



**California Department of Fish and Wildlife  
Central Region; R4  
1234 EAST SHAW AVENUE  
FRESNO, CALIFORNIA 93710**

California Endangered Species Act  
Incidental Take Permit No. 2081-2022-056-04

**7<sup>TH</sup> STREET BRIDGE REPLACEMENT PROJECT**

**I. Authority:**

This California Endangered Species Act (CESA) incidental take permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take<sup>1</sup> of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.<sup>2</sup> However, CDFW may authorize the take of any such species by permit pursuant to the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c). (See Cal. Code Regs., tit. 14, § 783.4).

**Permittee:** Stanislaus County Public Works  
**Principal Officer:** David Leamon  
**Contact Person:** David Leamon, Director of Public Works  
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(209) 525-4151  
**Mailing Address:** 1716 Morgan Road  
Modesto, California 95358

**II. Effective Date and Expiration Date of this ITP:**

This ITP is effective as of the date signed by CDFW below. Unless renewed by CDFW, this ITP and its authorization to take the Covered Species shall expire on **December 31, 2034**.

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 6.7 of this ITP.

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

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

**III. Project Location:**

The 7<sup>th</sup> Street Bridge Replacement Project (Project) is located at the 7th Street Bridge over Tuolumne River in the City of Modesto, Stanislaus County and includes portions of Tuolumne Boulevard, the adjacent Tuolumne River floodplain (Floodplain), Southern Pacific Railroad, and Zeff Road which becomes River Road east of the bridge (Figure 1). The Project is within the United States Geological Survey Riverbank 7.5-minute quadrangle, Township 3 South, Range 9 East, Section 33, latitude 37.626478, and longitude -120.993605.

**IV. Project Description:**

The Project will create a structurally and functionally sufficient bridge crossing over the Tuolumne River along the 7<sup>th</sup> Street corridor. The Project is needed to correct structural and hydraulic deficiencies, increase the capacity of the 7<sup>th</sup> Street corridor, and to improve safety for vehicles, bicycles, and pedestrians. On a sufficiency scale of 0 (low) to 100 (high), the existing 7<sup>th</sup> Street Bridge is listed on the Caltrans Local Agency Bridge List with a sufficiency rating of 2 due to structural deficiencies associated with deteriorated structural and hydrologic conditions due to inadequate width and limited vehicle capacity.

The Project will replace the existing bridge with a new 1,238 foot long, 8-span arched concrete box girder bridge. The Project will occur within approximately 40.12 acres, with approximately 32.09 acres comprised of industrial complexes, roadway, low-income housing and degraded and disturbed substrate (existing, unvegetated, compacted dirt areas), 3.13 acres of floodplain and instream habitat, 0.40 acres of riparian vegetation, and 4.51 acres of ruderal non-native grassland habitat (collectively, the Project Area). Project activities include: 1) establishment of an environmentally sensitive area, 2) construction access, 3) staging areas for heavy equipment, 4) stockpiling area for fill excavation and construction materials, 5) construction trailer/field office site, 6) roadway improvements, 7) construction of a permanent maintenance access road, 8) utility improvements, 9) bridge demolition, 10) bridge construction, 11) isolation casing installation, 12) pile construction, 13) dewatering activities, 14) construction of the pedestrian plaza and specialty structure to commemorate historical significance of the existing structure, 16) retaining wall construction, 17) tree removal, and 18) building removal Project activities will begin following issuance of this ITP and are anticipated to be completed by December 2029.

*Establishment of Environmentally Sensitive Areas*

Construction will begin with the establishment of the Environmentally Sensitive Areas (ESAs) using fencing. ESA fencing will be maintained throughout construction.

*Construction Access Areas*

Project access to the Floodplain will occur through established paths/walkways within the Tuolumne River Regional Park, however the Permittee may first construct the permanent maintenance access road from Tuolumne Boulevard to use as the primary access for construction. It is anticipated that construction of temporary earthen/gravel access ramps will occur using heavy equipment on both sides of the Floodplain in support of the bridge construction. Grading will occur above the Floodplain along the existing roadways to infill the approach roadways to meet the raised profile of the new

bridge. In addition, the Permittee will install a temporary work trestle to support construction materials/equipment and to provide access over the Tuolumne River during construction.

In addition to temporary access ramps, existing roadways will be used for equipment access throughout the duration of construction. Project crews and/or equipment may utilize the entire Project footprint within the Floodplain to conduct work and facilitate access to construction areas.

### *Staging Areas*

Staging of equipment and materials may occur within the Floodplain, in upland areas, and/or on roadways. Storage and staging areas located within the Floodplain will be removed before a high flow event. Upland staging areas could include areas along the roadways on the north end of the Project owned by the City or on the south end of the Project owned by the County.

### *Stockpiling Area for Fill, Excavation and Construction Materials*

Stockpiling areas will be outside of the Tuolumne River ordinary high-water mark (OHWM) but within the Floodplain or upland areas along the existing roadways. It is anticipated that materials needed for construction will be stockpiled in consistent areas and transported using haul/dump trucks.

### *Construction of Trailer/Field Office Site*

The trailer/field office will be placed within or adjacent to the equipment staging areas outside of the Floodplain. Placement of the trailer/field office is anticipated before construction begins and would remain in place until the end of construction.

### *Roadway Improvements*

Roadway improvements include sidewalk installation, driveway improvements/reconstruction, widening and raising of existing pavement, construction of raised medians, and installation of crosswalks north and south of the new bridge. For the duration of construction, 7<sup>th</sup> Street will be closed. A detour, consisting of roadway signage will remain throughout Project construction.

Once the existing roadways are demolished, the area will be graded and contoured to facilitate construction. Additional fill will be brought for the widening of 7<sup>th</sup> Street and will be used to create a wider base for the new 4-lane roadway. Gravel will then be placed on the compacted surface and a paver will be used to further compact the road. A paver will be used to pave new roadways using asphalt and/or concrete followed by striping.

