



**California Department of Fish and Wildlife
Bay Delta Region
2825 CORDELIA ROAD, SUITE 100
FAIRFIELD, CA 94534**

California Endangered Species Act
Incidental Take Permit No. 2081-2023-042-03

KOLA ENERGY STORAGE 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 take⁴ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.⁵ 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: Kola Energy Storage, LLC
Principal Officer: Anthony Pedroni, Vice President
Mailing Address: 700 Universe Boulevard, Juno Beach, FL 33408
Contact Person: Craig Lawrence, Sr. Environmental Project Manager
Telephone: (510) 703-5680
Email: craig.lawrence@nexteraenergy.com

II. Effective Date and Expiration Date of this ITP:

This ITP is effective on 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, 2060**.

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 6.10 of this ITP.

⁴ 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"]).

⁵ 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 Kola Energy Storage Project (Project) is located approximately 0.9 mile southwest of Interstate 580 (I-580) and approximately 5 miles southwest of the City of Tracy, adjacent to the Pacific Gas and Electric Company (PG&E) Tesla substation (Figure 1; all figures are provided in Appendix A). The Project is centered at a latitude of 37.710 degrees and longitude of -121.554 degrees and is situated in the southwestern corner of Section 5, Township 3 South, Range 4 East.

The interconnection generation tie (gen-tie) will interconnect the Battery Energy Storage System (BESS) with the PG&E Tesla substation adjacent to the Project site. The majority of the gen-tie will be located within Alameda County and a small portion of the gen-tie, along with the BESS, will be located within San Joaquin County.

IV. Project Description:

The Project includes the development of approximately 32 acres within a 106-acre site of undeveloped land into a 400-megawatt (MW) capacity solar energy generation and storage facility and the facility's subsequent operation. Major Project components are the solar facility, the BESS, access roads, and a 230-kilovolt (kV) gen-tie, which will include both above ground and underground components (Figure 2).

The Project will take place over approximately 35 years in two phases covered under this ITP: Construction Phase (approximately 15 months, anticipated 2024-2025) and an Operations and Maintenance (O&M) Phase (35 years, anticipated 2025-2060). This ITP does not cover decommissioning or repowering activities within the Project area.

Construction Activities

Grading and Site Preparation

The Construction Phase will first include preparing the site by completing rough grading to accommodate support structures and access road. Site preparation may include application of pre-emergent herbicides formulated to minimize impacts on wildlife.

Retention basins, if required, will be created for hydrologic control. Access roads will be gravel or aggregate base depending on the final site geotechnical report. A temporary staging area, anticipated to be located on the southwestern end of the site, will be constructed to hold materials and construction equipment.

Due to the sloped topography of the San Joaquin County portion of the Project area, site preparation will require approximately 407,000 cubic yards of cut and 406,000 cubic yards of fill to create a single terrace on which the batteries will be installed. The balance of fill will be transported offsite. Slopes of all cuts and fills will be no steeper than is safe for the intended use and will remain consistent with the San Joaquin County Grading Ordinance.

Project Construction – Alameda County Project Portion

Gen-tie

The BESS will deliver power to the Tesla substation located adjacent to the Project area in Alameda County through a new 230-kV gen-tie line. The Permittee will construct the approximately 4,800-foot-long by 60–150-foot-wide gen-tie from the Project substation to the point south of the Tesla substation (see Figure 3). The gen-tie line requires steel, tubular poles up to approximately 165 feet in height. The poles may be A-frame, H-frame, monopole, or a combination thereof. There will be aboveground and below ground portions of the gen-tie components.

The Permittee will be responsible for siting, design, and construction of the gen-tie line from the Project substation to the point of connection. This portion of the gen-tie line will be an approximately 3,700-foot by 150-foot overhead line. Then, in coordination with PG&E, the Project will involve siting, design, and construction of approximately 2,000 linear feet of underground line which will enter the substation somewhere between the western edge and the center of the southern boundary of the existing Tesla substation.

Within the 2,000-foot-long underground line, the Project will involve temporary trenching of an approximately 1,100-foot by 60-foot underground corridor located outside of the Tesla substation. Throughout the length of this 1,100-foot corridor, a 4-foot-wide trench will be dug from the point of connection to directly outside of the substation to install the ducts. The rest of the 1,100 feet by 60 feet corridor section will be used as temporary workspace. The remaining 900 foot by 60-foot corridor of gen-tie will be located entirely inside of the substation.

Site Access and Parking

Access, including emergency access, onto the Project area will be provided from Patterson Pass Road to Midway Road to a driveway that leads to the Project area. Internal access roads will be gravel or aggregate base depending on the final site geotechnical report. On-site parking (approximately 400 feet by 75 feet) will be located adjacent to the substation.

Project Construction – San Joaquin County Project Portion

Battery Storage

Individual lithium-ion, or similar technology, battery cells form the core of the energy storage system. The battery cells are assembled either in series or parallel connection in sealed battery modules. The battery modules will be installed in self-supporting racks electrically connected, either in a series or parallel to each other. The individual battery racks are connected in series or parallel configuration to deliver the energy storage system power rating. The battery type will be selected based on the technology available at the time of construction.

Multiple self-contained storage system enclosures will house the batteries and the battery storage system controller. The energy storage system controller is a multi-level control system designed to provide a hierarchical system of controls for the battery modules, power conversion

system (PCS), medium-voltage system, and up to the point of connection with the electrical grid. The PCS consists of an inverter, protection equipment, direct current (DC) and alternating current (AC) circuit breakers, filter equipment, equipment terminals, and connection cabling system. The PCS will also include a transformer that converts the AC side output of the inverter to medium AC voltage to increase the overall efficiency of the energy storage system and to protect the PCS in the event of system electrical faults. The controllers ensure that the energy storage system effectively responds to grid emergency conditions and provides a secondary safety system designed to safely shut down the facility. The storage system enclosure will also house required heating, ventilation, and air conditioning (HVAC) and fire protection systems. Each enclosure will be equipped with HVAC systems for thermal management of the batteries. Two detention basins will be created on the northern and eastern portions of the site for hydrologic control.

Fencing

The perimeter of the San Joaquin portion of the Project area will be enclosed by a 6-foot-tall chain-link fence topped with one foot of three-strand barbed wire. The perimeter fence will include a sound-attenuating fabric attached to the western facing portion of the fence. The purpose of the fence will be to prevent unauthorized access to the site. In addition, an approximately 8-foot-high perimeter security fence topped with approximately one foot of barbed wire will be installed around the on-site substation.

Lighting

Low-elevation, controlled security lighting will be installed at the access gate and the entrance to the energy storage structures. The lighting will only switch on when personnel enter the area (through either motion-sensor or manual switch activation). The lighting will be shielded so the light is directed downward. All lighting will be directed on site and will include shielding as necessary to minimize illumination of the night sky or spillover onto adjacent properties. Lighting implementations required for the Project, other than temporary, will not be installed within Alameda County.

A substation pad for the step-up transformer will be poured, and then the Permittee will install medium-voltage stations, wiring of the modules through combiner boxes, and construction of the Project substation and grid interconnection. The medium-voltage stations will sit on concrete foundations or driven piles (Figure 3).

Material Deliveries

Delivery of material and supplies will reach the Project area through on-road truck delivery via I-580 to Patterson Pass Road to Midway Road. Most of the materials delivered by truck will be for the energy storage enclosures and PCS installation, as well as any aggregate material that may be required for foundations. These loads will typically be limited to 40 tons, or 80,000 pounds, with a typical cargo load of approximately 25 tons, or 50,000 pounds. Typically, rock is delivered in bottom dump trucks or transfer trucks with six axles. Low-bed transport trucks will transport the construction equipment to the site as needed. The size of the low-bed trucks (axles for weight distribution) will depend on the equipment transported. The heaviest delivery loads to the

site will be for the step-up transformer, which may weigh up to 160,000 pounds. Water for dust control will also be delivered by trucks via the same access route.

Hazardous Materials

The battery modules eventually will be disposed of in accordance with the applicable hazardous waste requirements. These materials will be stored and handled in a manner that will prevent accidental release. Standard construction practices within the scope of the Project impact area will be observed such that any incidental releases will be appropriately contained and remediated as required by applicable law. Other hazardous materials used for construction will be typical for most construction Projects of this type. Materials will include small quantities of gasoline, diesel fuel, oils, lubricants, solvents, detergents, degreasers, paints, ethylene glycol, dust palliative, herbicides, and welding materials and supplies.

Operations and Maintenance (O&M)

Once constructed, the Project will operate 7 days per week, 365 days per year. The facility will be operated by the Permittee or an affiliated company remotely. Periodic augmentation of batteries within the San Joaquin County portion of the Project area may occur. Only occasional, on-site maintenance is expected to be required following commissioning, including replacement of inverter power modules, filters, and miscellaneous electrical repairs on an as-needed basis. No permanent sanitary facilities will be required.

Water and Wastewater

The average water use during the Project's O&M phase is estimated to be less than one acre-foot per year for general maintenance. The expected maintenance would generate little traffic during operation. Heavy equipment would not be used during normal operation. Large or heavy equipment may be brought to the facility infrequently for equipment repair or replacement, or for vegetation control.

Fire Safety

Each battery enclosure unit will have a fire rating in conformance with local fire authority and County standards, via compliance with the 2019 California Fire Code. Installation of battery units will follow manufacturer specifications for the spacing of batteries and clearance distances to further prevent a thermal runaway event. Each unit will also be equipped with thermal management systems for thermal management of the batteries. Power to the thermal management system and lighting will be provided through a connection to the onsite station service transformer with connection lines installed above or below ground. Cabinets housing batteries are designed with adequate ventilation and will also be equipped with carbon monoxide detection that will alert the remote monitoring facility that the sensor has been activated.

