



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

California Endangered Species Act  
Incidental Take Permit No. 2081-2024-004-04

**KERN 33 CULVERT REHABILITATION PROJECT (PROJECT)  
CALTRANS EA 06-0X240**

**I. Authority:**

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

<b>Permittee:</b>	<b>California Department of Transportation (Caltrans)</b>
<b>Principal Officer:</b>	<b>Dena Gonzalez, Biology Branch Chief</b>
<b>Contact Person:</b>	<b>Tamra Nunes, (559) 383-5814</b>
<b>Mailing Address:</b>	<b>2015 East Shields Avenue Fresno, California 93726</b>

**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, 2026**.

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 as a Condition of Approval of this ITP.

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

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

### III. Project Location:

The Kern 33 Culvert Rehabilitation Project (Project) is located on State Route (SR) 33 between post miles (PM) 21.8 (0.9 mile south of Henry Road) and 39.8 (0.2 mile north of Cymric Road) in Kern County (see Figure 1). The Project occurs in portions of the following locations in the Mount Diablo Baseline and Meridian of the Public Land Survey System:

- Township 29 South, Range 22 East, in portions of Sections 30, 31 and 32 (Belridge, California, USGS quad map);
- Township 30 South, Range 22 East, in portions of Sections 5, 8, 16, 17, 21, 28 and 33 (Reward and West Elk Hills, California, USGS quad maps);
- Township 31 South, Range 22 East, in portions of Sections 3, 4, 10, 11, 14, 23, 24 and 25 (West Hills and Fellows, California USGS quad map);
- Township 31 South, Range 23 East, in portions of Sections 30, 31, and 32 (Fellows, California USGS quad map); and
- Township 32 South, Range 23 East, in portions of Sections 4 and 5 (Fellows, California USGS quad map).

The southern end of the Project is located approximately 3.3 miles northwest of the community of Taft, at Latitude 35.1675, and Longitude -119.508. The northern end of the project is located approximately 13.5 miles southeast of the community of North Belridge, at Latitude 35.3788, and Longitude -119.654.

### IV. Project Description:

The Project involves replacement and rehabilitation of existing culverts at 40 locations within an 18-mile section of SR 33. Work includes vegetation clearing and grubbing (removal of roots) prior to culvert activities; replacing or adding concrete headwalls, flared end sections, drainage inlets, and rock slope protection pads associated with culvert replacements; installing metal beam guardrail at five culvert locations; installing vehicle detection systems at three locations; reconstructing curb ramps at the intersection of SR 33 and Reward Road in McKittrick; and regrading existing roadside ditches adjacent to culvert work areas. Existing utilities will not be relocated for the Project. Except for the vehicle detection systems and portions of new guardrail, all work activities will take place within 50 feet of the culverts proposed to be replaced or repaired. Project activities will take three to four days at each location, for a total of approximately 180 working days, including the potential for night-work at all locations.

#### Culvert Activities

Existing corrugated steel pipes at 31 locations (PMs 22.0, 22.1, 22.34, 22.54, 22.84, 23.92, 24.12, 24.42, 25.43, 26.52, 26.65, 26.83, 27.33, 27.60, 28.13, 28.31, 28.76, 28.88, 29.05, 29.57, 30.08, 32.06, 32.71, 32.91, 33.06, 34.17 (two separate culvert systems at this location), 36.37, 36.49, 37.15 and 39.56) will be replaced with reinforced concrete pipes of the same or larger diameter as the existing pipes (ranging from 8 to 48 inches in diameter). Existing steel and concrete pipes at four locations (PMs 23.0, 23.85, 25.97 and 26.41) will be replaced with reinforced concrete box culverts ranging from 5-feet-wide by 3-feet-tall to

8-feet-wide by 5-feet-tall. Existing reinforced concrete pipes at four locations (PMs 24.21, 24.94, 25.12 and 29.82, ranging from 12 to 15 inches in diameter), will be replaced with 24-inch reinforced concrete pipe. The existing 42-inch diameter culvert at PM 27.13 will be repaired with patching and sealing rather than being replaced.