### *Construction of Permanent Maintenance Access Road*

A permanent maintenance access road will be constructed west of the bridge to connect Tuolumne Boulevard to existing landscape and parkscape areas. This will require clean imported soil backfill to conform to the existing slopes. After fill is

compacted, approximately six inches of aggregate base will be placed to underly approximately eight inches of poured pervious concrete.

#### *Utility Improvements*

Utility improvements for the Project will include relocation of existing overhead and underground utilities and installation of a new City of Modesto water line. The water line will be installed within the new bridge and below ground beyond the bridge limits. In addition, a portion of the water line at the south end of the Project will be installed via jack-and-bore underneath the existing railroad. Permittee may use cranes to lift pipe segments into place within the bridge footprint. .

#### *Demolition of Existing Bridge*

To demolish the existing bridge and construct a new bridge, work within the OHWM will be necessary. A total of 13 existing concrete piers/abutments, will be permanently removed during demolition of the existing bridge. A portion of the existing northern abutment is within the Floodplain; the entirety of the southern abutment is outside of the Floodplain. Two of the existing piers have some portion of their footprints located within the OHWM. Two temporary cofferdams will be installed to isolate and remove these two existing concrete piers.

The existing bridge will likely be demolished from the top down. The bridge deck elements will be sawcut and stripped. All bridge floor beams will be removed via sawing/hammering. The main bridge arched concrete girders will be trimmed back to the piers via sawing/hammering. Finally, the abutments and the piers themselves will be removed via sawing/hammering. Supports (pier and abutments) in the Floodplain (outside of OHWM) will be demolished two feet below grade, and left in place and buried.

Once the cofferdams are placed, the existing concrete piers within the Tuolumne River will be demolished with a jackhammer and completely removed with a backhoe and loader, or similar. Timber piles will be completely extracted using vibratory pulling, as feasible, followed by excavation if necessary. The voids left by the existing in-water pier foundation removal will be backfilled with clean gravel. Wales and struts will be removed as the voids are backfilled. All remaining piers, located outside of the OHWM, will be backfilled with native soil or imported fill

#### *Construction of New Bridge*

The new bridge design will fully span the wetted Tuolumne River channel. All new bridge piers will be installed above the OHWM and the new abutments will be installed outside of the Floodplain. Temporary falsework will be installed to construct the new structure and will remain in place for the duration of construction and be designed to sufficiently accommodate potential flows within the Floodplain.

The temporary work trestle installed to access the Project near the Tuolumne River will be installed prior to demolition to ensure no debris enters the river. The trestle would

be supported by up to 80 driven steel piles and will be installed under the existing and proposed bridges. Installation of the trestle will be conducted within the allowed in-water work window (June 1-October 31). Once installed, the trestle would remain in place for the duration of construction.

### *Isolation Casing Installation*

The isolation casings will be 11-foot diameter corrugated steel pipe and will be used to form a hollow void around the bottom portion of the column at each of the piers. The casings would likely overlap with the top 5-feet of the 9-foot diameter cast-in-drilled-hole (CIDH) piles, with a cast in place seal-course of concrete poured between the casing and pile. The Permittee may make the isolation casing continuous with the top of pile permanent casing that would be installed if the slurry displacement method of pile construction is used. The casings will lengthen the columns at certain piers, which would result in more desirable seismic performance of the bridge.

The isolation casings would be present at all new piles/columns and would range in vertical depth from 20 to 25 feet, including the five-foot overlap with the top of pile. Casings will be installed either open excavation, or will be oscillated into place and soil augered out. The top of the isolation casing will be capped with a steel plate, to prevent intrusion of materials into the void. The casing would extend nearly to finished grade but the steel cap plate would be buried about three inches underground.

### *Pile Construction*

All new pile construction will be outside the OHWM. There are a few possible pile construction methods that may be implemented. Each method is described below:

- If subsurface water is present and dewatering is performed, the piles would likely require a full-length temporary casing to maintain the integrity of the bore hole during construction. The casing would be composed of interlocking segments of steel pipe, approximately nine feet in diameter. The casing would be oscillated into place and soil removed from the interior using a crane mounted grab. A sump would remove the water from the interior of the bore hole. Once concrete is in place at a given portion of the bore hole, the outward pressure of the concrete would maintain the bore hole integrity, and casing would be removed. If a slurry displacement method is used, slurry would be placed in the bore hole as it's drilled. The slurry would impose outward pressure on the bore hole, maintaining integrity. Once the drilling is complete, rebar would be placed, and concrete would be pumped into the bottom of the bore hole. As the level of concrete rises, it would displace the less dense slurry, which would be recollected and reused for construction of the next pile. It is likely that only one to two pile volumes worth of slurry would be in the ground at any given time as pile construction would proceed sequentially in one or two strings. The deepest and most voluminous piles will be approximately 119 feet deep, amounting to about 290 cubic yards of volume. Thus, the likely maximum volume of slurry in the ground at any one-time during pier construction will be 580 cubic yards. The Permittee may furnish more than two pile

construction strings, in which case the slurry volume in the ground would be higher. Full length or partial length temporary casing may be used to ensure bore hole integrity. For this method, taken from the Caltrans Geotechnical Manual, the practice is to terminate pile construction short of the pile cutoff elevation, just below the bottom of the embedded column bars, creating a construction joint in the pile. The concrete would be allowed to cure, and the remaining slurry removed. A length of casing would be left in place permanently, spanning from this construction joint to the pile cutoff elevation, to maintain integrity after slurry removal. This permanent casing may be up to 11 feet in diameter and made continuous with the voided isolation casing.. Workers would descend into this permanent casing with hand tools to inspect and clean to top surface of concrete, prior to continuation of pile construction. Column rebar would then be placed, and the pile would be constructed up to the pile cutoff elevation.

