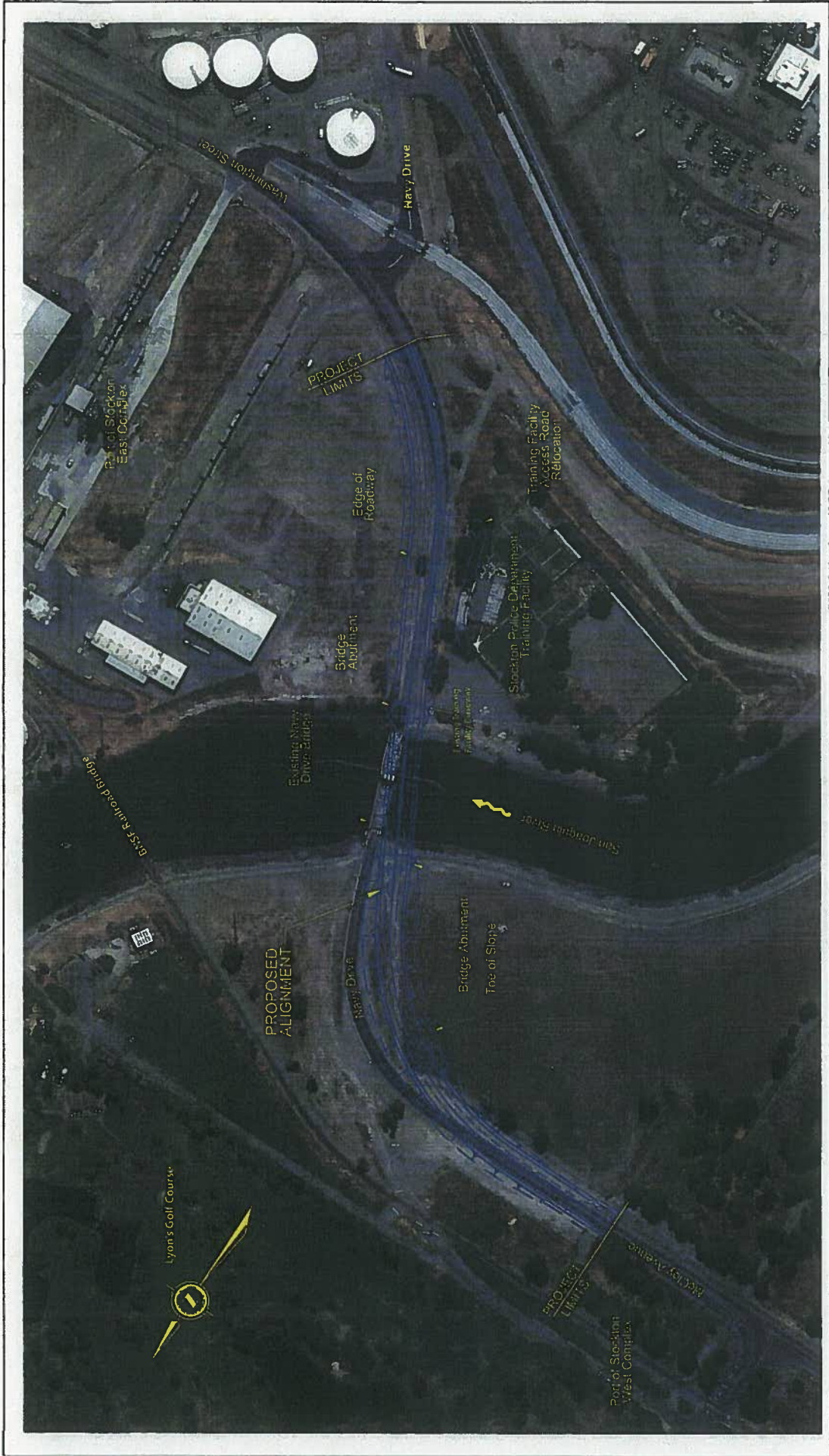
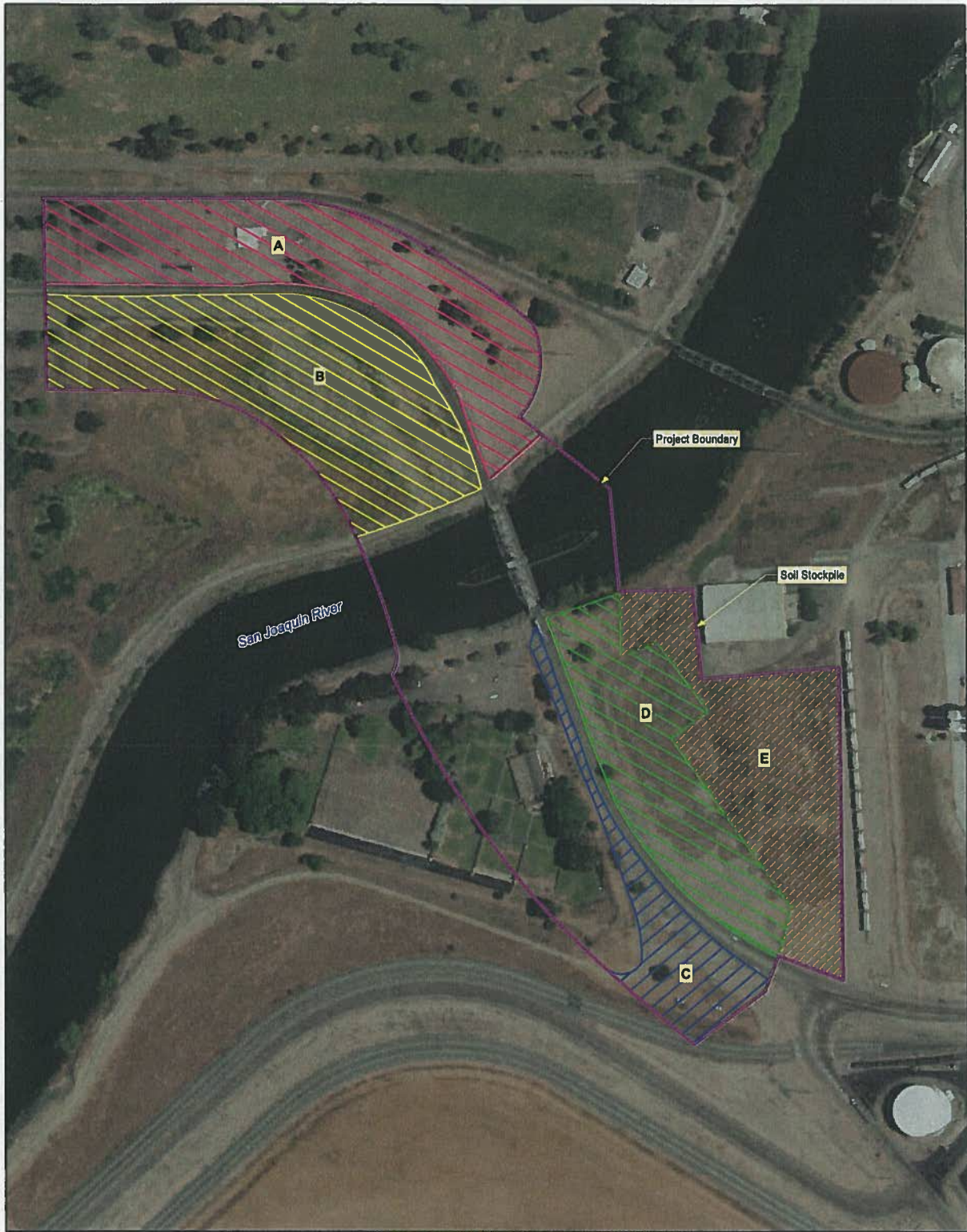