Hazardous Materials

Limited amounts of hazardous materials will be stored or used onsite during Project operations, including diesel fuel, gasoline, and motor oil for vehicles; mineral oil to be sealed within the

transformers; and lead-acid-based or lithium-ion-based batteries for emergency backup. Appropriate spill containment and cleanup kits will be maintained during operation of the Project.

Traffic and Vehicles

During operation of the Project substation, O&M staff will visit the substation periodically for switching and other operation activities. Maintenance trucks will be used to perform routine maintenance, including, but not limited to, equipment testing, monitoring, repair, routine procedures to ensure service continuity, and standard preventative maintenance.

Routine operations will require one or two workers in a light utility truck to visit the facility on a weekly basis. Typically, one major maintenance inspection will take place annually. The expected maintenance will generate little traffic during operations. O&M vehicles will include light duty trucks (for example, pickup, flatbed) and other light equipment for maintenance. Heavy equipment will not be used during normal operation. Large or heavy equipment may be brought to the facility infrequently for equipment repair or replacement or vegetation control.

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

This ITP covers the following species:

<u>Name</u>	<u>CESA Status</u>
1. Crotch's bumblebee (<i>Bombus crotchii</i>)	Candidate ⁶
2. California tiger salamander (<i>Ambystoma californiense</i>)	Threatened ⁷
3. San Joaquin kit-fox (<i>Vulpes macrotis mutica</i>)	Threatened ⁸

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

VI. Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include initial site preparation; heavy equipment operation; grading; excavation, trenching and backfilling; installation and/or removal of structures and equipment; vehicle and foot traffic; access road construction, repair and resurfacing; handling of stockpiles and stored materials; soil compaction; vegetation clearing and maintenance (grading, mowing and grubbing); revegetation requiring disking and excavation; as well as other development activities related to the Project (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as

⁶ The species status may change following the decision of the Fish and Game Commission to designate the species as threatened or endangered but if there is such a designation, the species will remain a Covered Species.

⁷ See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(3)(G).

⁸ See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(6)(E).

a result of Covered Activities such as: vehicle/equipment strikes, materials placement; burrow collapse associated with earthwork, vegetation removal and/or vehicle passage (entombment, crushing, or suffocation); equipment laydown, trenching, other excavations, grading, pile driving, laying of foundations, planting, placement of spoils and/or fill materials (entombment, crushing, and/or suffocation); flooding (drowning) from washing of facilities; and entanglement in erosion control materials and/or exclusion fencing (strangulation, immobility). 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 when individuals of the Covered Species are salvaged, collected for identification, and/or relocated out of harm's way as required by this ITP. Covered Activities could also result in pursuit or capture of individual Covered Species during habitat enhancement, maintenance and monitoring on the Project's proposed mitigation land(s), however, mortality is not anticipated as a result of these activities.

Indirect impacts of the authorized taking also include adverse effects to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, lighting at night, and the Project's incremental contribution to cumulative impacts. These impacts include: stress resulting from noise and vibrations from ground disturbance, equipment operation, and traffic; stress resulting from capture and relocation; increased exposure or stress from disorientation; introduction or spread of invasive species; and long-term effects due to displacement from preferred habitat, barriers to movement to and increased travel distance to breeding habitat (decreased reproductive output, energetic expenses, exposure to predation and elements), loss of foraging habitat, increased pollution, increased competition for food and space; loss of burrowing habitat used for shelter, reproduction, and escape cover; increased vulnerability to predation; and exposure to contaminants or pathogens through introduction of contaminated water, contaminated substrates, hazardous materials (including herbicides and pesticides), and/or vehicle and equipment fuels and fluids. Additional impacts to Crotch's bumble bee include; decreased food supply through changes in composition of floral nectar resources or prey abundance (starvation). Lastly, a fire sparking as a result of battery or other equipment presence could result in burning or loss of habitat (change in vegetation composition) and food supply (change in prey resources). Individuals displaced due to habitat loss and degradation may be unable to survive in adjacent areas if these areas are at carrying capacity or are unsuitable for colonization. The areas where authorized take of the Covered Species is expected to occur include the entire Project site in both Alameda and San Joaquin counties, and the Project's mitigation land(s) (collectively, the Project Area).

The Project is expected to cause the permanent loss of 0.72 acres of upland habitat and the temporary loss of 11.65 acres of upland habitat for the Covered Species (California tiger salamander, San Joaquin kit fox, and Crotch's bumble bee) within the Alameda County portion of the Project during the Construction Phase.

The Project is expected to cause the permanent loss of 22.12 acres of upland habitat and the temporary loss of 10.45 acres of upland habitat for the Covered Species within the San Joaquin County portion of the Project during the Construction Phase. However, this ITP is limited to authorizing incidental take of certain Covered Species (Crotch's bumble bee) in the San Joaquin County portion of the Project (see reference below to *San Joaquin County Multi-Species Habitat Conservation and Open Space Plan*). In total, the Project will result in 22.84

acres of permanent impacts and 22.10 acres of temporary impacts during construction. The Project is not expected to result in additional impacts to Covered Species habitat during the O&M Phase, but this ITP covers O&M activities in the event Covered Species may be present within the Project Area during such activities.

The *San Joaquin County Multi-Species Habitat Conservation and Open Space Plan* (SJMSCP) covers incidental take of California tiger salamander and San Joaquin kit fox in San Joaquin County but does not cover Crotch's bumble bee. The ITP (# 2081-2000-006-02) issued in association with the SJMSCP; therefore, covers incidental take of California tiger salamander and San Joaquin kit fox for the portion of the Project located in San Joaquin County. Therefore, this ITP covers only take of Crotch's bumble bee within the San Joaquin County portion of the Project and take of all three Covered Species in the Alameda County portion of the Project.

Repowering or decommissioning activities or O&M activities beyond the term of this ITP and associated with a repowered Project are not covered under this ITP. The Permittee may seek coverage under an amendment and extension of this ITP or a new Incidental Take Permit.

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 salvage, capture for identification, 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 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.: 2022120675) certified by San Joaquin County Community Development Department on March 12, 2024 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). For purposes of this ITP, where the terms and conditions for the Covered Species in the Environmental Impact Report are less protective of the Covered Species or otherwise

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conflict with this ITP, the conditions of approval set forth in this ITP shall control.

3. ESA Compliance. Permittee shall implement and adhere to the terms and conditions related to the Covered Species within the San Joaquin County portion of the Project in the Intra-Service Biological and Conference Opinion on Issuance of an Incidental Take Permit to Multiple Applicants for a Multiple Species Habitat Conservation Plan for San Joaquin County, California 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.

4. ITP Time Frame Compliance: Permittee shall fully implement and adhere to the conditions in 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 Biologists and Biological Monitors. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist and Biological Monitor using the Biologist Resume Form (Attachment 2) or another format containing the same information at least 15 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist and Biological Monitor are knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist and Biological Monitor 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 and Biological Monitor in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist or Biological Monitor 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 Site and otherwise facilitate the Designated Biologist in the performance of their 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. Delivery drivers may be exempt from this education program requirement. 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, their 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 and Biological Monitor shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout Construction, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project site upon request by CDFW.
- 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. Plastic water bottles and plastic bags shall be removed daily.
- 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.** Permittee shall utilize erosion control measures throughout all phases

of the Project where sediment runoff from exposed soils could leave the Project Area and/or enter Cayetano Creek, its tributaries, or Project-adjacent ponds. Permittee shall repair and/or replace ineffective measures immediately.

- 5.9. 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. Acceptable substitutes include coconut coir matting. To limit introduction of invasive plant species, if erosion control materials include straw, Permittee shall ensure that it is rice straw and/or weed-free straw (and that use of hay is avoided). Permittee shall ensure that erosion control materials will not create a barrier to movement of the Covered Species.
- 5.10. Maintenance of Existing Drainage Patterns.** Permittee shall minimize impacts from grading by ensuring that existing drainage areas and patterns will be maintained in their pre-Project condition.
- 5.11. Vehicle Fueling, Servicing, and Washing.** Vehicles or equipment shall not be refueled within 100 feet of any streams. Equipment shall be re-fueled and serviced at designated construction laydown areas only. All construction material and fill will be stored and contained in a designated area that is located away from waterways to prevent transport of materials into the creek or tributary channels. Vehicles shall not be washed on-site.
- 5.12. Pesticide Use.** Permittee shall not use pesticides, including herbicides, insecticides, fungicides, or rodenticides within the Project Area without prior consultation with and written approval from CDFW. Through this consultation, CDFW may approve limited use of herbicides through targeted spray (e.g., backpack sprayer) at a buffer from Covered Species habitat. Use of neonicotinoid pesticides will not be approved by CDFW within the Project Area. If approved by CDFW, application will be in accordance with federal, state, and San Joaquin County regulations, as directed by the manufacturer, and will be applied by a California state-licensed pesticide applicator.
- 5.12.1.** Permittee shall not use fertilizers (or any similar soil additives, hereby referred to as "fertilizer") within the Project Area, unless Permittee requests and receives a written approval from CDFW. To request written approval for fertilizer application, no less than 30 days prior to the proposed application, Permittee shall submit to CDFW for review and approval a Fertilizer Application Plan. The Fertilizer Application Plan will detail the type of fertilizer proposed to be used, method of application, amount of fertilizer to be used, spatial extent and timing of proposed application, impacts assessment of application specific to the Covered Species, measures to reduce impacts to Covered Species, and justification for need of fertilizer application.