The new abutments would be installed outside of the Floodplain. Abutment CIDH piles for the new bridge are 36-inch diameter. The abutment areas would be excavated, graded, and compacted to the bottom of footing elevation. The pile bore holes would be augered, and may use full or partial length temporary casing, or the slurry displacement method as described above. Each pile would be constructed in a single operation up to pile cutoff elevation. It is likely that only one to two pile volumes worth of slurry would be in the ground at any given time, with pile construction proceeding sequentially in one or two strings. The deepest and most voluminous piles are at Abutment 1, which are 48 feet deep, amounting to about 15 cubic yards of volume per pile. The likely maximum volume of slurry in the ground at any one time during abutment construction is 30 cubic yards.

### *Dewatering Activities*

There are two existing concrete piers located within the wetted Tuolumne River channel. Cofferdams would be installed at each pier so demolition of piers can be conducted under dry conditions. Each cofferdam would maintain a dewatered area approximately 50-feet long by 18-feet wide. The cofferdams would be constructed out of approximately 60-foot-long sheet piles, with approximately two feet of freeboard above the water surface elevation. The sheet piles would be installed via pile driving or vibration, from the adjacent work trestle and/or the top of the bank to construct the outer wall of the cofferdam.

The interior of the cofferdam would be de-watered to install inner structural members, wales and struts, to brace the sheet pile during excavation. The cofferdams would be in place for approximately five months for each in-water work season and during the allowed in-water work window (June 1 to October 31). Work in the wetted channel is expected to require two in water working seasons, totaling approximately 10 months of in-water work.

Cofferdams would be removed in the reverse order of installation: sheet piles would be extracted via vibratory pulling and water would be allowed to enter the cofferdam.

Cofferdam installation and removal of existing bridge foundation elements may occur prior to construction of proposed bridge, or subsequent to construction of proposed bridge, or both. No additional dewatering or diversions are expected during construction.

#### *Construction of New Drainage Outfall*

A new permanent drainage outlet, to include an outfall with rock slope protection (RSP), will be installed on the southwest bank adjacent to the new bridge. The new drainage would formalize an existing storm drainpipe outlet and would have a footprint of approximately 14 feet wide and 14.5 feet long. The RSP would be approximately 18 inches deep.

Equipment that will be used for all Project activities include excavator/excavator with breaker, crane, backhoe/loader, compactor, baker tank, scraper, bulldozer, trucks (haul trucks/dump trucks), motor grader, forklift, water truck, mowers/grinders, pick-up truck, cement mixer truck and concrete pump truck, CIDH pile drill rigs and oscillators, pile drivers (impact and vibratory), cofferdam, bubble curtains, bid-well paver, roller, sandblaster, boom lift, trencher, asphalt paver, cold planer, jackhammer, water pumps, various hand tools (carpentry, concrete, and rebar placement and cutting), saws, loppers, shovels, and pile extractor.

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

This ITP covers the following species:

<u>Name</u>	<u>CESA Status</u> <sup>3</sup>
1. Swainson's hawk ( <i>Buteo swainsonii</i> )	Threatened <sup>4</sup>

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

#### **VI. Impacts of the Taking on Covered Species:**

Riparian vegetation and ruderal grassland at and adjacent to the Project constitutes roosting, nesting, and foraging habitat for the Covered Species. The Covered Species was observed nesting approximately 230 feet from the Project location in 2018. Covered Species nesting activity was not observed in 2022, but suitable nesting habitat features are present within and in the immediate vicinity of the Project. While Covered Species nesting, foraging, or roosting at and adjacent to the Project may become habituated to the local baseline of vehicular through traffic, many of the Project-related activities may represent a novel disturbance and could result in incidental take of individuals of the Covered Species. The activities described above that may result in incidental take of individuals of the Covered Species include establishment of the ESAs; clearing, grubbing and grading of temporary staging areas for heavy equipment and office/trailer placement; construction of earthen/gravel access ramps; construction of a permanent access road; utility and roadway improvements; demolition of the

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

<sup>4</sup>See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(5)(A).

existing bridge; construction of the new bridge; isolation casing installation; pile construction, dewatering activities; construction of new drainage outfall; pile driving; use of artificial light, welding; concrete cutting; and the excavation and stockpiling of materials; and the operation and staging of heavy equipment (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 strikes due to increased Project-related traffic from site preparation and hauling of materials and spoils; and as a result of the loss of young, fledglings, or eggs due to destruction of nests or abandonment of nests during Covered Activities which occur in close proximity to active Covered Species nests. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of capture when eggs or individuals of the Covered Species are salvaged after parental nest abandonment has occurred, though the chance of viability of eggs and/or survival for the Covered Species in this circumstance is greatly reduced. Direct impacts to foraging habitat could also affect migrating individuals, and the fitness of Covered Species young raised in close proximity to the Project due to reduced or disrupted foraging opportunities that reduce the ability of parents to acquire food for their dependent young. Other potential indirect impacts to the Covered Species and their habitat include effects of the novel disturbance associated with implementation of the Covered Activities. These include construction-related noise; ground vibration; fugitive dust; habitat loss and modification; introduction or spread of invasive species; and increased human activity which could result in a reduction in prey abundance and/or availability. Noise and vibration could cause physiological and/or behavioral disruptions that may interfere with breeding, result in nest abandonment, and a loss of fitness in dependent young resulting from interruptions to brooding and/or feeding schedules.