FIGURE 1-5

Navy Drive Bridge Replacement Project
Proposed Project Site

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LEGEND

- Project Limits
- Potential Swainson's Hawk Foraging Habitat**
- A: 208,810 SF
- B: 239,140 SF
- C: 67,652 SF
- D: 137,590 SF
- E: 160,741 SF

Service Layer Credits:
 Content may not reflect National Geographic's current map policy. Sources: National Geographic, Esri, DeLorme, HERE, UNEP-WCMC, USGS, NASA, ESA, METI, NRCAN, GEBCO, NOAA, increment P Corp.

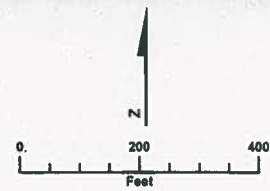


Exhibit D-2
Potential Swainson's Hawk Foraging Habitat within the Project Area
 Navy Drive Bridge Replacement Project
 Port of Stockton
 San Joaquin County, California

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)
CALIFORNIA ENDANGERED SPECIES ACT**

INCIDENTAL TAKE PERMIT NO. 2081-2017-067-03

PERMITTEE: Port of Stockton

PROJECT: Navy Drive Bridge Replacement Project

PURPOSE OF THIS MMRP

The purpose of this 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
1	Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with the ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of the ITP.	ITP Condition # 6.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed.	ITP Condition # 6.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
3	To ensure compliance with the Conditions of Approval of the ITP, the Designated Biologist shall have authority to immediately stop any activity that does not comply with the ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.	ITP Condition # 6.3	Entire Project		
4	Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in the ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided for any new workers before their performing work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.	ITP Condition # 6.4	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
5	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 closed (animal-proof) containers and removed regularly (at least once a week) to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.	ITP Condition # 6.5	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
6	Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.	ITP Condition # 6.6	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
7	All erosion and sediment control measures shall be installed prior to earth moving 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 stream or pond. Permittee, Designated Representative, or other trained staff shall monitor erosion control measures before, during, and after each storm event and repair and/or replace ineffective measures immediately.	ITP Condition # 6.7	Before commencing ground-disturbing activities/ Entire Project		

Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
8 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 # 6.8	Entire Project		
9 Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat within areas designated as Active Nest Buffer Zones as specified in Condition of Approval 8.16 (Active Nest Buffer Zones) of the ITP.	ITP Condition # 6.9	Entire Project		
10 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 # 6.10	Entire Project	Permittee	
11 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 # 6.11	Before commencing ground- or vegetation-disturbing activities	Permittee	
12 Permittee shall provide CDFW staff with reasonable access to the Project Area(s) under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in the ITP.	ITP Condition # 6.12	Entire Project		
13 The Designated Representative shall notify CDFW five calendar days before starting Covered Activities in a seasonal work period and shall document compliance with all pre-project Conditions of Approval before starting Covered Activities.	ITP Condition # 7.1	Before commencing ground- or vegetation-disturbing activities	Permittee	
14 The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of the ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in the ITP and/or this MMRP. The Designated Representative shall report any non-compliance with the ITP to CDFW within 24 hours.	ITP Condition # 7.2	Entire Project	Permittee	
15 The Designated Biologist shall be on-site daily during: all initial clearing, grubbing, and mass grading activities; as necessary to determine appropriate nest buffer zone; and to oversee installation of temporary fencing/markings around nest buffer zones. The Designated Biologist shall conduct compliance inspections (including taking representative photos) of all portions of the Project Area a minimum of twice a month throughout the duration of Covered Activities. Compliance inspections shall (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of the ITP; (4) check all nest buffer zones; (5) ensure that any signs, stakes, and fencing are intact as required in the ITP; (6) document any instances of capture and relocation of fish and wildlife and (7) capture photos of Project Area conditions and Covered Activities and to ensure 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 behaviors and any monitoring activities required by the ITP.	ITP Condition # 7.3	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
16	The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.3 (Compliance Monitoring) into a Quarterly Compliance Report and submit it to CDFW along with a copy of this 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 the ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.	ITP Condition # 7.4	Entire Project	Permittee	
17	The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Quarterly Compliance Report.	ITP Condition # 7.5	Entire Project	Permittee	
18	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 Quarterly Compliance Reports; (2) a copy of the table in this 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) the beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of the ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.	ITP Condition # 7.6	Upon project completion	Permittee	
19	Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (707) 944-5500. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.	ITP Condition # 7.7	Entire Project	Permittee	
20	All project-related in-water work shall be limited to the period between June 1 to October 31.	ITP Condition # 8.1	During In-water work	Permittee	
21	The Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the Project Area. If 0.10 inches or more rain is predicted in the 24-hour forecast, no ground-disturbing activities shall occur on the Project site on the day the rain is predicted to occur. Unless otherwise authorized by CDFW, no work shall occur until 24 hours after rain has ceased.	ITP Condition # 8.2	Entire Project	Permittee	
22	Permittee shall terminate all Covered Activities 30 minutes before sunset and shall not resume Covered Activities until 30 minutes after sunrise unless otherwise authorized in writing by CDFW. Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for the geographic area where the project is located.	ITP Condition # 8.3	Entire Project	Permittee	

Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
<p>23</p> <p>Permittee shall have on site a person properly trained in spill containment/clean up to implement spill control devices in the event a spill occurs.</p>	<p>ITP Condition # 8.4</p>	<p>Entire Project</p>	<p>Permittee</p>	
<p>24</p> <p>Permittee shall submit for acceptance an emergency spill response plan to CDFW prior to commencement of construction. The plan shall identify the location of containment and abatement materials on site, the actions which shall be taken in the event of a spill of hazardous or other material harmful to aquatic or plant life, the emergency materials which shall be kept at the Project Area to allow the rapid containment and clean-up of any spilled material, and the notification and cleanup procedures to be followed by Permittee in the event of a spill.</p>	<p>ITP Conditions # 8.5</p>	<p>Before commencing ground- or vegetation-disturbing activities</p>	<p>Permittee</p>	
<p>25</p> <p>In the event of a hazardous materials spill into a stream (e.g., concrete), Permittee shall immediately notify the California Office of Emergency Services State Warning Center by calling (800) 852-7550 and immediately provide written notification to CDFW by email at R31600Program@wildlife.ca.gov. Permittee shall take all reasonable measures to document the extent of the impacts and affected areas including photographic documentation of affected areas, injured fish and wildlife. If dead fish or wildlife are found in the affected area, Permittee shall collect carcasses and immediately deliver them to CDFW. Permittee shall meet with CDFW within ten days of the reported spill in order to develop a resolution including: site clean-up, site remediation and compensatory mitigation for the harm caused to fish, wildlife and the habitats on which they depend as a result of the spill. The Permittee shall be responsible for all spill clean-up, site remediation and compensatory mitigation costs. Spill of materials to waters of the state that are deleterious to fish and wildlife are in violation of Fish and Game Code Section 5650 et. seq. and are subject to civil penalties for each person responsible. CDFW reserves the right to refer the matter to the District Attorney's Office if a resolution cannot be agreed upon and achieved within a specified timeframe, generally six months from the date of the incident.</p>	<p>ITP Conditions # 8.6</p>	<p>Entire Project</p>	<p>Permittee</p>	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
26	<p>Containment of concrete leachate shall adhere to the following practices:</p> <p>Any and all concrete structures that may come in contact with channel flows (e.g., piers, abutments) shall be poured by September 30. All other concrete pouring twenty-five (25) feet from the top of the bank or over the watercourse (e.g., bridge surfaces, upland structures) shall be completed by October 31.</p> <p>Water that has come in contact with uncured concrete or other cement products shall not be allowed to enter the main stream channel until the pH of the water is between 6.5 and 8.0 pH units. Water shall be diverted around uncured concrete structures, and the areas around poured concrete shall be dewatered.</p> <p>Unsealed structures shall be allowed to cure (dry) for at least 28 days before flows are reintroduced.</p> <p>To shorten the curing period, Permittee may use a non-toxic sealant designed for use in aquatic environments. Prior to use, Permittee shall submit the product Material Safety Data Sheet (MSDS), including information about environmental toxicity, to CDFW for review and approval. If a sealant is to be applied, concrete structures shall be allowed to cure for at least seven days prior to application and for an additional three days following application of the sealant before flows are reintroduced.</p> <p>Concrete curing compounds shall not be used within 25 feet of the a stream without written acceptance from CDFW.</p>	ITP Conditions # 8.7	Entire Project	Permittee	
27	<p>Wash-down water from concrete delivery trucks, concrete pumping equipment, and other tools and equipment shall not be allowed to enter the stream channel and should be removed from the site for treatment following work. No dry concrete shall be placed in a location where it could either fall into or be carried into the channel by wind or storm water runoff.</p> <p>Underwater sound monitoring shall be performed during pile-driving activities to ensure that single-strike peak sound pressure level does not exceed 208 decibels and the single-strike peak sound exposure level (SEL) does not exceed 187 decibels measured at 10 meters from the source. The Designated Biologist shall include a monitoring report in the Quarterly Compliance Report required in Condition of Approval 7.4, using the Fisheries Hydroacoustic Working Group's Underwater Noise Monitoring Template, available online at: http://www.dot.ca.gov/hq/enr/bio/fisheries_bioacoustics.htm.</p>	ITP Conditions # 8.8	During in-water work	Permittee	
28	<p>The underwater sound monitor shall conduct visual monitoring of the water surface concurrent with pile driving activities to ensure that the SEL exceedance does not adversely affect fish motor functions and cause fish die-off. The Designated Biologist shall notify CDFW immediately if fish are observed to be in distress during the pile driving activities. If fish are observed to be in distress then Permittee shall cease pile-driving activities for 3 hours, and subsequent pile driving shall be done using the 'ramping up' technique defined in Condition 8.10.</p>	ITP Conditions # 8.9	During in-water work	Permittee	
29	<p>Underwater sound reduction measures shall be used as needed to ensure that sound levels do not exceed above threshold levels. Sound reduction measures may include: use of an impact hammer cushion block; use of impact hammers during daylight hours only; 'ramping up' technique where pile strikes gradually increase energy and frequency of impacts until full force and frequency are achieved; pipe caissons installed with a vibratory hammer to isolate the piles from the water, and the use of a bubble curtain surrounding the pile to be driven.</p>	ITP Conditions # 8.10	During in-water work	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
30	<p>A turbidity curtain shall be used to reduce turbidity caused by demolition of the existing center swing-pier, and demolition of existing bridge abutments below the MHW elevation. After installation of a turbidity curtain, the Permittee or their contractor shall monitor turbidity during demolition activities consistent with the 401 Water Quality Certification for the Project. If water quality compliance cannot be achieved with turbidity curtains, then Permittee shall isolate the in-water demolition area(s) with cofferdams.</p>	ITP Conditions # 8.11	Entire project	Permittee	
31	<p>If water quality thresholds cannot be achieved using turbidity curtains then Permittee shall isolate the work area from the flowing river using cofferdams. The cofferdam installation shall be limited to the period between June 1 and November 30. Cofferdams shall remain in place and functional during Covered Activities as necessary to meet water quality thresholds. Cofferdams that fail for any reason shall be repaired immediately. All materials used in cofferdam construction shall be removed from the Project Area once the cofferdams are no longer needed.</p>	ITP Conditions # 8.12	Entire project		
32	<p>A CDFW-approved biologist shall be present to capture and relocate fish that may become visible behind the cofferdams as water level drops. During the period of active dewatering, the Designated Biologist shall check daily for stranded aquatic life as the water level in the dewatering area drops and until active dewatering ceases. All stranded aquatic life in the dewatered areas shall be immediately relocated to suitable habitat. A fish relocation plan shall be prepared and submitted to the CDFW Regional Representative at the contact information below for written approval.</p>	ITP Conditions # 8.13	During in-water work (dewatering activities)		
33	<p>The Designated Biologist(s) shall conduct nesting surveys for Covered Activities related to the construction, grading, vegetation trimming, tree removal, or other Covered Activities occurring during the raptor nesting season (February 15 to August 15). If Covered Activities are to be conducted during the nesting season, a focused survey for active Swainson's hawk nests shall be conducted by the Designated Biologist(s) within 7 days prior to the beginning of Covered Activities. If a lapse in Covered Activities of 7 days or longer occurs, another focused survey shall be performed and the survey results sent to CDFW prior to resuming work. After the pre-construction nesting survey occurs the Designated Biologist shall conduct additional surveys within and adjacent to the Project Area every other week (i.e. during compliance checks). Initial nesting surveys shall be conducted within the Project Area and within a 0.25-mile buffer of the Project Area to identify active nests. The Designated Biologist(s) shall use the methodology outlined in the "Swainson's Hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley", for all nesting surveys, available at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline. If any active Swainson's hawk nests are found within 0.25-mile of the Project Area or within the Project Area, CDFW shall be contacted to establish appropriate no-work buffers to avoid nest abandonment as described in Condition of Approval 8.15 (Active Nest Buffer Zones).</p>	ITP Conditions # 8.14	Before commencing ground- or vegetation-disturbing activities		
34	<p>If active Swainson's hawk nests are found, Covered Activities near active nests shall be avoided by establishment of nest buffers zones, unless under the direct observation of the Designated Biologist. The size of the buffers shall be determined by the Designated Biologist in consultation with CDFW. The Permittee shall clearly delineate the buffer zone around an active nest within the Project Area with posted signs demarcating the area to avoid and using stakes, fencing, flags, and/or rope or cord to minimize the disturbance of Swainson's hawk nesting behaviors. All construction personnel shall be notified of the existence of the nest buffer zone and instructed to avoid entering it during nesting season.</p>	ITP Conditions # 8.15	Before commencing ground- or vegetation-disturbing activities/entire project		

