



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

California Endangered Species Act
Incidental Take Permit No. 2081-2022-076-05

STATE ROUTE 33 CURVE WIDENING PROJECT

I. Authority:

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

Permittee:	California Department of Transportation (Caltrans)
Principal Officer:	Paul D Caron, Sr. District Biologist, 213-326-0378
Contact Person:	Mario Mariota, Associate Env. Planner, 213-269-1656
Mailing Address:	100 S Main Street, MS 16A Los Angeles, CA 90012

II. Effective Date and Expiration Date of this ITP:

This ITP is effective as of the date signed by CDFW below. Unless renewed by CDFW, this ITP and its authorization to take the Covered Species shall expire on **December 31, 2028**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.8 of this ITP.

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

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

III. Project Location

The State Route 33 Curve Widening Project (Project) is located on State Route 33 where it crosses the North Fork Matilija Creek within Ventura County (Figure 1). The project is located at postmile 18.8, and the coordinates are Latitude 34.508639, Longitude -119.274614.

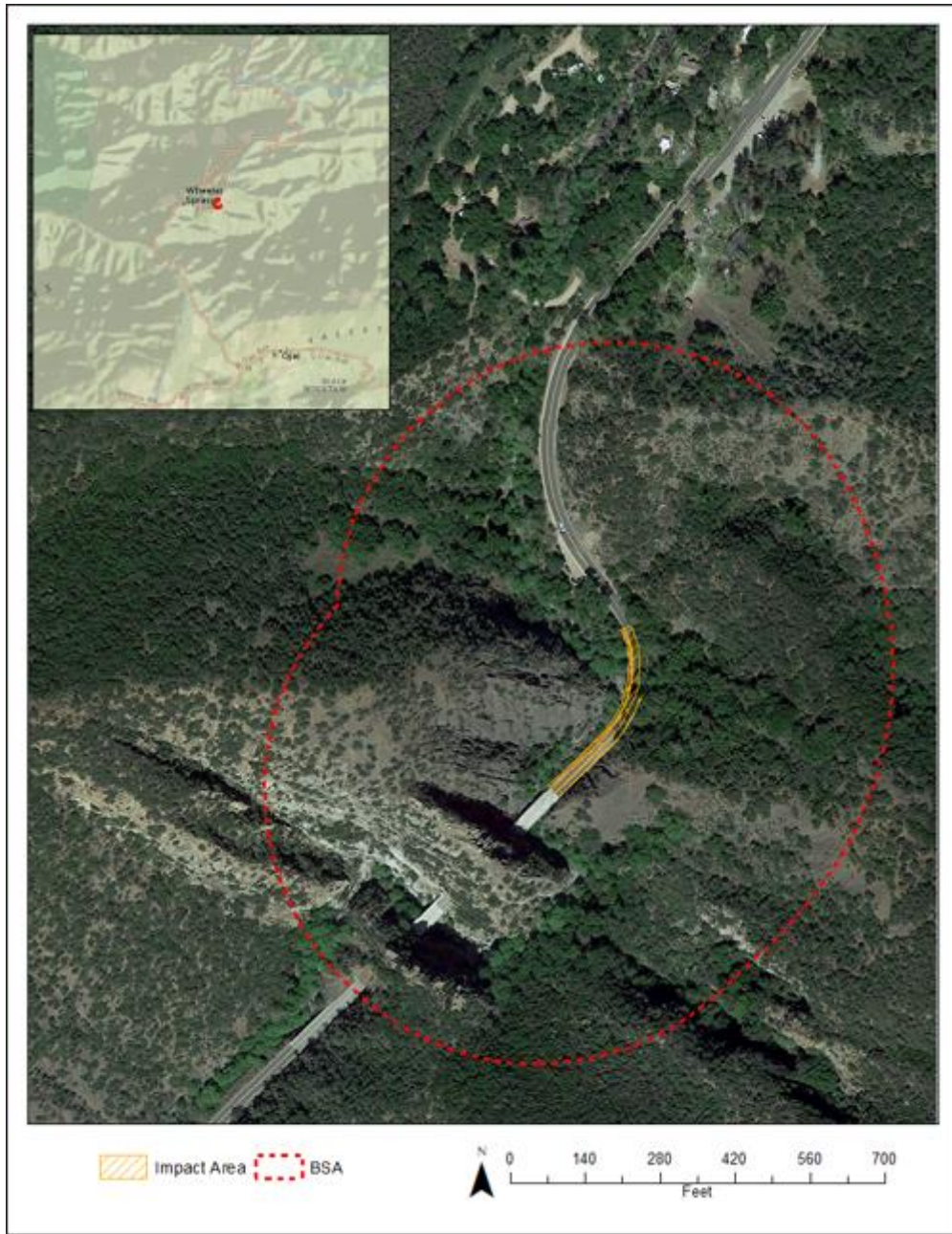


Figure 1. Map of State Route 33 Curve Widening Project Location

IV. Project Description:

The project includes widening approximately 378 feet of State Route 33 for safety purposes. The project is estimated to take five months to construct, including four weekend road closures. Project activities include demolishing and rebuilding the road, temporarily diverting a spring, trimming trees, installing temporary platforms, relocating aquatic species, and other activities.

Road Widening

The project will demolish the existing roadway to below approximately 1.6 feet below current grade and sawcut approximately 2 feet off the existing stone retaining wall. The project will then reconstruct the road 4.9 feet wider, and the road will cantilever over the North Fork Matilija Creek by approximately three feet.

Tree Trimming

The project will require trimming of 700 square feet of riparian vegetation, including the trimming of five mature alders and two California bay trees.

Temporary Spring Diversion

An existing spring flows within the ditch adjacent to the north bound lanes. It will be temporarily diverted across the road while the ditch is recontoured during the weekend traffic closures.

Temporary Protective Platforms

The North Fork Matilija Creek will not be diverted during construction. To protect the creek from construction debris, temporary wooden platforms will be placed on the bedrock and boulders within the creek channel. The platforms will be approximately 8 feet wide and will be placed 2 feet above the water's surface. The platforms will be lowered down to the active channel with heavy equipment staged on the road surface. Only foot traffic will be required within the creek bed for the installation and removal of the platforms.