The Project is expected to cause the permanent loss of 0.12 acres of habitat for the Covered Species, and the temporary loss of 4.78 acres of habitat for the Covered Species (Figure 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: temporary noise generating activities including vehicle movement (i.e., excavators, backhoe/loaders, forklifts, bulldozers, scrapers, motor graders, compactors, haul/dump trucks, and water trucks), bridge demolition, and bridge construction could result in direct and indirect impacts on the Covered Species if loud enough to result in nest abandonment. Clearing and grubbing is anticipated to be scheduled outside of the nesting season (September 30 to February 15); however, work within the Floodplain and Tuolumne River, would be conducted year-round and could potentially overlap with the peak nesting season for the Covered Species (mid-May to July). In addition, grading for temporary access routes and equipment staging within the Floodplain and Tuolumne River corridor could disrupt foraging behavior, stress resulting capture and relocation, and long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.



**VII. Incidental Take Authorization of Covered Species:**

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

**VIII. Conditions of Approval:**

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular, ingress and egress, staging and parking, and noise and vibration generating activities that may/will cause take. CDFW's issuance of this ITP and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following Conditions of Approval:

1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Environmental Impact Report (SCH No.: 2013092059) certified by Stanislaus County, Public Works on May 23, 2017, as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No. EPIMS- STA-30311-04) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **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.
5. **General Provisions:**
  - 5.1. **Designated Representative.** Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify

CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.

- 5.2. Designated Biologist(s) and Designated Monitor(s).** Permittee shall submit to CDFW in writing the name, qualifications, business address, contact information, and references with contact information of Designated Biologist(s) and Designated Monitor(s) using the Biologist Resume Example (Attachment 2) or another format containing the same information. This information shall be submitted for CDFW review and approval at least 30 days before starting Covered Activities. The Designated Biologist(s) and Designated Monitor(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of the Covered Species and to minimize disturbance of Covered Species' habitat. The Designated Monitor(s) shall assist the Designated Biologist(s) in compliance monitoring under direction/supervision of the Designated Biologist(s). Designated Monitor responsibilities will be restricted to a specific set of Conditions of Approval, specified by the Permittee or Designated Representative at the time their qualifications are submitted for review. Permittee shall ensure that the Designated Biologist(s) and Designated Monitor(s) are knowledgeable and experienced in the Covered Species' biology, natural history, as well as monitoring construction activities following Conditions of Approval of an ITP. Permittee shall obtain CDFW approval of the Designated Biologist(s) and Designated Monitor(s) in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist(s) or Designated Monitor(s) must be changed.
- 5.3. Designated Biologist Authority.** To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Area and otherwise facilitate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.
- 5.4. 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 prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.

- 5.5. Construction Monitoring Documentation.** The Designated Biologist(s) and Biological Monitor(s) shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project Area upon request by CDFW.
- 5.6. Trash Abatement.** Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed, ideally at daily intervals but at least once a week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 5.7. Dust Control.** Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 5.8. 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.
- 5.9. Delineation of Property Boundaries.** Before starting Covered Activities along each part of the route in active construction, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.

- 5.10. Delineation of Habitat.** Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 5.11. Project Access.** Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.
- 5.12. Staging Areas.** Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Project Access of this ITP.
- 5.13. Hazardous Waste.** Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 5.14. CDFW Access.** Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 5.15. Refuse Removal.** Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

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

- 6.1. Notification Before Commencement.** The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document

compliance with all pre-Project Conditions of Approval before starting Covered Activities.

- 6.2. Notification of Non-compliance.** The Designated Representative shall immediately notify CDFW if the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.
- 6.3. Compliance Monitoring.** The Designated Biologist shall be on-site daily when Covered Activities occur during the Covered Species nesting season (February 15 through September 15). The Designated Biologist shall conduct compliance inspections a minimum of once a week frequency of compliance inspections during periods of inactivity and after clearing, grubbing, and grading are completed. The Designated Biologist shall conduct compliance inspections to:
- (1) minimize incidental take of the Covered Species;
  - (2) prevent unlawful take of species;
  - (3) check for compliance with all measures of this ITP;
  - (4) check all exclusion zones; and
  - (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area.

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

- 6.4. Monthly Compliance Report.** The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Compliance Monitoring into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative, CDFW'S Regional Office, and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Crystal Sinclair ([crystal.sinclair@wildlife.ca.gov](mailto:crystal.sinclair@wildlife.ca.gov)), the CDFW Regional office e-mail is [R4CESA@wildlife.ca.gov](mailto:R4CESA@wildlife.ca.gov), and Headquarters CESA Program email is [CESA@wildlife.ca.gov](mailto: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.

- 6.5. Annual Status Report.** Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Monthly Compliance Report; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.
- 6.6. CNDDDB Observations.** The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 6.7. Final Mitigation Report.** No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 6.8. Notification of Take or Injury.** Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (559) 243-4005 and by email to the CDFW Regional Representative. 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.

- 7. 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:
- 7.1. Swainson's Hawk (SWHA) Nest Abandonment Contingency Plan.** The Designated Biologist shall submit a Nest Abandonment Contingency Plan to CDFW for written approval prior to the start of Covered Activities. The plan shall include, but not be limited to, identification of capture methods, handling methods, methods to return SWHA back into the wild, and the identification of a CDFW-approved wildlife rehabilitation center or veterinary facility. The Permittee shall fund the recovery and hacking (controlled release) of the SWHA nestlings.
  - 7.2. Designated Biologist On Site.** The Designated Biologist shall be on site during all activities that may result in the take of Covered Species.
  - 7.3. Delineation of Ingress and Egress Routes.** Permittee shall flag all access roads in the field from the paved road and vehicle operation shall be limited to these designated ingress and egress routes.
  - 7.4. Delineation of Environmentally Sensitive Areas.** Permittee shall clearly delineate ESAs before Covered Activities commence in the Project Area to minimize the disturbance of Covered Species habitat from Covered Activities. ESAs shall be marked with brightly colored markers visible to workers with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species. ESAs are defined as all areas that warrant special protection and work exclusion zones, as defined in SWHA Nest Buffers below. The Designated Biologist shall inspect the ESA fencing before the start of each workday. Permittee shall maintain the fencing in good repair for the duration of the Covered Activities in the Project Area. Permittee shall remove all fencing material upon completion of the Project. No Covered Activities are allowed within ESAs. Permittee shall remove all fencing material upon completion of the Project.
  - 7.5. SWHA Surveys.** The Designated Biologist shall conduct preconstruction surveys during the nesting season (February 15 through September 15) at and within 0.5 mile of the Project Area. The Designated Biologist or Designated Representative shall provide the survey results to CDFW in a written report at least five (5) days prior to beginning Covered Activities.