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
35	Covered Activities within 600 feet of an active nest should be limited to the greatest extent possible from the time eggs are laid until they hatch. If construction must occur in that time frame, to the greatest extent possible, Permittee shall initiate construction prior to egg-laying. This allows Swainson's hawks time to acclimate to disturbance before eggs are laid, reducing the potential for nest abandonment.	TTP Conditions # 8.16	Entire project	Permittee	
36	A biologist, who is experienced in raptor behavior and approved by CDFW, shall be assigned to monitor the behavior of actively nesting hawks within the nest buffer zone. The Designated Biologist(s) shall stop all work activities within the buffer zone if the birds exhibit abnormal nesting behavior which may cause nest abandonment and loss of eggs/young. Abnormal nesting behaviors include, but are not limited to, swooping/stooping excessive vocalization (distress calls), agitation, standing up from a brooding position, failure to remain on the nest, and failure to deliver prey items for an extended time-period. Project activities within the buffer zone shall not resume until the Designated Biologist(s) has consulted with CDFW and both the Designated Biologist and CDFW confirm that the bird's behavior has normalized or the young have left the nest. On a weekly basis, the Designated Biologist shall report directly to CDFW the status of each active Swainson's hawk nest, observations of abnormal nesting behaviors and any significant changes in ambient conditions due to Covered Activities. Significant changes would include noise levels and visual conditions such as an increase in the number of personnel walking around the Project Area or mobilization of large equipment into the Project Area.	TTP Conditions # 8.17	Entire project	Permittee	
37	Physical contact with an active nest tree shall be prohibited from the time of egg-laying to fledging. To the greatest extent possible, Project personnel shall remain away from and out of sight of active Swainson's hawk nests. If Project personnel must approach closer than 90 feet to an active nest tree for more than 15 minutes while adults are brooding, the nesting adults shall be monitored per Condition of Approval 8.17 (Stop Work for Abnormal Nesting Behavior) for abnormal behavior. If stressed or abnormal behavior is identified, personnel shall be removed outside the nest buffer zone until behavior normalizes.	TTP Condition # 8.18	Entire Project	Permittee	
38	If Covered Activities within the Swainson's hawk nest buffer zone need to occur, all Project personnel shall not be closer than 600 feet to an active nest site while taking breaks. To the greatest extent possible, personnel shall remain in their equipment, vehicles or out of the line of sight of active Swainson's hawk nests during breaks. Breaks shall not be permitted under active nest trees or within nest buffer zones.	TTP Condition # 8.19	Entire Project	Permittee	
39	If the Project results in nest abandonment and nestling(s) are still alive, the Designated Biologist(s) shall recover the hatchling(s) or egg(s) and immediately take it to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall bear any cost associated with recovery of nestling(s) and hatching (controlled release of captive reared young) of the nestling(s).	TTP Condition # 8.20	Entire Project	Permittee	
40	CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. To meet this requirement, the Permittee will purchase 19.1 acres of Swainson's hawk credits, 0.05 acres of riparian shaded riverine aquatic credits and 0.71 acres of smelt credits from CDFW-approved mitigation banks prior to conducting Covered Activities.	TTP Condition # 9	Before commencing ground- or vegetation-disturbing activities	Permittee	

Attachment B – Eric Hansen GGS Report

Eric C. Hansen
Consulting Environmental Biologist

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Sacramento, CA
95834-1235



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Mobile 916-214-7848

Date: October 25, 2021

To: Diane S. Moore, M.S.
Principal Biologist
Moore Biological Consultants
10330 Twin Cities Road, Ste. 30
Galt, CA 95632
Office: (209) 745-1159
Mobile: (209) 986-5862
moorebio@softcom.net

Re: Giant gartersnake (*Thamnophis gigas*) Habitat Assessment on the Smith Canal Gate Project, San Joaquin County, California.