- 5.13. Delineation of Property Boundaries.** Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 5.14. Delineation of Habitat.** Permittee shall clearly delineate habitat of the Covered Species that will be avoided within and adjacent to 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.
- 5.15. 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. Unless otherwise authorized under this ITP, Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 15 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel is 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 Project modification.
- 5.16. Staging Areas.** Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 5.14 of this ITP.
- 5.17. 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. All hazardous materials shall be used, stored, and disposed of in accordance with the manufacturers' specifications and consistent with applicable regulatory requirements. Workers shall be trained to engage in safe work practices and to properly identify and handle any hazardous materials on-site.
- 5.18. 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 Conditions of Approval set forth in this ITP.

- 5.19. Refuse Removal.** Upon completion of all phases 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.
- 5.20. Firearms and Dogs.** Permittee shall prohibit firearms and domestic dogs from the Project Area and Project site access routes during Covered Activities, except those that are in the possession of authorized security personnel or local, State, or federal law enforcement officials.
- 5.21. Wildfire Prevention.** Permittee shall keep basic fire suppression supplies on site at all times. Hand removal of vegetation, mowing, weed-whacking, and/or grazing by sheep are the authorized methods that shall be used to reduce fuel loads. The Designated Biologist or Biological Monitor shall inspect for Covered Species all non-living or living vegetation marked for removal by hand, mowing or weed-whacking prior to removal and the Designated Biologist or Biological Monitor shall be on-site to monitor these fuels reduction activities.
- 5.22. Prevention of Spread of Invasive Species.** Permittee shall conduct Project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (for example, algae, fungi, parasites, bacteria), from one Project Area and/or waterbody to another. Prevention best management practices (BMPs) and guidelines for invasive plants can be found on the Cal-IPC's website at: <http://www.cal-ipc.org/ip/prevention/index.php/>. Prevention BMPs and guidelines for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: <http://www.protectyourwaters.net/>. Permittee shall incorporate BMPs to minimize risk of introduction and/or spread of *Phytophthora* spp. within the Project Area.

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. 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. The Designated Biologist shall submit a notification of observation (including species name, date of observation and GPS coordinates) by email to the CDFW Regional Representative (Mia.Bianchi@wildlife.ca.gov) and the Wildlife Diversity Program (wildlifemgmt@wildlife.ca.gov) within 24 hours of observation.

- 6.4. Daily Compliance Monitoring.** During the Construction Phase, the Designated Biologist shall be on-site daily when Covered Activities occur while the temporary exclusion fence remains in place, as applicable, and during any vegetation removal and ground-disturbing Covered Activities (with the exception of grazing) conducted during Project construction. 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, weather conditions, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.
- 6.5. Weekly Compliance Monitoring.** During periods of inactivity or after clearing, grubbing, and grading have been completed and temporary exclusion fence has been removed, compliance inspections by the Designated Biologist may be reduced to a minimum of one day per week only after Permittee obtains written approval from CDFW. This Condition applies to non-vegetation disturbing and/ or non-ground-disturbing Covered Activities during the Construction Phase. Daily compliance inspections shall resume if the Designated Biologist or CDFW finds the Permittee is out of compliance with any Conditions of Approval of this ITP.
- 6.6. Monthly Compliance Report.** During the Construction Phase, the Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Conditions of Approval 6.2, 6.3, 6.4, and 6.5 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 and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Mia Bianchi (Mia.Bianchi@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.
- 6.7. Annual Status Report.** Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and

continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 6.6; (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.

- 6.8. Final Construction Phase Report.** No later than 45 days after completion of all Construction Phase activities, including restoration activities during this Phase, Permittee shall provide CDFW with a Final Construction Phase Report. The Designated Biologist shall prepare the Final Construction Phase Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs during the Construction Phase; (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 due to construction; (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.
- 6.9. Final O&M Phase Report.** No later than 45 days after completion of all O&M Phase activities, including restoration activities during this Phase, Permittee shall provide CDFW with a Final O&M Phase Report. The Designated Biologist shall prepare the Final O&M Phase Report which shall include, at a minimum: (1) a summary of all ASRs during the O&M Phase; (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 due to O&M; (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.
- 6.10. Final Mitigation Report.** No later than 45 days after completion of all mitigation Conditions of Approval, 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.

- 6.11. Final Design Reports.** If Permittee makes any modifications to the current Project designs, Permittee shall submit updated final geotechnical reports and constructions designs to CDFW for review and acceptance at least 45 days before the start of Covered Activities.
- 6.12. Photo Monitoring.** The Designated Biologist shall establish no less than 10 photo monitoring stations to provide representative views of Project construction and restoration activities. Photo monitoring station results shall contribute to the CDFW's assessment of temporary impacts and restoration work ; therefore, the Designated Biologist should ensure that photo monitoring stations numbers and locations are sufficient to document temporary impacts and restoration success. Photo monitoring shall be done as follows:
- 6.12.1.** Stations should be located in areas that allow for unobstructed views and a field of vision of approximately 2,000 feet.
- 6.12.2.** At least one photograph shall be taken at all stations prior to ground-breaking activities, and each month thereafter until construction and initial restoration are complete. Photo documentation of restoration success shall occur every three months following initial restoration until restoration success criteria are reached.
- 6.12.3.** Photo monitoring station locations shall be provided to CDFW in a geographic format with the coordinate system and horizontal error identified.
- 6.12.4.** If CDFW or the Designated Biologist determines that additional monitoring stations are necessary, the locations shall be added to the inventory of photo monitoring stations.
- 6.12.5.** During each photo monitoring cycle, the Permittee shall take photographs at all stations within two consecutive days.
- 6.13. Notification of Take or Injury.** Permittee shall immediately notify the Designated Biologist if a Covered Species is taken (including relocation) 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 the CDFW Regional Representative via email at Mia.Bianchi@wildlife.ca.gov, with copy to R3CESA@wildlife.ca.gov, and by calling the

direct line to the CDFW Representative at (707) 815-8722 by the end of the business day. 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, GPS location (including GPS error estimated in feet and datum) of the Covered Species, photographs of the location and the Covered Species, explanation as to cause of take or injury, and any other pertinent information.

- 6.13.1. California Tiger Salamander Salvage.** If a California tiger salamander is found recently deceased, a ½-inch portion of the tail tip shall be removed and placed in a labeled tissue tube with 95 percent ethanol. The remaining carcass, if salvageable, shall be immediately bagged, labeled, and preserved in a freezer. The label shall include a unique identifier (collection number), species name, time and date of collection, collection location, GPS location (including datum and horizontal error in feet), circumstances surrounding death (if known), collector name and contact information (phone number or email), and ITP tracking number. Tail specimens shall be delivered to:

CDFW Bay Delta Region
Attention: Mia Bianchi
2825 Cordelia Road, Suite 100
Fairfield, CA 94534

The remaining carcasses shall be delivered to the following address within two calendar days of the discovery:

CDFW Wildlife Investigations Lab
Attention: Deana Clifford
1701 Nimbus Road, Suite D
Rancho Cordova, CA 95670

- 6.13.2. Crotch's Bumble Bee Salvage.** If a Crotch's bumble bee is accidentally killed during survey efforts, stop all work and immediately contact CDFW for guidance. The carcass shall be photographed, salvaged, and placed in a labeled, clean plastic, resealable bag or vial and stored in a freezer. The label shall include a unique identifier (collection number), species name, time and date of collection, collection location, GPS location (including datum and horizontal error in feet), circumstances surrounding death (e.g. cooler may have been too cold; hot day and extreme shifts in temperature from ambient air to cooler may have contributed), collector name and contact information (phone number or email), and ITP tracking number. If deemed necessary by CDFW, the carcass shall be delivered (on dry ice if possible) to the following address and reported with photographs via email to the CDFW Regional Representative at the time of collection and shipping:

CDFW Wildlife Genetics Research Unit (Wildlife Health Lab)

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KOLA ENERGY STORAGE PROJECT

Attention: Michael Buchalski
1415 North Market Boulevard, Suite 9
Sacramento, CA 95834

- 6.14. Additional Impacts to Habitat.** No take beyond the permanent loss of 22.84 acres of upland habitat for the Covered Species and temporary loss of 22.10 acres of upland habitat for the Covered Species shall occur due to Covered Activities unless this ITP is amended by CDFW prior to additional impacts or unless authorized by CDFW under Condition of Approval 8 of this ITP.
- 6.15. Temporary Impact Criteria.** To be considered a temporary impact, all temporary impacts must meet the following criteria: (1) recontouring and seeding of each temporary impact area shall occur by October 31 of the year of the temporary impact (or by December 31 of the year of the temporary impact with prior approval from CDFW), and no additional ground-disturbing activities should occur; (2) temporary impact sites have achieved vegetation success as described in the Vegetation Restoration and Enhancement Plan (Restoration Plan) (See Condition of Approval 6.17.2).
- 6.16. Temporary Impact Restoration Schedule.** Prior to initiating any temporary impacts, Permittee shall develop a Temporary Impact Restoration Schedule that ensures: (1) removal of non-native substrate, recontouring and seeding of temporary impact areas shall occur prior to October 31 of each year where the impacts occur (or by December 31 of the year of the temporary impact with prior approval from CDFW); and (2) all temporary impacts from prior years have met the October 31 (or December 31 with prior approval from CDFW) recontouring and seeding criteria and have achieved vegetation success as described in the Restoration Plan (See Condition of Approval 6.17.2).
- 6.17. Temporary Impact Vegetation Restoration.** Permittee shall ensure that vegetation restoration is implemented and completed in a manner that restores Covered Species habitat that will be temporarily disturbed during Covered Activities to pre-Project or better conditions.