- 7.6.** SWHA Nest(s). If a SWHA nest is found at or within 0.5 mile of the Project Area, the Designated Biologist shall be present daily for the entire duration of any Covered Activities occurring during the nesting season (February 15 through September 15) and within 0.5 mile of the active nest, to monitor the behavior of the potentially affected SWHA. The Designated Biologist shall order the cessation of all Covered Activities if the bird(s) exhibits any distress and/or abnormal nesting behavior (swooping/stooping, excessive vocalization [distress calls], agitation, failure to remain on nest, failure to deliver prey items for an extended time period, failure to maintain nest, etc.) which may cause reproductive failure (nest abandonment and loss of eggs and/or young). Permittee shall not resume Covered Activities until CDFW has been consulted by the Designated Biologist, and both the Designated Biologist and CDFW confirm that the bird's behavior has returned to normal.
- 7.7.** SWHA Nest Buffers. The Permittee and Designated Biologist shall ensure that no Covered Activities occur within 100 feet of a SWHA nest during the nesting season (February 15 through September 15). The 100-foot no-disturbance buffer shall not be reduced or otherwise modified without prior written CDFW approval. Worker foot traffic, water and restroom facilities, employee break areas (permanent or temporary), and worker vehicle parking is prohibited within 1,000 feet of any SWHA nest without prior written CDFW approval.
- 7.8.** SWHA Nest Abandonment. If a SWHA nest is abandoned, the Permittee shall notify CDFW immediately and initiate actions to salvage any abandoned eggs or hatchlings in accordance with the CDFW-approved Nest Abandonment Contingency Plan required in SWHA Nest Abandonment Contingency Plan.
- 7.9.** Covered Species Injury. If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting 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 to the Covered Species immediately by telephone and e-mail followed by a written incident report as described in Notification of Take or Injury. Notification shall include the name of the facility where the animal was taken.
- 7.10.** Equipment Fueling. Permittee shall ensure that mobile equipment fueling, and maintenance occur at least 1,000 feet from any SWHA nest. Permittee shall locate permanent and temporary equipment fueling and maintenance areas at a distance of at least 1,00 feet from active SWHA nests, and shall include permanent containment devices that will preclude fuel or other liquids from exiting the equipment fueling or maintenance area in the event of a spill or leak. Permittee shall ensure that sufficient spill containment and cleanup equipment are present at



all mobile, temporary, and permanent equipment fueling and maintenance locations.

- 7.11. Lighting.** Permittee shall ensure that no permanent or temporary, fixed, exterior lighting, including motion-triggered security lighting, will cast light on SWHA habitat beyond the footprint of permanent or temporary Project facilities between sunset and sunrise. Permittee shall not use motion-triggered lighting (including visible spectrum and infrared) within the Project Area.

- 8. 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 from implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the protected acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall purchase 7.50 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank pursuant to Covered Species Credits below. Purchase of Covered Species credits must be completed before starting Covered Activities.

- 8.1. Covered Species Credits.** Permittee shall purchase 7.50 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities. Prior to purchase of Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities. Prior to transfer of Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project.

**IX. Amendment:**

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

**X. Stop-Work Order:**

If CDFW determines the Permittee has violated any term or condition of this ITP or has engaged in unlawful take, CDFW may issue Permittee a written stop-work order instructing the Permittee to suspend any Covered Activity for an initial period of up to 30 days or risk

suspension or revocation of this ITP. CDFW can issue a stop-work order to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species, regardless of whether that species is a Covered Species under this ITP. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period, not to exceed 30 additional days.

If Permittee fails to remedy the violation or to comply with a stop-work order, CDFW may proceed with suspension and revocation of this ITP. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and any other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

#### **XI. Liability:**

All terms and conditions of this ITP shall be binding upon each Permittee. Notwithstanding California Civil Code section 1431 or any other provision of law, each Permittee shall be jointly and severally liable for performance of all terms, conditions, and obligations of this ITP and shall be jointly and severally liable for any unauthorized take or other violations of this ITP, whether committed by Permittees or any person acting on behalf of one or more Permittees, including their officers, employees, representatives, agents or contractors and subcontractors. Any failure by one or more Permittees to comply with any term, condition, or obligation herein shall be deemed a failure to comply by all Permittees.

#### **XII. 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.

#### **XIII. Notices:**

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email or registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2022-056-04) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Julie A. Vance, Regional Manager  
California Department of Fish and Wildlife  
1234 East Shaw Avenue  
Fresno, California 93780  
[R4CESA@wildlife.ca.gov](mailto:R4CESA@wildlife.ca.gov)

Incidental Take Permit  
No. 2081-2022-056-04  
STANISLAUS COUNTY, PUBLIC WORKS  
7<sup>TH</sup> STREET BRIDGE PROJECT

and a copy to:

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

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

Crystal Sinclair  
California Department of Fish and Wildlife  
1234 East Shaw Avenue  
Fresno, California 93710  
Telephone (559) 578-0416  
[Crystal.Sinclair@wildlife.ca.gov](mailto:Crystal.Sinclair@wildlife.ca.gov)

**XIV. Compliance with the California Environmental Quality Act:**

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, Stanislaus County, Public Works. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Final Environmental Assessment and Section 4 (f) Evaluation with Finding of No Significant Impact, (SCH No.: 2013092059) dated August 23, 2016 that the Stanislaus County, Public Works certified for 7<sup>th</sup> Street Bridge on May 23, 2017. At the time the lead agency certified the EIR 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 EIR 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.