Aquatic Species Relocation

The project will place block nets to capture and relocate aquatic species from 215 linear feet of the North Fork Matilija Creek. The excluded area between the block nets will remain in place during construction.

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

This ITP covers the following species:

<u>Name</u>	<u>CESA Status</u> ³
Southern California Steelhead (<i>Oncorhynchus mykiss</i>)	Candidate ⁴

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

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

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

VI. Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species in the form of relocation. The activities described above expected to result in incidental take of individuals of the Covered Species include capture and relocation (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality (“kill”) may occur as a result of Covered Activities such as stress from capture and relocation. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species from relocation. The areas where authorized take of the Covered Species is expected to occur include the bed, bank, channel, and riparian habitat areas of North Fork Matilija Creek (Project Area).

The Project is not expected to cause the permanent loss of Covered Species or instream habitat used by Covered Species. Impacts of the authorized taking include adverse impacts to the Covered Species related to temporal losses, temporary habitat fragmentation, and the Project’s incremental contribution to cumulative impacts (indirect impacts). These impacts include: capture and relocation; inadvertent construction related spills and turbidity; and increased competition for food and space due to relocation.

VII. Incidental Take Authorization of Covered Species:

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

CDFW anticipates take in the form of relocation of eleven (11) Covered Species as a result of Covered Activities. No lethal take is authorized by this Incidental Take Permit. This number is an estimate based on current knowledge of steelhead populations within the watershed and avoidance and minimization measures in place during Covered Activities. If this number is exceeded then the assumptions about risk were not accurate and Caltrans will need to contact and consult with CDFW immediately to ensure that no additional take occurs related to the Project. Covered Activities that may result in take shall cease during this consultation because additional take cannot be authorized without an amendment of this ITP.