As part of restoration, Permittee shall oversee the management of invasive plants within the Project Area and may use control methods such as hand removal, light grubbing, mowing, or grazing within seeding and planting areas following vegetation restoration. The Designated Biologist shall ensure that invasive plant removal does not result in damage to adjacent Covered Species habitat or to root systems of planted plants. Permittee shall ensure that all vegetation restoration meets the Performance Standards described in Condition of Approval 6.17.2.

- 6.17.1. Vegetation Restoration and Enhancement Plan.** Permittee shall submit the Vegetation Restoration and Enhancement Plan (Restoration Plan) for CDFW acceptance at least 30 days prior to the start of restoration activities or within six months of ITP issuance, whichever occurs first. The restoration activities shall not be implemented until the Permittee has received written acceptance from CDFW

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of the Restoration Plan. The Restoration Plan shall include, but not be limited, to the following:

6.17.2. Performance Standards. The Restoration Plan shall include the following performance standards that Permittee shall meet:

- 6.17.2.1.** Gravel and other non-native substrate shall be removed from restoration areas;
- 6.17.2.2.** To the maximum extent feasible, topsoil shall be salvaged from within on-site work areas prior to construction. Imported fill soils shall be limited to weed-free and pathogen-free topsoil similar in texture, chemical composition and pH to soils found at the Project Area;
- 6.17.2.3.** Minor re-contouring may be conducted; however, Permittee shall limit grading compaction, fill, and other earthmoving activities to the Project Area. Soils shall be protected from wind erosion using a biodegradable erosion control blanket or appropriate mulch cover, or other appropriate methods approved by CDFW, until vegetation is established. Seed shall be applied in the early fall, typically between October 15 and October 31, or outside of this window with CDFW approval. If feasible, seed shall be applied immediately prior to the first rain event. Mulch and seed shall be weed free and pathogen free;
- 6.17.2.4.** Seed mixes shall be approved by CDFW prior to application and shall include a mix of locally native species and non-native forage species (no species designated by Cal-IPC as high or moderate invasive species may be used), including diverse assemblages of native and non-native flora, with an emphasis on native bunchgrasses and other grassland species including local, native wildflowers. Seed may be collected from within the Project Area. Additional seed shall be sourced from within 50 miles of the Project Area, and within level 4 eco-regions as seed zones, to the extent feasible (original genetic material collected within this radius); however, the seed may be purchased from a seed farm outside of this area. For seeding and mulching exposed slopes, the seed blend may include one or two sterile non-native perennial grass species. Seed mixes shall not have been treated with pesticides and shall be pathogen-free.
- 6.17.2.5.** Permittee shall complete seeding prior to winter rains, but no later than October 31 of the year of the impact (or by December 31 of the year of the impact with prior approval from CDFW). At the discretion of CDFW, all exposed areas where seeding is unsuccessful after 90 days shall receive appropriate soil preparation and a second application of seeding, straw, or mulch as soon as is practical on a date mutually agreed upon. Straw and/or mulch used shall be weed and pathogen free.
- 6.17.2.6.** No more than 15 percent of the vegetation shall consist of species

designated as high or moderate invasive plants in the Cal-IPC California Invasive Plant Inventory Database (<https://www.cal-ipc.org/plants/inventory/>). If the presence of invasive species exceeds this threshold, Permittee is responsible for conducting appropriate control activities in coordination with CDFW and the property owner.

- 6.17.3. Monitoring and Maintenance.** Permittee is responsible for monitoring and maintaining the restored areas for a period of three years or until the Restoration Plan success criteria have been met, whichever is longer. After the first six months following completion of restoration activities, Permittee shall submit to CDFW a brief monitoring report (10 pages or less, not including figures) detailing vegetation establishment, percent invasive plant cover, and other relevant observations regarding success of the restoration Project.

If the survival and/or cover requirements are not meeting the performance standards outlined in Condition of Approval 6.17.2, Permittee is responsible for replacement planting, additional watering, weeding, invasive plant eradication, or any other practice necessary to achieve these requirements. Permittee shall submit annual restoration reports by December 31 to CDFW until the standards have been met. Replacement plantings shall be monitored with the same survival and growth requirements for three years after planting.

- 6.17.4. Mowing and Grazing.** The Restoration Plan shall include specifications to minimize impacts of disking, mowing, and grazing to Covered Species.

- 6.17.5. Pollen and Nectar Resources.** The Restoration Plan shall include a list of pollen and nectar resources that specifies a palette of drought-tolerant, locally native (eastern San Francisco Bay Area) species of which at least three species can be expected to be blooming at any given time throughout the active season for Crotch's bumble bee (approximately February 1 through October 31). Nectar- and pollen-producing plants that may be used by Crotch's bumble bee include, but are not limited to, the genera *Asclepias*, *Chaenactis*, *Lupinus*, *Phacelia*, and *Salvia*, and plants in the families *Fabaceae*, *Apocynaceae*, *Asteraceae*, *Lamiaceae*, *Hydrophyllaceae*, *Plantaginaceae*, *Onograceae*, *Papaveraceae*, *Polygonaceae*, *Boraginaceae*, including non-native flowering plants. The plan shall also identify a revised list of locally native pollen and nectar resources appropriate for incorporation in the grassland seed mix to be used for restoration. The Restoration Plan shall specify that pollen and nectar resources imported to the Project Area shall not have been treated with pesticides and shall be pathogen-free.

- 6.18. Tracking Impacts.** Permittee shall track temporary and permanent impacts and notify CDFW if take authorization is likely to be exceeded. Permittee shall submit an appropriately revised Project Phase schedule (Condition of Approval 6.19.1 and 6.19.2) and within seven days to ensure temporary impacts remain within the temporary impact criteria according to Condition of Approval 6.15. If Permittee or CDFW determines that

this ITP's take authorization is likely to be exceeded and/or that this ITP's temporary impact criteria cannot be met, then the Permittee shall obtain an amendment to this ITP as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable law, unless otherwise authorized by CDFW under Condition of Approval 8 of this ITP.

6.18.1. Exceedance of Take Authorization. If Permittee or CDFW determines that this ITP's take authorization or authorization for temporary or permanent impacts has been exceeded, CDFW may issue a Stop-Work Order as described in Section X of this ITP.

6.19. Phase Schedules. Permittee shall submit to CDFW final Covered Activity Schedules specific to each Project Phase according to the following Conditions of Approval:

6.19.1. Construction Schedule. Permittee shall submit a final construction schedule to CDFW within 15 calendar days prior to the start of Project construction activities. The construction schedule shall identify the approximate beginning and completion date of Covered Activities to take place during the Construction Phase (including construction activities and construction-related restoration activities). During the Project construction period, Permittee shall notify CDFW of any major changes in the construction schedule at least seven days prior to the change being implemented.

6.19.2. O&M Schedule. Permittee shall submit a final O&M schedule to CDFW within 15 calendar days prior to the start of O&M Project activities. The O&M schedule shall identify the approximate beginning and completion date of Covered Activities to take place during the O&M Phase (including routine O&M activities and O&M-related restoration activities).

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:

Multi-species Protection Measures

7.1. Vegetation Management. Disturbance or removal of vegetation shall be kept to the minimum necessary to complete Covered Activities. Vegetation marked for protection may only be trimmed with hand tools to the extent necessary to gain access to work sites. Permittee shall set mower blade heights no lower than 4 inches, unless otherwise approved by CDFW in writing. Permittee shall ensure to the extent feasible that mowing and/or grazing only occur when Covered Species are dormant or less active on the surface (See also Condition of Approval 6.17.4).

7.2. Mowing Prior to Ground-Disturbing Activities. Prior to ground-disturbing Covered Activities (including but not limited to grading or trenching), Permittee shall mow vegetation to 4-inch height to the width necessary to accommodate construction

equipment and a walking buffer to facilitate locating and avoiding small mammal burrows, and Covered Species, including active Crotch's bumble bee nests.

- 7.3. Burrow Avoidance.** During installation and placement of Project infrastructure (including, but not limited to water tanks and irrigation lines, fencing, solar facility and BESS equipment), Permittee shall avoid fossorial mammal burrows and active Crotch's bumble bee nests to the maximum extent practicable.
- 7.4. Facility Washing.** Permittee will ensure that any water used for any facility washing shall be free of chlorine and/or other components that could negatively impact Covered Species. If water is treated on-site prior to use in facility washing, associated wastewater shall be properly disposed of off-site. Permittee shall keep the amount of water used in facility washing to the minimum amount needed and shall not allow water to form puddles or inundate rodent burrows.