Incidental Take Permit  
No. 2081-2022-056-04  
STANISLAUS COUNTY, PUBLIC WORKS  
7<sup>TH</sup> STREET BRIDGE PROJECT

**XV. Findings Pursuant to CESA:**

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

CDFW finds based on substantial evidence in the ITP application, 7<sup>th</sup> Street Bridge Project, , Incidental Take Permit Supplemental Response, the results of consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 7.50 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project (e.g., the purchase of Covered Species credits), 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.

**XVI. Attachments:**

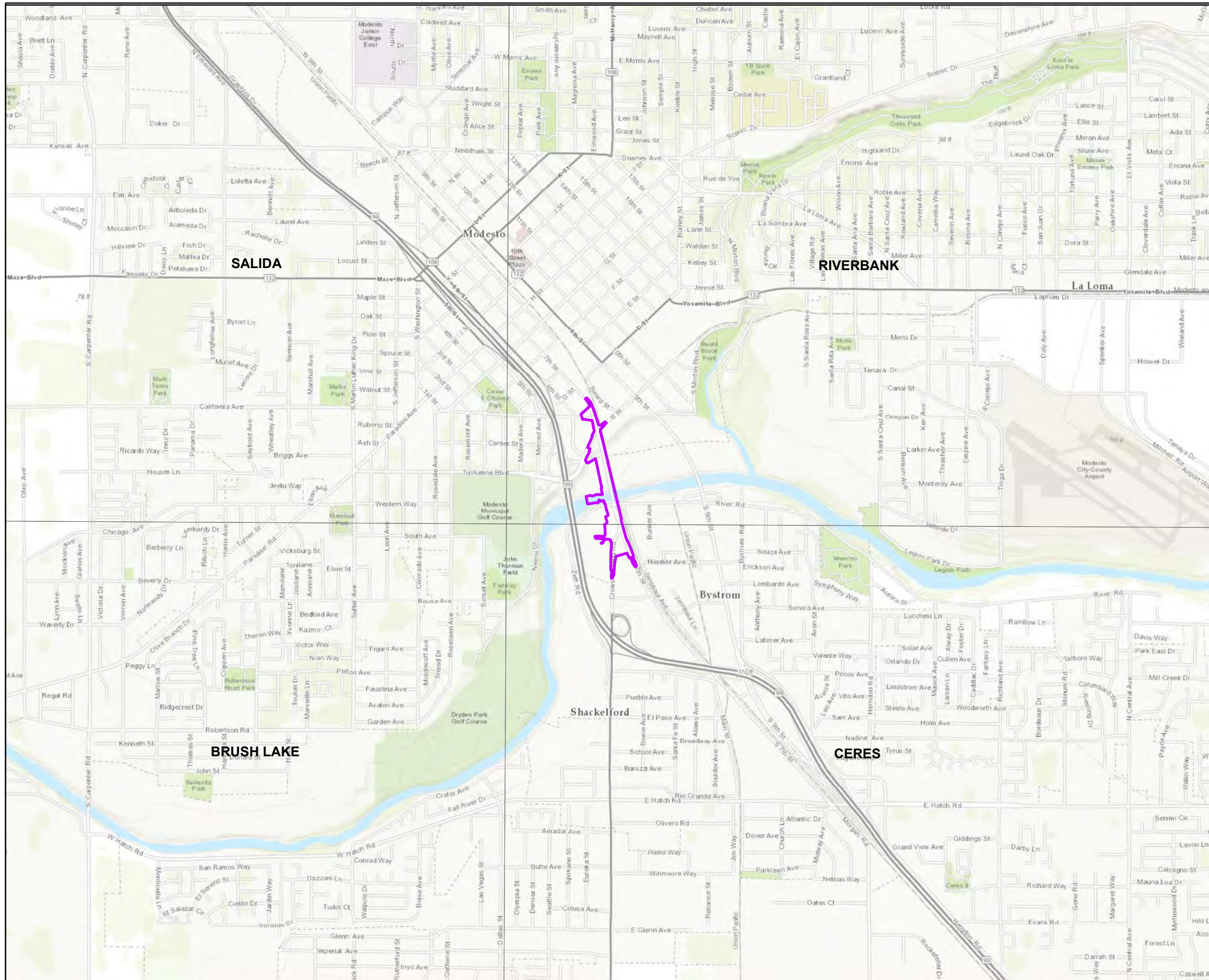
- |              |   |
|--------------|---|
| FIGURE 1     | Project Location                            |
| FIGURE 2     | SWHA Impacts                                |
| FIGURE 3     | SWHA Project Buffer                         |
| ATTACHMENT 1 | Mitigation Monitoring and Reporting Program |
| ATTACHMENT 2 | Biologist Resume Form                       |



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

**ON** 4/15/2024

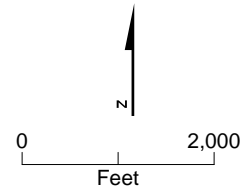
DocuSigned by:  
  
 FA83F09FE08945A...  
 Julie A. Vance, Regional Manager  
 Central Region (R4)

Incidental Take Permit  
No. 2081-2022-056-04  
**STANISLAUS COUNTY, PUBLIC WORKS**  
**7<sup>TH</sup> STREET BRIDGE PROJECT**



**LEGEND**  
 Biological Study Area (22.5 Acres)  
 USGS 7.5 Minute Quadrangle

Service Layer Credits: Sources:  
 Esri, HERE, DeLorme, Intermap,  
 increment P Corp., GEBCO,  
 USGS, FAO, NPS, NRCAN,  
 GeoBase, IGN, Kadaster NL,