Dear Ms. Moore,

This memorandum provides the results of the 29 September 2021 survey at the Smith Canal Gate Project (Project), located at the mouth of Atherton Cove upstream to Smith Canal, a Perennial drainage and tributary to the San Joaquin River within the City of Stockton, San Joaquin County. This survey was conducted in response to a request by the Construction Management (CM) Team to assess potential habitat for the giant gartersnake (GGS) and was directed by Moore Biological Consultants, the firm assigned to biological compliance of species covered by the San Joaquin County Multi-Species Habitat Conservation Plan. Potential habitat was evaluated using a combination of ground-level surveys, professional experience, the California Natural Diversity Database (CNDDB), and Geographic Information System (GIS) program ArcGIS 10.6 to assess the overall suitability of the site based on the prevailing character of the landscape, and to examine the site's location in reference to historical and recent GGS occurrence records. Comments on minimization and avoidance both before and after October 1 (the giant garter snake construction window boundary) are also included, with emphasis on activities occurring during the post-September dormant season. Photographs illustrating the site's general character are provided in a separate photo appendix at the end of this document (Appendix A).

The lands encompassing the Project area were evaluated in context of the full suite of suitable features required to support permanent populations of gartersnakes, which include: 1) sufficient water during the active summer season to supply cover and food such as small fish and amphibians; 2) emergent, herbaceous aquatic vegetation accompanied by vegetated banks to provide basking and foraging habitat; 3) bankside burrows, holes and crevices to provide

short-term aestivation sites; 4) high ground or upland habitat above the annual high water mark to provide cover and refugia from floodwaters during the dormant winter season (Hansen 1988, Hansen and Brode 1980).

Results suggest the Project constitutes only marginal habitat (at best), which is characterized by any combination of those features listed above needed to support transient GGS on a temporary basis, or to act as connective corridors between areas of more stable or desirable habitat. In this case, the relative distance to known habitat, the quality of features at occupied sites relative to the Project site, and the size and isolation of the Project site suggest the likelihood of GGS occurrence is exceptionally low. The prevailing landscape surrounding the Project site is entirely unsuitable for GGS. Nonetheless, it is also my opinion that in the unlikely event GGS should occur on the Project site, the applied Minimization and Avoidance Measures (MMAs) are sufficient to reduce potential take to less-than-significant levels. Justifications for these conclusions are provided below.

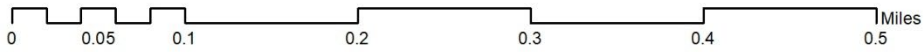
Project Location and Description

The Project is located at the mouth of Atherton Cove upstream to Smith Canal, a Perennial drainage and tributary to the San Joaquin River within the City of Stockton, San Joaquin County at Latitude of 37.9579, Longitude: -121.3527; County Assessor's Parcel Numbers: 109-02-006, 133-06-001, and 121-040-27. The Project site is bounded by the San Joaquin River to the south and west and bounded by the surrounding neighborhood to the north and east (see Figure 1).

The purpose of the Project is to reacquire Federal Emergency Management Agency accreditation (revoked in 2009) and remove the Special Flood Hazard Area designation from a large portion of central Stockton. Construction of the Project has been anticipated to take up to three years from the time when construction activities begin. The Project consists of the following elements:

1. Construction of an approximately 800-foot-long gated fixed cellular sheet pile wall over the course of three years to isolate Atherton Cove and Smith Canal from the San Joaquin River during high flow and tide events.
2. Installation of approximately 1,660 linear feet of single-sheet sheet pile wall embedded within Dad's Point, where a concrete cap will be installed on top of wall in areas where it is exposed.
3. Placement of fill materials in areas to raise the elevation of Dad's Point.
4. Grading the crown of Dad's Point and construction of an 8-foot-wide all-purpose road and a 12-foot-wide concrete paver trail.
5. Construction of a temporary cofferdam and dewatering of the area where the gated fixed cellular sheet pile wall will be installed.
6. Dredging of up to 8,650 cubic yards in the footprint of the fixed cellular sheet pile wall;
7. Installation of sixty-four concrete-filled steel pipe piles, approximately 36 inches in diameter for gate construction.