California Tiger Salamander

- 7.5. California tiger salamander checks.** During ground disturbing activities, before the start of work each morning, the Designated Biologist shall check for California tiger salamander individuals under all vehicles, equipment, materials, or otherwise suitable locations for a California tiger salamander to hide. Workers shall inspect under vehicles and equipment for California tiger salamanders before the vehicles and equipment are moved. If a California tiger salamander is present, the worker shall notify the Designated Biologist. All ruts and holes near root structures, foundations, abutments, etc., shall be inspected for California tiger salamanders prior to and during excavation or removal. If a California tiger salamander is discovered, the Designated Biologist shall relocate individuals as required by Conditions of Approval 7.8 and 7.9.
- 7.6. Inspection of Pipes and Similar Structures – California tiger salamander.** All construction pipes or similar structures with a diameter of 2 inches or greater (including any hollow openings of battery storage containers) that are stored in the Project Area for one or more overnight periods shall be either securely capped prior to storage or thoroughly inspected by the Designated Biologist and/or the construction foreman/manager for California tiger salamanders or other animals before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a California tiger salamander is found, it shall be relocated as described in Conditions of Approval 7.8 and 7.9.
- 7.7. Open Excavations – California tiger salamanders.** To prevent inadvertent entrapment of California tiger salamanders during construction activities, the Designated Biologist shall check all open excavations, including but not limited to open holes and trenches more than 6-inches deep, for trapped animals no later than 9:00 AM each day. During the workday, before any open trenches or holes are filled, the Designated Biologist shall thoroughly inspect the trenches or holes for California tiger salamander. At the close of each working day, the Designated Biologist shall check open excavations and ensure that all excavated, steep-walled holes or trenches more than 6 inches deep are provided with one or more escape ramps constructed of earthen fill or wooden planks

with a slope of 3:1 (run:rise) or covered with boards or metal plates placed flush to the ground with edges overlaid by loose dirt leaving no gaps for Covered Species entry. At any of these times, if a California tiger salamander is discovered by the Designated Biologist or anyone else, the Designated Biologist shall move the individual as required by Conditions of Approval 7.8 and 7.9.

If any open holes, trenches or other excavations greater than 6-inches-deep cannot be covered or fitted with escape ramps as described above, then temporary exclusion fence shall be installed around these trenches, holes, or other excavations to prevent California tiger salamander from becoming trapped. Refuge opportunities, such as coverboards (2-foot x 3-foot or larger plywood), shall be provided on the outside perimeter of the temporary exclusion fences.

- 7.8. California Tiger Salamander Relocation.** The Designated Biologist shall relocate any California tiger salamander found within the Project Area to an active rodent burrow system located no more than 300 feet outside of the Project Area unless otherwise approved by CDFW in writing. The Designated Biologist shall document both the capture and relocation areas by photographs and GPS positions. The California tiger salamander shall be photographed and measured in millimeters (Snout-Vent) for identification purposes prior to relocation. All documentation shall be provided to the CDFW Regional Representative (Mia.Bianchi@wildlife.ca.gov) within 24 hours of California tiger salamander relocation.
- 7.9. California Tiger Salamander Relocation Plan.** The Designated Biologist shall prepare a California Tiger Salamander Relocation Plan (Relocation Plan). The Relocation Plan shall include, but not be limited to, an identification of the survey and hand excavation, capture, handling, and relocation methods, and identification of where the individuals will be relocated to. Relocation areas shall be identified by the Designated Biologist based upon best suitable habitat available and time of year and approved by CDFW prior to the start of Covered Activities. The Relocation Plan shall be submitted to CDFW for approval prior to the beginning of Covered Activities. Covered Activities anywhere within the Project Area may not proceed until the Relocation Plan is approved in writing by CDFW. Only the approved Designated Biologist is authorized to capture and handle the Covered Species.
- 7.10. California Tiger Salamander Handling and Injury.** California tiger salamander shall be handled and assessed according to the Restraint and Handling of Live Amphibians USGS, National Wildlife Health Center (D. Earl Greene, ARMI SOP NO. 100; 16 February 2001) (Attachment 5). If an injured California tiger salamander is found during the Project term, the individual shall be evaluated by the Designated Biologist who shall then immediately contact the CDFW Regional Representative, via email and telephone, to discuss the next steps. If the CDFW Regional Representative cannot be contacted immediately, the injured California tiger salamander shall be placed in a shaded container and kept moist. If the CDFW Regional Representative is not available or has not responded within 15 minutes of initial attempts, then the following steps shall be taken by the Designated Biologist:

- 7.10.1.** If the injury is minor or healing and the California tiger salamander is likely to survive, the salamander shall be released immediately in accordance with Conditions of Approval 7.9 and 7.10.
- 7.10.2.** If it is determined that the California tiger salamander has major or serious injuries as a result of Project-related activities, the Designated Biologist shall immediately take it to the Lindsay Wildlife Experience or another CDFW approved facility. If taken into captivity, the individual shall remain in captivity and not be released into the wild unless it has been kept in quarantine and the release is authorized by CDFW and U.S. Fish and Wildlife Service. Permittee shall bear any costs associated with the care or treatment of such injured California tiger salamander. The Permittee shall document the circumstances of the injury, the procedure followed, and the final disposition of the injured animal in a written incident report as described in Condition of Approval 7.10.
- 7.11. Temporary Exclusion Fencing.** Prior to commencing Covered Activities, Permittee shall install temporary exclusion fencing according to the approved Temporary Exclusion Fence Plan (Condition of Approval 7.12) to prevent California tiger salamanders from dispersing into the Project Area. Within each Project Phase, Permittee shall ensure that temporary exclusion fencing is installed around the footprint of all planned vegetation- and ground-disturbing Covered Activities, including but not limited to disking and seeding involved with restoration. Permittee shall ensure that exclusion fencing remains in place until Permittee has completed the related vegetation- and/or ground-disturbing Covered Activities and removed related equipment from that footprint. Permittee shall remove temporary exclusion fencing at the culmination of related activities. To limit barriers to California tiger salamander movement imposed by temporary exclusion fencing, exclusion fencing may be installed and removed in stages (enclosed subsets of fencing) as vegetation- and ground-disturbing activities progress across the Project Area.
- 7.12. Temporary Exclusion Fence Plan for California Tiger Salamander.** Permittee shall submit to CDFW for review and accept a Temporary Exclusion Fence Plan describing the location and design of the temporary exclusion fencing and refugia, and survey method to inspect refugia, no less than 15 days prior to the start of Covered Activities within the Alameda County portion of the Project. Permittee shall not install temporary exclusion fencing until receiving written acceptance of the plan from CDFW. If areas of the Project site are proposed to not include temporary exclusion fencing, Permittee shall provide a thorough justification indicating why it is deemed unnecessary.
- 7.12.1.** Permittee shall design temporary exclusion fencing to allow California tiger salamanders to leave the Project Area through one-way funnels or another method approved by CDFW.
- 7.12.2.** Permittee shall provide refuge opportunities such as coverboards (2-foot x 3-foot or larger plywood) or pitfall traps along both sides of the exclusion fence. (If Permittee chooses to use pitfall traps, these shall be placed on the interior of the

fence only and coverboards shall be placed on the exterior of the fence.)

- 7.12.3.** The Designated Biologist shall inspect the temporary exclusion fencing for damage each day. The Designated Biologist shall inspect under cover boards for California tiger salamander by 9:00 AM during and after rain events.
- 7.12.4.** The Designated Biologist shall relocate animals found within the interior fence or in refugia along the fence to a pre-determined location outside the fence line no more than 300 feet from the Project boundary per the Relocation Plan described in Conditions of Approval 7.8 and 7.9.
- 7.12.5.** The Designated Biologist shall communicate temporary exclusion fence condition and type and location of needed repairs orally, followed up in writing (email), to the Permittee upon completion of each fence inspection. These communications shall be appended to Daily Compliance Monitoring Reports. Permittee shall maintain and repair the temporary exclusion fencing immediately to ensure that it is functional and without defects.
- 7.12.6.** If initial site grading and restoration of temporary impacts (Conditions of Approval 6.15) is not completed in the Project Area by October 31, then temporary exclusion fencing shall be installed between any ungraded and graded portions of the planned grading footprint.
- 7.12.7.** Temporary exclusion fencing in place between November 1 and April 30 shall be considered a semi-permanent impact because it may impede potential California tiger salamander movement to breeding ponds. If temporary exclusion fencing is in place between November 1 and April 30, the Permittee shall adjust impacts assessment in consultation with CDFW (Condition of Approval 6.18 and 8).

If work is approved by CDFW outside of the dry season work window required in Condition of Approval 7.14, the following shall apply: Any work site located within 2,000 feet of potential California tiger salamander breeding habitat, including where equipment will be stored overnight, shall be completely fenced with wildlife exclusion fencing. All construction work shall take place within the fenced area. Installation of exclusion fencing does not apply to graveled or well- traveled roads.

7.13. Barriers to Movement – California tiger salamander. As part of infrastructure construction, the Permittee shall not install curbs or other barriers to California tiger salamander movement.

- 7.13.1. Roads – California tiger salamander.** Permittee shall construct roadways such that there are no steep curbs, berms, straw wattles, or dikes that could prevent California tiger salamander from crossing or exiting the roadway. If curbs, berms, and/or straw wattles are necessary for safety and/or surface runoff, Permittee shall design and construct them to allow California tiger salamander to walk over them. If steep dikes are required, Permittee shall design and construct them to include over-side drains or curb/dike breaks spaced at intervals of 16.4 to 32.8

feet to allow California tiger salamander passage.