The new reinforced concrete pipe segments, concrete flared end sections, and drainage inlets will be pre-cast (manufactured at a facility, off-site) and installed on site. Concrete box culverts and headwalls will either be pre-cast or cast-in-place (use of wooden forms, falsework, and concrete pours). Most of the culverts will be removed and replaced, although a few will be abandoned in place, capped, filled with concrete, and the new culvert installed adjacent and parallel to the abandoned culvert. All but one of the existing culverts will be replaced using the "cut and cover" method, where the culvert is excavated out, replaced, and then the trench backfilled, one lane at a time. The culvert at PM 34.17 will be replaced using the "jack and bore" drilling method, which involves the use of a specialized auger that excavates a horizontal hole through the ground to install the new culvert, without disturbing the surface above. Temporary entry and exit pits will be excavated for the drilling equipment. The RSP pads will be excavated to a depth of 2- to 3.5-feet, depending on rock size, filter cloth will be placed along the bottom and sides of the pit, and then the RSP rock will be placed on top of the filter cloth up to the level of the bottom of the new culvert outlet or flared end section.

#### Other Construction Activities

New sections of metal beam guardrail (not replacing existing) will be installed along the road shoulder adjacent to the culvert at the following locations: PMs 23.85 and 37.15 (northbound lane), PM 25.12 (southbound lane), and PMs 25.97 and 26.41 (both lanes). All guardrails will include the installation of wood posts and rubber vegetation control mats, and each section will extend no more than 200 feet beyond the culvert. The three new vehicle detection loop systems will be installed in the road surface at PMs 32.62, 34.54, and 34.20. All systems will incorporate the construction of pull-boxes and telephone cabinets installed on concrete pads (measuring 3- to 4-feet square) approximately 20-feet from the edge of the paved road, adjacent to each loop system. The vehicle detection system PM 34.20 will require power from a nearby PG&E pole, requiring the installation of approximately 180-feet of underground conduit by open trenching (the temporary trench will be approximately 12-inches wide by 3-feet deep).

Temporary construction signs will be hammered into the ground adjacent to the paved road. Construction equipment parking and staging areas will be in previously disturbed, unvegetated areas within the highway right-of-way (ROW).

Non-native and weedy annual grasses and forbs and saltbush shrubs (*Atriplex* spp.) will be cleared to allow access to the work areas. Vegetation removal will be performed by hand, using hand-tools or chainsaws, or using heavy equipment such as an excavator, backhoe, or road grader. Trees will not be removed. Temporarily disturbed soil will be re-contoured after the work, then re-seeded.

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

This ITP covers the following species:

<u>Name</u>	<u>CESA Status</u> <sup>3</sup>
1. San Joaquin Antelope Squirrel ( <i>Ammospermophilus nelson</i> )	Threatened <sup>4</sup>
2. San Joaquin Kit Fox ( <i>Vulpes macrotis mutica</i> )	Threatened <sup>5</sup>

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 impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above that are expected to result in incidental take of individuals of the Covered Species include the following: clearing and grubbing to remove vegetation; soil grading; leveling (cut or fill); compacting soil; excavating and trenching; pouring concrete; temporarily storing materials, vehicles and equipment; transporting construction materials and other project-related traffic; trash and debris removal; seeding; other construction activities described in the Project Description above; and mortality reduction activities as specified in this ITP (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality (“kill”) may occur as a result of Covered Activities due to construction crews or equipment running over, crushing, or entombing Covered Species situated either above or below ground during initial ground-breaking or during ongoing work. Incidental take of individuals may also occur from the Covered Activities in the form of catch, capture or attempt to do so from entrapment in holes or open trenches; entrapment in fencing; uncovering individuals during the excavation of burrow systems; corralling individuals into a confined area, and capturing, collecting, and relocating individuals of the Covered Species during mortality reduction activities required by this ITP; and by temporary loss of habitat. Incidental take of individuals may also occur from the Project’s incremental contribution to cumulative impacts (indirect impacts) including exposure to chemical contamination from uncured concrete, concrete dust, drilling fluids, petroleum products, paint, and other construction chemicals; loss of breeding and burrowing habitat used for shelter, reproduction, and escape cover; long term effects due to increased pollution; displacement from preferred habitat; increased competition for food and space; introduction or spread of invasive species; changes in drainage patterns; and increased vulnerability to predation. Even though the proposed work is temporary, the effects could be longer-lasting if feeding or reproduction are impacted.

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

<sup>4</sup>See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(6)(B).

<sup>5</sup>See *Id.*, subd. (b)(6)(E).

The areas where authorized take of the Covered Species may occur include the Permittee's ROW on SR 33 between PMs 21.8 and 39.8, as well as temporary construction easements directly adjacent to many of the culvert work areas (Project Area). Implementation of the Conditions of Approval outlined below will reduce the risk of construction personnel directly encountering individuals of the Covered Species, but the Covered Species are likely present within the Project Area. Burrow entrances were not observed in the Project Area during baseline surveys for this Project. However, individuals and sign of both Covered Species have been observed at several locations throughout the Project Area during biological surveys for this Project and in the past.