Figure 1. Project Location and Overarching Land Cover



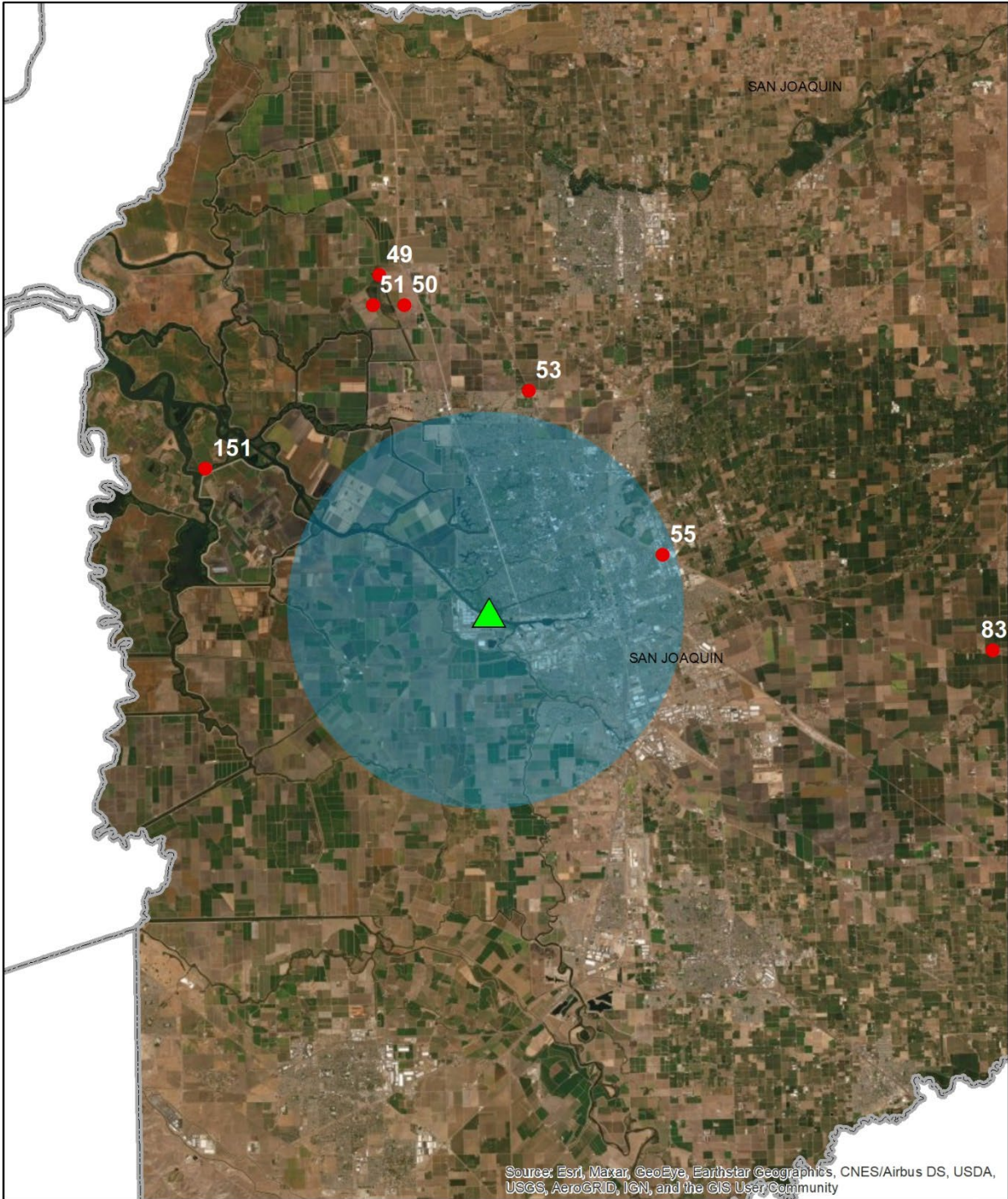
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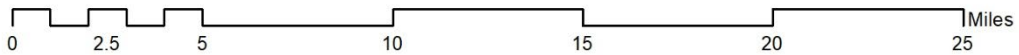
8. Forming and pouring of an approximately 69-foot wide, 69-foot long, and 6-foot thick reinforced concrete floor and two approximately 71.25-foot long, 22-foot high, and 6-foot thick gate structure walls.
9. Installation of thirty-six 36-inch steel pipe dolphin piles on the San Joaquin River side of the wall for protection from boats and two fender piles on both the San Joaquin River and Smith Canal sides of the gate structure to provide support for the concrete floor and walls fitted with solar-powered light-emitting diode navigation lights.
10. Placement of approximately 4,200 tons of riprap along the banks where the wall ties into the banks and around the edge of the gate structure.
11. Installation of two fishing/wildlife viewing platforms on the river-side of Dad's Point approximately 36 feet wide by 12 feet deep placed on 24-inch diameter steel piles.
12. Removal of invasive plant species, replanting with native plants on the banks of Dad's Point.
13. Installation of up to five bat boxes.
14. Installation of a multi-use interpretive trail.
15. Water quality maintenance via removal of floating debris and vegetation after construction.
16. Ongoing operation, inspection and maintenance of the gate and associated infrastructure.