VIII. Conditions of Approval:

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

- 1. Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
- 2. CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Mitigated Negative Declaration for the SR-33 Road Safety Enhancement Project (SCH No.: 2020100364) certified by the California Department of Transportation on June 28, 2021, as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
- 3. LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No. EPIMS-VEN-23453-R5) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
- 4. ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the SR-33 Curve Widening and Barrier Replacement Project (WCRO-2020-02379) for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
- 5. ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
- 6. General Provisions:**
 - 6.1. Designated Representative.** Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
 - 6.2. Designated Biologist(s) and Biological Monitor(s).** Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated

Biologist(s) and Biological Monitor(s). Permittee shall ensure that the Designated Biologist(s) and Biological Monitor(s) are knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist(s) and Biological Monitor(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist(s) and Biological Monitor(s) in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist(s) or Biological Monitor(s) must be changed.

- 6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Site and otherwise facilitate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.
- 6.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall post a fact sheet handout containing this information for workers to view in the Project Area. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.
- 6.5. Construction Monitoring Documentation. The Designated Biologist(s) and Biological Monitor(s) shall maintain construction-monitoring documentation on-site in either hard

copy or digital format throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project site upon request by CDFW.

- 6.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed, ideally at daily intervals but at least once a week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 6.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 6.8. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material. Tightly woven silt fencing material or woven organic materials such as coir logs (without mono-filament netting) shall be permitted.
- 6.9. Delineation of Project Boundaries. Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 6.10. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area before Project Activities start with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 6.11. Project Access. Project-related personnel shall access the Project Area using designated routes. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas.
- 6.12. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas.
- 6.13. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe

to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site. Permittee shall report all spills within the stream channel immediately to CDFW.

- 6.14. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.15. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

7. Monitoring, Notification and Reporting Provisions:

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Covered Species Taken During Relocation. Permittee shall provide Relocation Report within 5 days of any Covered Species relocation effort as described within the Aquatic Species Relocation and Exclusion Plan (Condition of Approval 8.7). The report shall include number of Covered Species pursued, captured, and relocated; health status; and any other pertinent information of Covered Species pursued, captured, or relocated.
- 7.3. Notification of Non-compliance. The Designated Representative and/or Designated Biologist shall immediately notify CDFW if the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative or Designated Biologist shall follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.
- 7.4. Compliance Monitoring. The Designated Biologist shall be on-site daily during riparian vegetation removal or clearing, installation of exclusionary fencing, concrete pours and washouts, installation and removal of block nets, and aquatic species relocations. Otherwise, the Designated Biologist shall conduct inspections at least weekly and the Biological Monitor shall conduct inspections daily. The Designated Biologist and Biological Monitor shall conduct compliance inspections to:

- (1) minimize incidental take of the Covered Species;
- (2) prevent unlawful take of species;
- (3) check for compliance with all measures of this ITP;
- (4) check all exclusion zones; and
- (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area.

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

- 7.5. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.4 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall include details on temporary and permanent impacts to date; numbers of Covered Species taken to date; and monitoring results required by the terms of this ITP, including monitoring associated planning documents required per this ITP. Permittee shall submit Monthly Compliance Reports to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Erika Cleugh (Erika.Cleugh@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If the reporting schedule requires changes, CDFW will notify Permittee in writing.
- 7.6. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 7.5; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) amount of take to date; and (7) information about other Project impacts on the Covered Species.

- 7.7. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within sixty calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 7.8. Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 7.9. Notification of Injury or Mortality. Permittee shall immediately notify the Designated Biologist if a Covered Species is injured or killed by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by emailing Erika Cleugh at Erika.Cleugh@wildlife.ca.gov and calling the Regional Office at (858) 467-4201. The initial notification to CDFW shall include information regarding the location, species, and number of individuals injured or killed and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph, explanation as to cause of injury or mortality, and any other pertinent information.

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

- 8.1. Seasonal In Channel Work Window. Permittee shall limit Covered Activities in and around the stream channel from June 1 through October 31 to avoid impacts to migrating steelhead. Vegetation trimming (without root removal, ground disturbance, or implemented by heavy equipment), revegetation, restoration, and erosion control work can occur outside of the above stated work window.