Habitat conditions for Covered Species vary from high-quality native scrub habitat (dominated by allscale [*Atriplex polycarpa*] and bush seepweed [*Sueda nigra*]) in approximately 80% of the Project Area to marginal quality annual grassland and ruderal areas in approximately 10% of the Project Area. Oil production occurs adjacent to the highway ROW in approximately 10% of the Project Area (PM 28.13 to 28.88) with scattered patches of allscale scrub in these areas. Covered Species may occur throughout the Project Area, including in areas of bare ground and within oil fields, utilizing the various habitats for dispersal, cover, and/or foraging. The impacts to Covered Species will be directly adjacent to the existing two-lane highway (SR33). Individuals of Covered Species may also be present in underground burrows not visible on the ground surface. Furthermore, burrow habitat is dynamic and new burrows may be created in the Project Area by the time Covered Activities commence or during construction.

The Project is expected to result in the permanent loss of up to 3.13 acres and temporary disturbance of up to approximately 2.918 acres of suitable habitat for the Covered Species (allscale scrub, bush seepweed, annual grassland, ruderal, oil field, and disturbed/developed habitat types) (Figure 2). Project impacts are considered permanent when they involve the loss of habitat due to a new permanent, man-made feature (e.g., larger culvert, rock slope protection) or where construction activities will disturb native scrub habitats that may take years to recover, if at all. Project impacts are considered temporary where construction activities will take place in heavily disturbed habitat or habitat dominated by annual grassland or ruderal vegetation, where habitat conditions will be returned to pre-project conditions within approximately one year of impact.

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

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

### **VIII. Conditions of Approval:**

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

- 1. Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
- 2. California Environmental Quality Act (CEQA) Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Mitigated Negative Declaration and Initial Study/Environmental Impact Report (SCH No. 2021090066 adopted by Caltrans on March 28, 2022, 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-KER-47801-R4) for the Project to be executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
- 4. ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
- 5. General Provisions:**
  - 5.1. Designated Representative.** Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
  - 5.2. Designated Biologist(s) and 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) using the Biologist Resume Form (Attachment 2) or another format containing the same information at least 30 days before starting Covered Activities. The Designated Monitors may assist the Designated Biologists in compliance monitoring under the direct supervision of the Designated Biologists and as specified in Compliance Monitoring below. Permittee

shall ensure that the Designated Biologists are knowledgeable in the biology and natural history of the Covered Species, and have experience with collecting and handling Covered Species, excavating small mammal burrows for the Covered Species, enforcing no-disturbance buffers, and monitoring construction activities under an ITP for the Covered Species. Permittee shall ensure that the Designated Monitors are knowledgeable and experienced in the biology and natural history 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.

- 5.3. Designated Biologist and Designated Monitor Authority.** To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologists and Designated Monitors shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Area and otherwise facilitate Designated Biologists and Designated Monitors in the performance of their duties. If the Designated Biologist or Designated Monitor is unable to comply with the ITP, then they 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 noncompliance or take or injury of a Covered Species because 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 they are authorized to perform any work. The program shall consist of a presentation from the Designated Biologist for the Covered Species that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees

shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.

- 5.5. Construction Monitoring Documentation.** The Designated Biologists and Designated Monitors shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project Area upon request by CDFW.
- 5.6. Trash Abatement.** Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed, ideally at daily intervals but at least once a week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 5.7. Dust Control.** Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles. Permittee shall not apply dust suppressant, surfactant, soil binders, or stabilizer products that may be harmful to Covered Species. Permittee shall obtain written approval from CDFW before applying any dust suppressant (other than water), surfactant, soil binders, stabilizer products, hydro-mulch, or hydroseed. Permittee shall provide all available documentation of each product's safety or hazards to wildlife to CDFW with any such request for approval.
- 5.8. Erosion Control Materials.** Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting, photodegradable mesh (erosion control matting), photodegradable mesh, or similar material, in potential Covered Species' habitat.
- 5.9. Delineation of Property Boundaries.** Before starting Covered Activities within each discrete part of the Project Area in active construction (work area), Permittee shall clearly delineate the boundaries of the work area. The boundary of the Project Area shall be delineated with stakes, fencing, and/or flags and shall be maintained with signage until the completion of Covered Activities in that area.
- 5.10. Delineation of Habitat.** Before starting Covered Activities at any work area, Permittee shall clearly delineate habitat of the Covered Species within or adjacent to the work area with posted signs, posting stakes, flags, and/or rope or cord, and



place fencing as necessary to minimize the disturbance of Covered Species' habitat.