- 7.13.2. Detention Basin – California tiger salamander.** Permittee shall install a permanent barrier to minimize potential for California tiger salamander movement into the detention basins. Permittee shall submit a Detention Basin Permanent Barrier Plan to CDFW no later than 15 days prior to the start of Covered Activities.
- 7.14. Dry Season Work Restriction.** During the Dry Season of May 1 to October 31 of each year until the expiration of this ITP, Permittee shall limit Covered Activities involving ground disturbance and heavy equipment use (including but not limited to excavation, grading, contouring, or disking) to periods of low rainfall (less than 0.10 inches per 24-hour period). If rain exceeds 0.10 inches during a 24-hour period, work shall cease. Construction may resume 24 hours after the rain ceases when there is a less than 40 percent chance of precipitation in the National Weather Service (NWS) 24-hour forecast for the Project Area (<https://forecast.weather.gov/MapClick.php?lat=37.69&lon=-121.76&unit=0&lg=english&FcstType=graphical>), and humidity, as measured locally on-site under the supervision of the Designated Biologist, has fallen below 75 percent. Both rainfall and humidity records shall be kept on-site and subject to inspection.
- 7.15. Seasonal Work Window.** Permittee shall limit ground-disturbing Covered Activities involving heavy equipment use (such as excavation, road construction and repair, grading and trenching) to May 1 to October 31 (Dry Season) until the expiration of this ITP, except as otherwise authorized in Conditions of Approval of this ITP.
- 7.16. Seasonal Work Window Extension.** Covered Activities involving ground disturbing and heavy equipment use (including but not limited to excavation, grading, contouring, and disking) during November 1 to April 30 (Wet Season) shall be subject to written approval of CDFW. Permittee shall submit a request for an extension to the CDFW Regional Representative at least 14 days prior to the desired Wet Season start date of Covered Activity.

If CDFW approves Wet Season work, Permittee shall monitor the NWS 48-hour hourly forecast for the Project Area (<https://forecast.weather.gov/MapClick.php?lat=37.69&lon=-121.76&unit=0&lg=english&FcstType=graphical>) and shall ensure that Covered Activities involving ground-disturbing activities and heavy equipment cease 24 hours prior to a 40-percent or greater forecast of precipitation. Covered Activities may resume 24 hours after the precipitation ceases if there is less than a 40 percent chance of precipitation in the 24-hour forecast for the Project Area. If CDFW approves wet-season work, the Designated Biologist shall survey the Project Area each day precipitation is forecast and the morning after all precipitation events.

If work during the wet season delays restoration of temporarily disturbed areas past December 31 of the year of impact, the Permittee shall recategorize these areas as semi-permanent or permanent impacts depending on the timing of restoration and achievement of performance standards (See Condition of Approval 6.17.2). In this

circumstance, Permittee shall adjust impacts assessment in consultation with CDFW (Condition of Approval 6.18 and 8).

- 7.17. Daily Work Window.** Permittee shall terminate all Covered Activities 30 minutes before sunset and shall not resume Covered Activities until 30 minutes after sunrise during California tiger salamander migration/active season from November 1 to June 15. The Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for the geographic area where the Project is located to determine when Covered Activities shall terminate and resume.
- 7.18. Nighttime Activities and Artificial Lighting.** If nighttime work cannot be avoided, Permittee shall obtain written approval from CDFW prior to working during non-daylight hours at least 24 hours prior to proposed nighttime activities. Permittee's written request to CDFW to perform nighttime work shall outline the extent of activities and minimization measures specific to the request (monitoring, surveys, etc.). Permittee shall ensure that nighttime work is limited in extent, duration, and brightness to the minimal amount necessary to complete the approved nighttime work. Except when necessary for emergency work, Permittee shall ensure that no earthmoving activities or overland travel take place during nighttime work. Except when necessary for emergency work or driver/pedestrian safety, Permittee shall minimize artificial lighting in the Project Area during nighttime hours to the minimal amount necessary to complete the approved nighttime work. Permittee shall ensure that lighting shall be faced downward and shall only be utilized in the immediate workspace. All nighttime work shall be suspended during rain events.
- 7.19. Notification of Non-Native Tiger Salamanders or Hybrids.** The Designated Biologist shall immediately notify CDFW if a non-native tiger salamander (tiger salamander, *Ambystoma tigrinum*; barred tiger salamander, *A. mavortium*; or plateau tiger salamander, *A. velasci*) or California tiger salamander hybrid is found or suspected within the Project Area within 24 hours by calling CDFW's Regional Representative. The Designated Biologist shall not release any non-native or hybrid salamanders back to the wild until directed to do so by CDFW. The Designated Biologist shall follow the Covered Species Handling and Injury measures outlined in this ITP (see Condition of Approval 7.10).

Crotch's bumble bee

- 7.20. Seasonal Restrictions.** During the Project Construction Phase, any work within the colony active period (approximately February 1 through October 31) shall be subject to approval by CDFW as described in Condition of Approval 7.22. For both the construction and O&M phases, if feasible, native or non-native flowering vegetation removal shall occur prior to bloom and before the Colony Active Period. If Covered Activities cannot be avoided during this time and vegetation needs to be removed during the bloom period for those species, Permittee shall remove flowering vegetation in a patched manner leaving areas of floral resources as refugia for foraging Covered Species or wait until bloom has ceased. During the bloom period and colony active

period, removal of non-native plants should be prioritized over native plants.

Permittee shall avoid conducting Covered Activities involving vegetation and ground disturbance in Covered Species habitat during the queen/gyne flight seasons, when queens emerge in the spring searching for nest sites and during the fall flight period when gynes mate and search for overwintering habitat. If a Crotch's bumble bee nest is discovered onsite, the Designated Biologist shall establish a minimum 50-foot no disturbance buffer around the nest(s) until they senesce. Starting in July, nest activity shall be observed for a minimum of 1 hour per day for 3 consecutive days to determine if activity has ceased and if the nest has senesced. These time periods shift each year due to climatic conditions (drought, temperature, and precipitation). These time periods shift each year due to climatic conditions (drought, temperature, and precipitation). To determine these time periods each year, the Designated Biologist(s) shall be onsite and conduct Crotch's bumble bee Pre-Construction Surveys as described in Condition of Approval 7.22 prior to ground disturbing activities in the late fall (after October 31) to avoid the gyne flight season and again in early spring (starting in late January) to avoid queens emerging in the spring.

- 7.21. Vegetation Management.** Disturbance or removal of vegetation shall be kept to the minimum necessary to complete Covered Activities. Vegetation marked for protection may only be trimmed with hand tools to the extent necessary to gain access to work sites. Permittee shall set mower blade heights no lower than 4 inches, unless otherwise approved by CDFW in writing. Permittee shall ensure that pesticide use only occurs when Covered Species are dormant or when flowers are no longer in bloom. See Condition of Approval 5.12.
- 7.22. Focused Crotch's Bumble Bee Pre-Construction Surveys.** If Covered Activities are proposed to occur during the Colony Active Period, Permittee shall develop a Pre-Construction Survey Plan for the Covered Species and submit it to CDFW for acceptance no less than 15 days prior to the initiation of ground disturbing activities. The Pre-Construction Survey Plan shall include the number of surveys that will be conducted, when the surveys are planned to take place (i.e., season and how much time between surveys), what type of habitat will be surveyed for (i.e., foraging, nesting, and/or overwintering), and survey method(s). The Pre-Construction Survey Plan shall follow the final Crotch's Bumble Bee Survey Plan, dated April 19, 2024, and prepared by Jacobs. Pre-construction survey must be completed no more than two weeks prior to the initiation of ground disturbing activities. The Pre-Construction Survey Plan shall provide justification for timing and method of survey design (e.g., elevation, climatic conditions, previous year's precipitation, average ambient temperature, species Colony Active Period and Queen/Gyne Flight Season, etc.). It shall also include the identification protocol(s) for Colony Active Period surveys. If photographs will be used as vouchers, the Pre-Construction Survey Plan must identify the person(s) who will provide positive identification.

San Joaquin kit fox

- 7.23. Standard Protective Guidance for San Joaquin Kit Fox.** At no time shall Permittee or its representatives capture, pursue, or otherwise attempt to handle a San Joaquin kit fox. Permittee shall follow USFWS' Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance (USFWS 2011).
- 7.24. Pre-Construction Surveys for San Joaquin Kit Fox.** Within 15 days prior to any habitat modification, the Designated Biologist shall conduct transect surveys to detect potential San Joaquin kit fox dens. The Designated Biologist shall conduct walking transects such that 100 percent visual coverage of the Project Area is achieved. Transect width shall be adjusted based on vegetation height, topography, *etc.*, to facilitate the detection of dens and other signs. Walking transect surveys shall be used to detect and map known dens, potential dens, and sign (tracks, scat, prey remains). Detection dogs may be used if practicable. Potential San Joaquin kit fox scat shall be collected and labeled based on mapped location. Potential dens shall be considered to be any subterranean hole on the site that has entrances of appropriate dimensions for which available evidence is insufficient to conclude that it is being used or has been used by a San Joaquin kit fox.
- 7.25. Construction Buffers for San Joaquin Kit Fox Dens.** If a potential San Joaquin kit fox den is discovered, or a fox is found in an "atypical" den such as a pipe or culvert, Permittee or Designated Biologist shall establish a 50-foot buffer using tagging. If a known kit fox den (one that shows evidence of current use or is known to have been used in the past) is discovered, a buffer of at least 100 feet shall be established using fencing. If a natal den is discovered, it shall be fenced and avoided in a buffer with a diameter of at least 200 feet. Permittee or Designated Biologist shall notify USFWS and CDFW for all of the above except potential kit fox dens. Buffer zones shall be considered environmentally sensitive areas, and entry shall be restricted.
- 7.26. Protection of San Joaquin Kit Fox Natal Dens.** Permittee shall not excavate natal dens for San Joaquin kit fox until the pups and adults have vacated and only after receiving written permission from USFWS and CDFW. Permittee may destroy known dens only after three days of monitoring with tracking medium or an infra-red camera has determined that a San Joaquin kit fox is not present.
- 7.27. Destruction/Collapse of Potential San Joaquin Kit Fox Dens.** Destruction of any potential San Joaquin kit fox dens shall be accomplished by the Designated Biologist by careful excavation until it is certain that no San Joaquin kit foxes are inside. The den should be fully excavated, filled with dirt, and compacted to ensure that San Joaquin kit foxes cannot re-enter or use the den during the construction period. If at any point during excavation a San Joaquin kit fox or kit fox signs is discovered inside the den, excavation shall cease immediately, and monitoring of the den as described in Condition of Approval 7.25 shall be resumed. Destruction of the den shall only be completed when, in the judgment of the Designated Biologist, the animal has escaped from or otherwise vacated the partially destroyed den.