- 8.2. Work in Wetted Stream. Work in the wetted portion of the stream is limited to foot traffic only when installing, monitoring, and removing block nets and temporary debris catchment platforms. No temporary creek diversions are permitted unless written permission from CDFW is obtained.
- 8.3. Erosion Control. Permittee shall install erosion and sediment control measures prior to start of Covered Activities. Permittee shall utilize erosion control measures throughout all phases of the Project where sediment runoff from exposed slopes could leave the Project Area and/or enter a drainage, stream, or ponded area. Permittee shall consult 72-hour weather forecasts from the National Weather Service to avoid starting any phase of the Project that may result in sediment runoff to a drainage, stream, or ponded area. The Designated Biologist shall monitor erosion control measures before, during, and after each storm event and Permittee shall repair and/or replace ineffective measures immediately. Following completion of the Project, Permittee shall implement erosion control measures for all disturbed areas.
- 8.4. Hours of Operation and Lighting. Construction activities shall take place during daylight hours (30 minutes before sunrise to 30 minutes after sunset). If night work is necessary, it shall be limited and light shall be shielded from adjacent habitat.
- 8.5. Weather Limitations. Permittee shall restrict work to periods of dry weather. The Permittee shall monitor the National Weather Service 72-hour forecast daily for the Project Area. When $\frac{1}{4}$ inch or more of precipitation per 24 hour period is forecasted to occur, the Permittee shall stop work and demobilize 24 hours before precipitation commences. Work shall not restart until runoff ceases and there is less than 40 percent chance of rain forecasted for the following 24-hour period.
- 8.6. Post Storm Inspection. After any storm event, Permittee shall inspect all sites within 72 hours. Permittee shall repair or correct any insufficient erosion control measures.
- 8.7. Aquatic Species Relocation and Exclusion Plan. Permittee shall prepare and submit to CDFW for approval 30 days before start of Covered activities, an Aquatic Species Relocation and Exclusion Plan (Relocation Plan) to relocate and exclude the Covered Species from the work area. The Relocation Plan shall include at minimum the following:
- 8.7.1. The name(s) of Designated Biologist(s) supervising the relocation. The CDFW-approved Designated Biologist shall be present during capture and relocation efforts as required by Condition of Approval 6.2.
- 8.7.2. Permittee shall describe location of block nets including detailed drawings and geographic coordinates.

- 8.7.3. After block net installation, the Designated Biologist shall capture and relocate Covered Species to the nearest predetermined release location, approved in advance by CDFW. Release locations shall provide suitable habitat for Covered Species.
- 8.7.4. All dip nets used to capture Covered Species shall be made of a soft braided nylon material that is non-abrasive. Mesh sizing shall be matched to life stages likely encountered.
- 8.7.5. Relocation activities shall be conducted in the morning if maximum daytime air temperatures are expected to exceed 23 degrees Celsius (75 degrees Fahrenheit).
- 8.7.6. If used, electroshocking shall be conducted using the National Marine Fisheries Service Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act, June 2000. <https://media.fisheries.noaa.gov/dam-migration/electro2000.pdf>.
- 8.7.7. Capture Covered Species must be kept in a closable container in an adequate amount of cool, clean, well-oxygenated water (e.g., a cooler with lid containing stream water and a battery-operated air stone). Water temperature shall be monitored and kept below 60 degrees Fahrenheit. If necessary, water shall be cooled with ice without introducing ice-borne chemical contaminants. Transport containers shall have a water volume of no less than 5 gallons. Covered Species density in the transport container shall not exceed 10 Covered Species (40-80mm in length) per gallon of water. Collected Covered Species shall not be anesthetized at any point during relocation.
- 8.7.8. The Designated Biologist shall reduce stress on the Covered Species to the maximum extent possible. This includes reducing the time that live Covered Species are being captured, handled, and transported.
- 8.7.9. The Designated Biologist shall record the species name, length, date, time, location, gear type, water temperature, and any other pertinent observations to be included in the Monthly Compliance Report.
- 8.7.10. Permittee shall inspect block nets for entrainment or insufficiencies daily and immediately conduct necessary repairs.
- 8.7.11. Permittee shall preserve dead individuals by freezing or placing in sealed container with 10 percent formalin solution. Information on time and exact location of any incidental take, method of take, length of time from death to preservation, water temperature, and any other relevant information will be recorded in writing. Permittee shall contact the CDFW regional representative for instructions on transmitting the preserved individuals. Any take of non-covered species shall be documented and included in the Mitigation Reports.