**FIGURE 1-2**  
**Project Location Map**  
 7<sup>th</sup> Street Bridge Project  
 Natural Environment Study  
 Modesto, California



Figure 3. Project Impacts on Marginal Swainson's Hawk Habitat  
7th Street Bridge Replacement Project



Figure 4. Swainson's Hawk Territories within 1/2 Mile Radius of the 7th Street Bridge Replacement Project



**Attachment 1**

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

**INCIDENTAL TAKE PERMIT NO. 2081-2022-056-04**

**PERMITTEE: Stanislaus County Public Works**

**PROJECT: 7<sup>th</sup> Street Bridge Replacement Project**

**PURPOSE OF THE MMRP**

The purpose of the MMRP is to ensure that the impact minimization and mitigation measures required by the 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
<b>BEFORE DISTURBING SOIL OR VEGETATION</b>					
1	<u>Designated Representative</u> . 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 # 5.1.	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	<u>Designated Biologist(s) and Designated Monitor(s)</u> . 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 # 5.2.	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
3	<u>Designated Biologist On Site</u> . The Designated Biologist shall be on site during all activities that may result in the take of Covered Species.	ITP Condition # 7.2.	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
4	<u>SWHA Surveys</u> . The Designated Biologist shall conduct preconstruction surveys during the nesting season (February 15 through September 15) at and within 0.5 mile of the Project Area. The Designated Biologist or Designated Representative shall provide the survey results to CDFW in a written report at least five (5) days prior to beginning Covered Activities.	ITP Condition # 7.5.	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
5	<u>Notification Before Commencement</u> . The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.	ITP Condition 6.1.	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
6	<u>Delineation of Property Boundaries</u> . Before starting Covered Activities along each part of the route in active construction, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.	ITP Condition # 5.9.	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
7	<u>Delineation of Habitat</u> . 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 # 5.10.	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
8	<u>Delineation of Environmentally Sensitive Areas</u> . Permittee shall clearly delineate ESAs before Covered Activities commence in the Project Area to minimize the disturbance of Covered Species habitat from Covered Activities. ESAs shall be marked with brightly colored markers visible to workers with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species. ESAs are defined as all areas that warrant special protection and work exclusion zones, as defined in <u>SWHA Nest Buffers</u> below. The Designated Biologist shall inspect the ESA fencing before the start of each workday. Permittee shall maintain the fencing in good repair for the duration of the Covered Activities in the Project Area. Permittee shall remove all fencing material upon completion of the Project. No Covered Activities are allowed within ESAs. Permittee shall remove all fencing material upon completion of the Project.	ITP Condition # 7.4.	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
9	<u>Delineation of Ingress and Egress Routes</u> . Permittee shall flag all access roads in the field from the paved road and vehicle operation shall be limited to these designated ingress and egress routes.	ITP Condition # 7.3.	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
10	<u>Project Access</u> . Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.	ITP Condition #5.11.	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
11	<u>Staging Areas</u> . Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in <u>Project Access</u> of the ITP.	ITP Condition #5.12.	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
12	<u>CDFW Access</u> . Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in the ITP.	ITP Condition #5.14.	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
13	<u>Covered Species Credits.</u> Permittee shall purchase 7.50 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities. Prior to purchase of Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities. Prior to transfer of Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project.	ITP Condition #8.1.	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
<b>DURING CONSTRUCTION</b>					
14	<u>Compliance Monitoring.</u> The Designated Biologist shall be on-site daily when Covered Activities occur during the Covered Species nesting season (February 15 through September 15. The Designated Biologist shall conduct compliance inspections a minimum of once a week frequency of compliance inspections during periods of inactivity and after clearing, grubbing, and grading are completed. The Designated Biologist shall conduct compliance inspections to: <ol style="list-style-type: none"> <li>(1) minimize incidental take of the Covered Species;</li> <li>(2) prevent unlawful take of species;</li> <li>(3) check for compliance with all measures of the ITP;</li> <li>(4) check all exclusion zones; and</li> <li>(5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area.</li> </ol> The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.	ITP Condition #6.3.	Entire Project	Permittee	
15	<u>Notification of Non-compliance.</u> The Designated Representative shall immediately notify CDFW if the Permittee is not in compliance with any Condition of Approval of the ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in the ITP and/or the MMRP. The Designated Representative shall follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with the ITP and suggested measures to remedy the situation.	ITP Condition #6.2.	Entire Project	Permittee	
16	<u>Monthly Compliance Report.</u> The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in <u>Compliance Monitoring</u> into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of the ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of the ITP's approval, the CDFW Regional Representative is Crystal Sinclair (crystal.sinclair@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.	ITP Condition #6.4.	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
17	<u>Annual Status Report</u> . Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of the ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in <u>Monthly Compliance Reports</u> ; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.	ITP Condition #6.5.	Entire Project	Permittee	
18	<u>CNDDB Observations</u> . 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 Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.	ITP Conditions #6.6.	Entire Project	Permittee	
19	<u>Notification of Take or Injury</u> . 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 (559) 578-0412. 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 Conditions #6.8.	Entire Project	Permittee	
20	<u>Construction Monitoring Documentation</u> . The Designated Biologist(s) and Biological Monitor(s) shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include a copy of the ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project site Area upon request by CDFW.	ITP Conditions #5.5.	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
21	<u>Designated Biologist Authority</u> . To ensure compliance with the Conditions of Approval of the ITP, the Designated Biologist shall immediately stop any activity that does not comply with the ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Site Area and otherwise facilitate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of the ITP.	ITP Conditions #5.3.	Entire Project	Permittee	
22	<u>SWHA Nest(s)</u> . If a SWHA nest is found at or within 0.5 mile of the Project Area, the Designated Biologist shall be present daily for the entire duration of any Covered Activities occurring during the nesting season (February 15 through September 15) and within 0.5 mile of the active nest, to monitor the behavior of the potentially affected SWHA. The Designated Biologist shall order the cessation of all Covered Activities if the bird(s) exhibits any distress and/or abnormal nesting behavior (swooping/stooping, excessive vocalization [distress calls], agitation, failure to remain on nest, failure to deliver prey items for an extended time period, failure to maintain nest, etc.) which may cause reproductive failure (nest abandonment and loss of eggs and/or young). Permittee shall not resume Covered Activities until CDFW has been consulted by the Designated Biologist, and both the Designated Biologist and CDFW confirm that the bird's behavior has returned to normal.	ITP Conditions #7.6.	Entire Project	Permittee	
23	<u>SWHA Nest Abandonment</u> . If a SWHA nest is abandoned, the Permittee shall notify CDFW immediately and initiate actions to salvage any abandoned eggs or hatchlings in accordance with the CDFW-approved Nest Abandonment Contingency Plan required in <u>SWHA Nest Abandonment Contingency Plan</u> .	ITP Conditions #7.8.	Entire Project	Permittee	
24	<u>Covered Species Injury</u> . If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting 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 to the Covered Species immediately by telephone and e mail followed by a written incident report as described in <u>Notification of Take or Injury</u> . Notification shall include the name of the facility where the animal was taken.	ITP Conditions #7.9.	Entire Project	Permittee	
25	<u>Erosion Control Materials</u> . 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 # 5.8.	Entire Project	Permittee	
26	<u>Hazardous Waste</u> . 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 # 5.13.	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
27	<u>Dust Control</u> . 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 # 5.7.	Entire Project	Permittee	
28	<u>Equipment Fueling</u> . Permittee shall ensure that mobile equipment fueling, and maintenance occur at least 1,000 feet from any SWHA nest. Permittee shall locate permanent and temporary equipment fueling and maintenance areas at a distance of at least 1,00 feet from active SWHA nests and shall include permanent containment devices that will preclude fuel or other liquids from exiting the equipment fueling or maintenance area in the event of a spill or leak. Permittee shall ensure that sufficient spill containment and cleanup equipment are present at all mobile, temporary, and permanent equipment fueling and maintenance locations.	ITP Condition # 7.10.	Entire Project	Permittee	
29	<u>Lighting</u> . Permittee shall ensure that no permanent or temporary, fixed, exterior lighting, including motion-triggered security lighting, will cast light on SWHA habitat beyond the footprint of permanent or temporary Project facilities between sunset and sunrise. Permittee shall not use motion-triggered lighting (including visible spectrum and infrared) within the Project Area.	ITP Condition # 7.11.	Entire Project	Permittee	
<b>POST-CONSTRUCTION</b>					
30	<u>Refuse Removal</u> . Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.	ITP Condition # 5.15.	Post-construction	Permittee	
31	<u>Final Mitigation Report</u> . No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of 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 # 6.7.	Post-construction and after completion of mitigation	Permittee	