8. Habitat Management Land Acquisition and Restoration: CDFW has determined that

permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result 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 do the following:

Permittee shall contribute sufficient funds to the SJCOG for coverage under the SJMSCP for the San Joaquin County portion of the Project to compensate for 22.12 acres of permanent impacts and 10.45 acres of temporary impacts (total of 32.57 acres) to California tiger salamander and San Joaquin kit fox habitat. These funds shall contribute to both the permanent protection and funding for perpetual management of a minimum of 97.71 acres of mitigation lands for the Project's impacts to California tiger salamander and San Joaquin kit fox within the San Joaquin County portion of the Project.

To compensate for 0.72 acres of permanent impacts and 11.65 acres of temporary impacts (total of 12.37 acres) to California tiger salamander, San Joaquin kit fox and Crotch's bumble bee habitat in the Alameda County portion of the Project, as well as 22.12 acres of permanent impacts and 10.45 acres of temporary impacts (total of 32.57 acres) to Crotch's bumble bee habitat in the San Joaquin County portion of the Project, the Permittee shall provide for both the permanent protection and management of a minimum of 90.62 acres of Habitat Management (HM) lands for the Covered Species pursuant to Condition of Approval 8.1 below and the calculation and deposit of the management funds pursuant to Condition of Approval 8.2 below. Permanent protection and funding for the perpetual management of HM lands 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 9 below for all uncompleted obligations.

Permittee shall also restore on-site a total of 22.10 acres of temporarily impacted Covered Species habitat (11.65 acres in Alameda County and 10.45 acres in San Joaquin County) for the Covered Species pursuant to Conditions of Approval 6.17. If any temporary impacts do not meet the criteria identified in ITP Condition of Approval 6.17.2 then the Permittee shall consult with CDFW regarding adjustments to the impact's assessment, and CDFW shall require compensatory mitigation to offset the additional Project temporal impacts. If Permittee does not complete seeding of temporary impact areas by October 31 (or by December 31 with prior approval from CDFW), unless otherwise approved by CDFW, of the year of the impact, but restores impact areas within 2 years of the impact consistent with Conditions of Approval 6.15 and 6.17, then CDFW shall consider those disturbed areas as semi-permanent and require compensatory mitigation at a 2:1 ratio (acres of mitigation: acres of impact). If Permittee does not restore areas considered temporarily disturbed within 2 years, then CDFW shall consider those areas as permanent impacts, and require compensatory mitigation at a 3:1 ratio (acres of mitigation: acres of impact).

No take beyond the permanent loss of 22.84 acres and the temporary loss of 22.10 acres

of habitat for the Covered Species authorized in this ITP shall occur unless this ITP is amended by CDFW prior to additional impacts or unless otherwise authorized by CDFW under Condition of Approval 8 of this ITP. The mitigation requirement will be identified by CDFW in writing and shall be subject to an amendment as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable regulations and law.

- 8.1. Cost Estimates.** For the purposes of determining the Security amount, CDFW has estimated the cost sufficient for CDFW or its contractors to complete acquisition, protection, and perpetual management of the HM lands and restoration of temporarily disturbed habitat as follows:
- 8.1.1.** Land acquisition costs for HM lands identified in Condition of Approval 8.2 below, estimated at \$20,000/acre for 90.62 acres: **\$1,812,400**. Land acquisitions costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements;
 - 8.1.2.** All other costs necessary to review and acquire the land in fee title and record a conservation easement as described in Conditions of Approval 8.2.1 and 8.2.2 below: **\$10,000**.
 - 8.1.3.** Start-up costs for HM lands, including initial site protection and enhancement (including Crotch's Bumble bee Habitat Mitigation and Monitoring Plan) costs as described in Condition of Approval 8.2.6 below, estimated at **\$50,000**.
 - 8.1.4.** Interim management period funding as described in Condition of Approval 8.2.10 below, estimated at **\$350,000**.
 - 8.1.5.** Long-term management funding as described in Condition of Approval 8.2 below, estimated at \$4,800/acre for 90.62 acres: **\$434,976**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
 - 8.1.6.** 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 8.3, estimated at **\$4,500**.
 - 8.1.7.** Restoration of on-site temporary impacts to Covered Species habitat due to construction as described in Condition of Approval 6.17, calculated at \$3,500/acre for 22.10 acres: **\$77,350**.
 - 8.1.8.** All costs associated with CDFW engaging an outside contractor to complete the mitigation tasks, including but not limited to acquisition, protection, and perpetual funding and management of the HM lands and restoration of temporarily disturbed habitat. These costs include but are not limited to the cost of issuing a request for

proposals, transaction costs, contract administration costs, and costs associated with monitoring the contractor's work **\$100,000.00**.

- 8.2. Habitat Management Lands Acquisition and Protection.** If the Permittee elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the Permittee shall:
- 8.2.1.** Transfer fee title of the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended.
- 8.2.2. Conservation Easement.** If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW elects not to be named as the grantee for the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Civil Code sections 815-816, as amended, and Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e). Because the "doctrine of merger" could invalidate the conservation interest, under no circumstances can the fee title owner of the HM lands serve as grantee for the conservation easement.
- 8.2.3. HM Lands Approval.** Permittee shall 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, documentation identifying the land to be purchased or property interest to be conveyed to an approved entity as mitigation for the Project's impacts on Covered Species. HM lands shall meet the minimum habitat requirements for the Covered Species including, but not limited to one or more aquatic features on-site which have been documented to support successful California tiger salamander breeding in an average or below average rainfall year (abundance and distribution) or adjacent to aquatic features which have been documented to support successful California tiger salamander breeding in an average or below average rainfall year (abundance and distribution) and already conserved and managed to the satisfaction of CDFW for the Covered Species, and no less than 100 acres of suitable upland habitat or adjacent to suitable upland habitat already conserved and managed for California tiger salamander. HM lands for Crotch's bumble bee shall provide (existing and/or enhanced) a reliable pollen and nectar supply with

floral resources associated with Crotch's bumble bee throughout the active season (approximately February 1 through October 31).

- 8.2.4.** HM Lands Documentation. Permittee shall provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents to CDFW as listed in Attachment 4: CDFW's Permittee Checklist of Documents for Habitat Management Land Property Review and Protection. All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services.
- 8.2.5.** Land Manager. Permittee shall designate both an interim and long-term land manager, approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified. The grantee for the conservation easement cannot serve as the interim or long-term manager without the express written authorization of CDFW in its sole discretion.
- 8.2.6.** Start-up Activities. Permittee shall provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=137386&inline>) (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage.
- 8.2.7.** HM Lands Selection and Requirements for Crotch's Bumble Bee. Permittee shall meet the requirements for Crotch's bumble bee mitigation by completing either a) restoration/enhancement of HM lands with floral resources, as described in Conditions of Approval 8.2.7.2 **OR** b) preservation of existing floral resources on HM lands, as described in Condition of Approval 8.2.7.1.

8.2.7.1. To determine specific impacts to floral resources within the Project Area to inform preservation or restoration/enhancement on HM lands, the Designated Biologist (i.e., a qualified botanist) shall submit a vegetation sampling methodology for acceptance to conduct a thorough habitat assessment within the Project Area describing the quantity and quality of floral resources present within the Project Area prior to start of ground-disturbing Covered Activities. The habitat assessment shall include a description of plant species observed onsite, including native and non-native species, and a location map of the Project Area showing the extent and location of observed plant species. The Designated Biologist shall conduct a minimum of one survey during the peak blooming season (late April, May, and/or June) and submit the results to CDFW within 15 days of the start of ground-disturbing Covered Activities.

8.2.7.2. Crotch's Bumble bee Habitat Mitigation and Monitoring Plan: If HM lands do not contain adequate floral resources, Permittee shall restore and/or enhance a sufficient amount of floral resources based on the habitat assessment within the Project Area (Condition of Approval 8.2.7.1) or a minimum 0.25 acres, whichever amount is larger.