- 8.7.12. After completing the relocation, the Designated Biologist shall prepare a relocation documentation report. The report shall include information on the personnel conducting the relocation; methods used in capture and relocation; numbers and length data of each species collected and relocated; coordinates and habitat description of release location(s); and estimate of the survival immediately after release. Photographs of the site and relocation operations shall be included. The report shall be provided by the Permittee to CDFW in the next Monthly Compliance Report.
- 8.7.13. Block nets shall remain in place and functional throughout the construction period. If the failure occurs, Permittee shall repair it immediately and conduct another relocation effort to remove Covered Species from the excluded area. Permittee shall remove the block nets immediately upon completion of work.
- 8.8. Concrete Curing. All concrete used shall be excluded from the wetted channel or areas where it may come into contact with water for a period of 30 days after it is poured/sprayed. Commercial sealants may be applied to the poured concrete surface where difficulty in excluding flow for a long period may occur. If sealant is used, the proponent shall follow the instructions as noted on the product label. As an alternative, water quality testing and analysis may be conducted in coordination with CDFW. Results shall be submitted and accepted by CDFW prior to removal of the temporary diversion system that will re-introduce flows to new concrete.
- 8.9. Pollutants. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream channel shall be positioned over drip pans. Any equipment or vehicles driven and/or operated within or adjacent to the stream channel must be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. No equipment maintenance or fueling shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas unless the appropriate spill prevention measures are in place such as catch basins or drip pans, lined with an impermeable layer that has been placed under the equipment. Building materials and/or construction equipment shall not be stockpiled or stored where they may be washed into the water or cover aquatic or riparian vegetation. Stockpiles shall be covered when measurable rain is forecasted. All removed spoils and construction debris shall be moved to areas where it may not permit to pass into, or place where it can pass into waters of the State in accordance with Fish and Game Code Section 5652.
- 8.10. Preventing Spread of Deleterious Organisms. Permittee shall conduct Covered Activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), from one Project site and/or waterbody to another. Prevention BMPs and guidelines for invasive plants can

be found on the [Cal-IPC's website](#) and for invasive mussels and aquatic species can be found at the [Stop Aquatic Hitchhikers website](#) .

8.11. Decontamination of Clothing and Equipment. Any equipment that will be entering the channel shall be cleaned and decontaminated to spread aquatic diseases. Workers entering the riparian area, bed, bank, or channel shall decontaminate waders, boots, and other clothing that will come in direct contact with the water. Repeat decontamination is required if the equipment is used on a different water body between uses at the project site. Decontamination of clothing and equipment will be done by one of the following:

8.11.1. Thoroughly drying equipment in an upland location. Drying times will be at least 7 days if average temperatures exceed 80°F. If average temperatures are below 80°F, drying times will be at least 30 days.

8.11.2. A water wash with water temperatures of at least 140°F with varying high- and low-pressure spray to dislodge pathogens, vegetation, and contaminated sediment.

8.11.3. Freezing at a temperature of less than 32°F for more than 72 hours.

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

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

9. Habitat Management Land Acquisition and Restoration: CDFW has determined that permanent protection and perpetual management of 0.55 acre 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 Covered Species, and CDFW's estimate requirements for adequate compensation.

To meet the 0.55 acre requirement, the Permittee shall provide ½ the funding for both the permanent protection and management of 2.2 acres at the Villanova Preparatory School parcel located on San Antonio Creek. The 2.2-acre mitigation site will satisfy mitigation requirement of 0.55-acre for this ITP, and in conjunction with 0.55 acre requirement for ITP No. 2081-2023-001-05, and 1.1- acre requirement for Lake and Streambed Alteration Agreement No. EPIMS-VEN-36433-R5,

Permittee shall provide protection and management of Habitat Management (HM) lands pursuant to Condition of Approval 9.2 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.3 below. Permanent protection and funding for perpetual management of HM lands must be complete before starting Covered Activities, or within 24 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

9.1. Cost Estimates. For the purposes of determining the Security amount, CDFW has estimated the cost sufficient for CDFW or its contractors to complete protection, restoration, and management of the HM lands as follows:

- 9.1.1. Costs necessary to review record a conservation easement as described in Condition of Approval 9.2.1 below: **\$52,500.00**;
- 9.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.2.4 below, estimated at **\$128,360.00**;
- 9.1.3. Interim management period funding as described in Condition of Approval 9.2.5 below, estimated at **\$317,350.00**;
- 9.1.4. Long-term management funding as described in Condition of Approval 9.3 below, estimated at \$155,584.00/acre for 1.1 acres: **\$171,143.00**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 9.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.4, estimated at **\$3,000.00**.