Attachment 2

**\*\*\* Please Note: While use of this form is not mandatory, CDFW strongly recommends completing this form as it will ensure the receipt of adequate information and expedite CDFW review of biologist's qualifications. \*\*\***

**Name of Biologist & Contact Information**

**Education:** (include year graduated)

**Training/Workshops:** (be prepared to provide copies of certificates upon request; these should be related to the Covered Species (or similar species) in the Incidental Take Permit)

**Certifications:** (please provide any copies of a CDFW Scientific Collecting Permit, MOU, or USFWS 10(a)(1)(A)) permit; these should be related to the Covered Species (or similar species) in the Incidental Take Permit)

**Species Name #1: (Example: Swainson's hawk)**

Project Name #1 (list the information below for all projects (separately) where biologist worked with this species; projects may be listed more than once under each separate species and please only include projects on the resume that demonstrate experience with the Covered Species (or similar species) in the ITP)

Location:

Project date completed: To and from date (month and year)

Incidental Take Permit (ITP) # (and Other Agency Permits):

Lead biologist Information: Name and contact information (phone number and email address)

Reference: Name and contact information, if different from above (phone number and email address)

Work description:

Estimated Survey Hours:

Estimated Monitoring Hours:

Individuals Observed: # of adults and # of juveniles

Individuals Handled: # of adults and # of juveniles

Burrows excavated:

Project Name #2

Location:

Project date completed: To and from date

Incidental Take Permit # (and Other Agency Permits):

Lead biologist Information: Name and contact information (phone number and email address)

Reference: Name and contact information, if different from above (phone number and email address)

Work description:

Estimated Survey Hours:

Estimated Monitoring Hours:

Individuals Observed: # of adults and # of juveniles

Individuals Handled: # of adults and # of juveniles

Burrows excavated:

Project Name #3 ...

**Species Name #2: (Example: Similar or related species to Swainson's hawk)**

Project Name #1 (list the information below for all projects (separately) where the biologist worked with this species)

Location:

Project date completed: To and from date

Incidental Take Permit # (and Other Agency Permits):

Lead biologist Information: Name and contact information (phone number and email address)

Reference: Name and contact information, if different from above (phone number and email address)

Work description:

Estimated Survey Hours:

Estimated Monitoring Hours:

Individuals Observed: # of adults and # of juveniles

Individuals Handled: # of adults and # of juveniles

Burrows excavated:

Project Name #2

Location:

Project date completed: To and from date

Incidental Take Permit # (and Other Agency Permits):

Lead biologist Information: Name and contact information (phone number and email address)

Reference: Name and contact information, if different from above (phone number and email address)

Work description:

Estimated Survey Hours:

Estimated Monitoring Hours:

Individuals Observed: # of adults and # of juveniles

Individuals Handled: # of adults and # of juveniles

Burrows excavated:

Project Name #3 ...

Include any other relevant information to the Covered Species or implementation of Conditions of Approval in the ITP