8.2.7.2.1. Permittee shall, in coordination with a restoration ecologist, submit to CDFW for review and approval a Habitat Mitigation and Monitoring Plan (HMMP) designed to meet the habitat restoration/enhancement, maintenance, and monitoring goals identified below. At a minimum, the HMMP shall include the following information: (a) a description of the conditions, including water resources, vegetation types to alliance (see California Native Plant Society's *A Manual of California Vegetation*), and a map that identifies the location of HM lands; (b) a plan for the enhancement/restoration of the site, including decompaction and recontouring of the site, if appropriate, the removal of non-native plants, revegetation methods (e.g., natural revegetation, topsoil salvage and redistribution, reseeding, planting), the installation of signage, fencing or other barriers, and the establishment of permanent photo stations; (c) a local, native plant palette; (d) procedures to ensure that nonnative plants are not introduced or allowed to sustain; (e) monitoring and maintenance schedules (monitoring and management activities shall occur no less than frequently than quarterly for the first two years); (f) contingency measures; and (g) quantitative success criteria. Success criteria shall include quantitative data collected and analyzed, such as cover, density, and composition using a CDFW approved sampling method. The HMMP maintenance and monitoring period shall be a minimum of 3 years from the date the initial restoration and enhancement actions are implemented and continue until the HMMP's success criteria are met, whichever is longer. Permittee

shall include the following within the HMMP:

8.2.7.2.2. The Designated Biologist shall conduct three to five Crotch's bumble bee point surveys (Point Surveys) within the HM lands prior to any restoration work. The Point Surveys shall be spaced two to four weeks apart when the colonies are most active, and workers are out foraging (generally between April and August). Point Surveys shall occur between 8:00 AM and 4:00 PM on warm sunny days (65-90° F) with wind speeds of less than 10 miles per hour. Point Surveys shall consist of 1 hour of survey effort per 3 acres of suitable habitat or until 100 bumble bees are recorded. Photographic vouchers of the Covered Species shall be obtained either through photographing the bee on floral resources or, if the Designated Biologist is approved by CDFW to handle, by netting and chilling the specimens. See CDFW's *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species (June 6, 2023)*. If additional habitat information needs to be collected, consider adopting the methods of California Bumble Bee Atlas guidance for habitat surveys (<https://www.cabumblebeeatlas.org/habitat-surveys.html>). The Designated Biologist shall contact CDFW if a Covered Species is discovered on the site.

8.2.7.2.3. Pollen and Nectar Resources. The HMMP shall include a list of pollen and nectar resources that specifies a palette of locally native, drought tolerant species of which at least three species can be expected to be blooming at any given time throughout the active season for Crotch's bumble bee (approximately February 1 through October 31). Nectar- and pollen-producing plants that may be used by Crotch's bumble bee include, but are not limited to, the genera *Asclepias*, *Chaenactis*, *Lupinus*, *Phacelia*, and plants in *Salvia*, and plants in the families *Fabaceae*, *Apocynaceae*, *Asteraceae*, *Lamiaceae*, *Hydrophyllaceae*, *Plantaginaceae*, *Onograceae*, *Papaveraceae*, *Polygonaceae*, and *Boraginaceae*. The HMMP shall specify that pollen and nectar resources imported to the HM lands shall not have been treated with pesticides and shall be pathogen-free. See Condition of Approval 5.12.

Permittee shall complete seeding prior to winter rains, but no later than October 31 of the year the HMMP is finalized. At the discretion of CDFW, all exposed areas where seeding is unsuccessful after 90 days shall receive appropriate soil preparation and a subsequent application of seeding, straw, or mulch as soon as is practical on a date mutually agreed upon. Straw and/or mulch used shall be weed and pathogen free.

- 8.2.8. Invasive Species.** At a minimum, no more than 15 percent of the vegetation within HM lands shall consist of species designated as high or moderate invasive plants in the Cal-IPC California Invasive Plant Inventory Database (<https://www.cal-ipc.org/plants/inventory/>). If the presence of invasive species exceeds this threshold, Permittee is responsible for conducting appropriate control activities in coordination with CDFW and the property owner.
- 8.2.9. Prohibition of Herbicides, Pesticides, and Rodent Control.** Use of herbicides, may be necessary to control invasive species such as star thistle to maintain appropriate upland dispersal habitat for Covered Species such as California tiger salamander. Pesticides, including herbicides, insecticides, fungicides, or rodenticides, shall not be used within the HM lands without prior consultation with and written acceptance from CDFW. Use of herbicides shall be restricted to a maximum of 0.91 acres (<1% of the conserved habitat) in any given year and herbicides that are labeled as unsafe for use around bee species shall be strictly prohibited. Herbicides shall not be used on plants during their blooming period.
- 8.2.10. Interim Management (Initial and Capital).** Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, vegetation and invasive species management, floral resource (nectar and pollen) establishment, floral resource irrigation and protection, pond and floral resource monitoring, floral resource maintenance, potential remedial measures and costs, Covered Species surveys, trespass management, and grazing management.

Permittee shall either (1) provide Security to CDFW for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense, (2) establish an escrow account with written instructions approved in advance in writing by CDFW to pay the land manager annually in advance, or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager.

- 8.3. Endowment Fund.** If the Permittee elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum

of money, held in a CDFW-approved fund that is permanently restricted to paying the costs of long-term management and stewardship of the mitigation property for which the funds were set aside, which costs include the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with this ITP, the conservation easement, and the management plan required by Condition of Approval 8.2.6. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.

- 8.3.1. Identify an Endowment Manager.** The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended.

Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e).

Within thirty days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(3) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(3).

- 8.3.2. Calculate the Endowment Funds Deposit.** After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare an endowment assessment (equivalent to a Property Analysis Record (PAR)) to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). Note that the endowment for the easement holder should not be included in this calculation. The Permittee shall submit to CDFW for review and approval of the

results of the endowment assessment before transferring funds to the Endowment Manager.

- 8.3.2.1. Capitalization Rate and Fees.** Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the endowment assessment and adjust for any additional administrative, periodic, or annual fees.
- 8.3.2.2. Endowment Buffers/Assumptions.** Permittee shall include in the endowment assessment assumptions the following buffers for endowment establishment and use that will substantially ensure long- term viability and security of the Endowment:
- 8.3.2.2.1. 10 Percent Contingency.** A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.
- 8.3.2.2.2. Three Years Delayed Spending.** The endowment shall be established assuming spending will not occur for the first three years after full funding.
- 8.3.2.2.3. Non-annualized Expenses.** For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.
- 8.3.3. Transfer Long-term Endowment Funds.** Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above.
- 8.3.4. Management of the Endowment.** The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

Notwithstanding Probate Code sections 18501-18510, the Endowment Manager shall not make any disbursement from the Endowment that will result in expenditure of any portion of the principal of the endowment without the prior written approval of CDFW in its sole discretion. Permittee shall ensure that this requirement is included in any agreement of any kind governing the holding, investment, management, and/or disbursement of the Endowment funds.

Notwithstanding Probate Code sections 18501-18510, if CDFW determines in its sole discretion that an expenditure needs to be made from the Endowment to preserve the conservation values of the HM lands, the Endowment Manager shall process that expenditure in accordance with directions from CDFW. The Endowment Manager shall not be liable for any shortfall in the Endowment resulting from CDFW's decision to make such an expenditure.

- 8.4. Reimburse CDFW.** Permittee shall reimburse CDFW for all reasonable costs incurred by CDFW related to issuance and monitoring of this ITP, including, but not limited to transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, costs incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.
- 8.5. Construction Habitat Restoration.** Permittee shall restore on-site the 22.10 acres of Covered Species habitat that will be temporarily disturbed during construction to pre-Project or better conditions. Within six months of issuance of this ITP or at least 30 days prior to the start of restoration activities, whichever occurs first, the Permittee shall prepare the Restoration Plan (Condition of Approval 6.17.2) to facilitate revegetation of the 22.10 acres of temporary construction disturbance on-site, and shall ensure that the Restoration Plan is successfully implemented by the contractor.
- 9. 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 8 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:
- 9.1. Security Amount.** The Security shall be in the amount of **\$2,839,226.00** or in the amount identified in Condition of Approval 8.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 8.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring. The total security amount of **\$2,839,226.00** identified under Conditions of Approval 8.1.1 to 8.1.8 shall be provided to CDFW per the timeline required under Condition of Approval 9.3.
- If mitigation has not been completed prior to start of Covered Activities, this Security amount shall be provided in order to proceed with Covered Activities.
- 9.2. Security Form.** The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.
- 9.3. Security Timeline.** The Security shall be provided to CDFW within 30 days prior to the start of Covered Activities.
- 9.4. Security Holder.** The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.

- 9.5. Security Transmittal.** Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form or by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other.
- 9.6. 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.
- 9.7. 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:
- Copy of Bill of Sale(s) and Payment Receipt(s) from SJMSCP demonstrating payment and confirmation funding will go towards HM lands accepted by CDFW;
 - Satisfactory demonstration of completion of performance standards (Conditions of Approval 6.17.2) of the on-site restoration; and
 - Timely submission of all required reports.

OR

- 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;
- Satisfactory demonstration of completion of performance standards (Conditions of Approval 6.17.2) of the on-site restoration; and
- Timely submission of all required reports.

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

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 will 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 if there is more than one entity as 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 to the Permittee. Notices, reports, and other communications shall

reference the Project name, Permittee, and ITP Number (2081-2023-042-03) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

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

and a copy to:

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

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

Mia Bianchi
California Department of Fish and Wildlife – Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Telephone (707) 815-8722
mia.bianchi@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, San Joaquin County. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Griffith Battery Energy Storage Project Final Environmental Impact Report (EIR; SCH No.:2022120675), dated March 12, 2024, that San Joaquin County certified for the Griffith Energy Storage Project Final Environmental Impact Report on March 12, 2024. 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

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KOLA ENERGY STORAGE, LLC
KOLA ENERGY STORAGE PROJECT

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.

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, Griffith Battery Energy Storage Project Final EIR document, 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 90.62 - acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;
- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;

- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (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	Regional Setting of Project
FIGURE 2	Project Layout
FIGURE 3	Final Design with Gen-Tie Diagram
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Biological Resume Form
ATTACHMENT 3	Letter of Credit Form
ATTACHMENT 4	CDFW's Permittee Checklist of Documents for Habitat Management Land Property Review and Protection
ATTACHMENT 5	Restraint and Handling of Live Amphibians USGS

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

ON 5/3/2024

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

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KOLA ENERGY STORAGE, LLC
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