9.2. Habitat Management Lands Protection. If the Permittee elects to provide for the permanent protection and perpetual management of HM lands to complete compensatory mitigation obligations, then the Permittee shall:

- 9.2.1. 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.

- 9.2.2. HM Lands Documentation. Provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents (please contact CDFW for document list). 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;
- 9.2.3. Land Manager. 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.
- 9.2.4. Start-up Activities. 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;
- 9.2.5. 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, and vegetation and invasive species 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.

- 9.3. 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 9.2.4. 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.

- 9.3.1. 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).

- 9.3.2. 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 the results of the endowment assessment before transferring funds to the Endowment Manager.
- 9.3.2.1. 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.
- 9.3.2.2. 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:
- 9.3.2.2.1. 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.
- 9.3.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
- 9.3.2.2.3. 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.

9.3.3. 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.

9.3.4. 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.

9.4. 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.

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

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

- 10.2. Funding Memorandum. Permittee has prepared, and CDFW has approved, the project-specific Funding Memorandum required by the Master Funding Agreement and attached to this ITP as Attachment 2.
- 10.3. Security Amount. The Security provided by this ITP shall be in the amount of **\$672.353.00**. The other half of the Security is provided by ITP No. 2081-2023-001-05 (Attachment 3). This amount is based on the cost estimates identified in Condition of Approval 9.1 above and the Funding Memorandum.
- 10.4. Funding of the Child EA. Permittee has created and funded the Child EA with funds equivalent to the Security Amount.
- 10.5. Compliance with Master Funding Agreement. Permittee shall complete all requirements set forth in the Master Funding Agreement and shall at all times comply with the terms and conditions of that Agreement.
- 10.6. Completion of Mitigation Requirements. Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 24 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

IX. Amendment:

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

X. Stop-Work Order:

If CDFW determines the Permittee has violated any term or condition of this ITP or has engaged in unlawful take, CDFW may issue Permittee a written stop-work order instructing the Permittee to suspend any Covered Activity for an initial period of up to 30 days or risk suspension or revocation of this ITP. CDFW can issue a stop-work order to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species, regardless of whether that species is a Covered Species under this ITP. Permittee shall stop work immediately as directed by

CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 30 additional days.

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

XI. Compliance with Other Laws:

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

XII. Notices:

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email or registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2022-070-05) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Erinn Wilson-Olgin, Regional Manager
South Coast Region
California Department of Fish and Wildlife
3883 Ruffin Road
San Diego, CA 92123
Erinn.Wilson-Olgin@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:

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

XIII. Compliance with the California Environmental Quality Act:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, California Department of Transportation, District 7. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the SR-33 Road Safety Enhancement Project (SCH No.: 2020100364) dated May 20, 2021, that the Department of Transportation adopted on June 23, 2021. At the time the lead agency adopted the Mitigated Negative Declaration and approved the Project, it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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

XIV. Findings Pursuant to CESA:

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

CDFW finds based on substantial evidence in the ITP application, SR-33 Road Safety Enhancement Project Mitigated Negative Declaration, consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;

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- (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 necessary activities to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 1.1 acres of compensatory habitat, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;
- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

XV. Attachments:

ATTACHMENT 1	Mitigation, Monitoring, and Reporting Program
ATTACHMENT 2	Funding Memorandum for 2081-2022-076-05
ATTACHMENT 3	Funding Memorandum for 2081-2023-001-R5

5/22/2024

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE ON _____

DocuSigned by:

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Erinn Wilson-Olgin, Regional Manager
South Coast Region

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