Proximity to Known Records

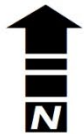
Giant gartersnakes have been documented within the Project vicinity, but only anecdotal accounts place GGS within 10-kilometers of the Project within the past 40 years. A search of the California Natural Diversity Database (CNDDDB 2021) shows only one record within a 10-kilometer radius of the project area (Figure 2). This record (Stockton Diverting Channel, CNDDDB Number 55) is 30+ years old. In addition to the lapse of time since the occurrence, there have been significant land use changes in this area which greatly reduce the likelihood of many of these occurrences remain viable. Additional comments on regional distribution are described below.



● GGS Locality Record ■ Smith Canal 10K Buffer ▲ Project Site



Created 25 October 2021 by EC Hansen



Results and Discussion

Results from this survey are drawn from the habitat assessment conducted on 29 September 2021 at the Smith Canal Gate Project, San Joaquin County, California.

The habitat at and near the Project is largely unsuitable due to the site's limited size, the large expanses of open water, tidal influence, heavy landscape modification, human disturbance, and distance to known locality records. While impossible to rule out the occasional presence of GGS washed down from other locales, the size of the site and lack of suitable connectivity to otherwise suitable habitats effectively preclude the possibility of resident GGS. The landscape changes and urban development that have taken place in the surrounding area since the last CNDDDB record of occurrence reduce the likelihood of GGS persistence in the region. In fact, only one verified GGS record (CNDDDB Number 55) fall within 10km of the Project (see Figure 2). Patterns of contemporary occupancy and distribution of GGS in this region remain relatively unexplored, and intensive sampling has not been conducted to my knowledge since prior to 2000. I acknowledge that the commercial version of the CNDDDB often lacks current information, and I am aware of numerous GGS sightings (both anecdotal and verified) at multiple sites throughout the Delta (e.g., Bullfrog Marina, Middle River Near West Lower Jones Road) that do not appear in the CNDDDB. However, most of the sightings I reference are associated with abundant supporting habitat features that the Project site does not possess.

As mentioned above, the Project site is heavily disturbed, and what little habitat does exist is present on the slim bank margins below the hinge of the slope. Riprap and marginal edge vegetation do occur, and there is very limited emergent vegetation (common tule, *Schoenoplectus acutus*) present in a limited patch at the tip of Dad's Point. However, these conditions are inadequate for supporting GGS on a permanent basis, and measures implemented prior to 1 October 2021 have isolated these areas from Project activities.

Furthermore, earth moving, and landscape-level disturbance began on the peninsula of Dad's Point well before the regulatory threshold of the GGS inactive season on October 1. Not only was earth-moving activity initiated or completed before the GGS inactive period, but exclusion fencing (including one-way exclusion funnels) was installed to prevent GGS from moving between the limited potential habitat to active work areas. Biological monitors have remained on site to inspect and maintain the integrity of the fence, and the installed escape funnels provide opportunities for GGS to evacuate should they become entrained in the work area. These measures are standard for reducing or eliminating risks prior to the onset of the GGS inactive period, therefore it is unlikely that GGS would be disturbed or "taken" during work conducted after October 1. The principal disturbance occurred before snakes entered the inactive period, and the AMMs established prior to GGS overwintering are expected to mitigate the likelihood that any GGS would be taken during any subsequent work.

If you have questions regarding this evaluation, the methodologies, or any of the subsequent comments, please do not hesitate to contact me. I will gladly expand on any of these topics upon request.

Sincerely,

A handwritten signature in black ink that reads "Eric C. Hansen". The signature is written in a cursive style with a large, sweeping initial "E".

Eric C. Hansen
Consulting Environmental Biologist

References

- California Department of Fish and Wildlife. 2021. California Natural Diversity Database (CNDDDB) – Commercial Version. Accessed October 25, 2021.
- Hansen, G.E. and J.M. Brode. 1980. Status of the giant garter snake, *Thamnophis couchi gigas* (Fitch) and its supporting habitat. California Department of Fish and Game. Inland Fisheries Division Endangered Species Division Special Report No. 80-5. 14pp.
- Hansen, G.E. 1988. Review of the Status of the giant garter snake (*Thamnophis couchii gigas*) and its supporting habitat during 1986-87. Final report for the California Department of Fish and Game, Contract C-2060. Unpublished. 31 pp.

Appendix A. Representative photographs of the Project Site



Example of Bankside Habitat



Gate Construction



Interface with Gate Construction



Limited Habitat at the Tip of Dad's Point



Example of Disturbance Prior to October 1



Limited Bankside Habitat

Appendix A. Representative photographs of the Project Site



Sheet Wall (Installed Before October 1)



Escape Funnel (Installed Before October 1)



Escape Funnel (Installed Before October 1)



Exclusion Fence (Installed Before October 1)



Escape Funnel (Installed Before October 1)



Exclusion Fence (Installed Before October 1)