- 5.11. Project Access.** Project-related personnel shall access the Project Area using existing routes and shall not cross Covered Species' habitat outside of, or on route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging areas, and parking areas as per Staging Areas below. 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 conducting such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur because of the project modification.
- 5.12. Staging Areas.** Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. No parking, storage, laydown, or staging areas shall be located within 50-feet of potential San Joaquin antelope squirrel (SJAS) burrows (per SJAS Burrow Avoidance below) or within the San Joaquin kit fox (SJKF) buffer areas (per SJKF Den Avoidance below), unless protective measures have been implemented for Covered Species as per Additional Measures for SJAS and Additional Measures for SJKF below. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Project Access above. If Permittee determines parking, storage, laydown, or staging areas are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur because of the project modification.
- 5.13. Hazardous Waste.** Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 5.14. CDFW Access.** Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 5.15. Refuse Removal.** Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material,

ords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

- 5.16. Wildfire Avoidance.** Permittee or Permittee's contractors shall minimize the potential for human-caused wildfires by carrying water or fire extinguishers and shovels in all Project-related vehicles and equipment. The use of shields, protective mats, or use of other fire preventative methods shall be used during grinding and welding to minimize the potential for fire. Personnel shall be trained regarding the fire hazard for wildlife as part of the worker education program described in Education Program above.

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

- 6.1. Notification Before Commencement.** The Designated Representative shall notify CDFW at least 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, Designated Biologist, or Designated Monitor 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, Designated Biologist, or Designated Monitor 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. Pre-Activity Survey Report.** At least three days prior to starting Covered Activities, Permittee shall prepare and submit to CDFW the results of pre-activity surveys and maps of burrows and dens, per Pre-Activity Clearance Surveys and Reporting below.
- 6.4. Inspection Records.** The Designated Biologists and Designated Monitors shall prepare written observation and inspection records for compliance monitoring as per Compliance Monitoring below, summarizing: (1) construction activities observed; (2) integrity of signs, stakes or fencing; (3) wildlife observations; (4) observations of non-compliance with any Conditions in this ITP; and (5) measures implemented or anticipated to rectify or remediate any incidents of non-compliance with this ITP. The inspection records shall be submitted with the Quarterly Compliance Reports below.
- 6.5. San Joaquin Antelope Squirrel Mortality Reduction and Relocation Plan.** Permittee shall submit a SJAS Mortality Reduction and Relocation Plan to CDFW at least 30 calendar days before starting Covered Activities. Burrow excavation and relocation activities shall not proceed until the SJAS Mortality Reduction and Relocation Plan

has been approved in writing by CDFW's Regional Representative (identified in Quarterly Compliance Reports below). The SJAS Mortality Reduction and Relocation Plan shall include, but not be limited to: (1) a discussion (and map) of the Project Area and those areas identified as potential SJAS habitat; (2) a detailed description of methods to be used for the surveys, burrow excavation, capture, handling, and relocation of individuals of SJAS; (3) release locations and methods (i.e., soft release, hard release, or another method); (4) artificial burrow design and installation methods; (5) monitoring frequency and methods; (6) schedule of SJAS mortality reduction and relocation activities; and (7) identification of a wildlife rehabilitation center or veterinary facility capable of and willing to treat injured individuals of the SJAS. The SJAS Mortality Reduction and Relocation Plan must specify that only the approved Designated Biologists are authorized to capture and handle individuals of the SJAS. Once the SJAS Covered Species Mortality Reduction and Relocation Plan is approved in writing by CDFW, it shall be used for all SJAS mortality reduction activities for the duration of this ITP. Any proposed changes to the CDFW-approved SJAS Covered Species Mortality Reduction and Relocation Plan shall be submitted in writing to CDFW and approved by CDFW in writing prior to implementation of any proposed Plan modifications.

- 6.6. San Joaquin Kit Fox Den Replacement Plan.** Permittee shall submit a SJKF Den Replacement Plan to CDFW at least 30 calendar days before starting Covered Activities. Permittee shall replace each potential, known, and active SJKF den that cannot be avoided within the Project Area with an artificial den to compensate for the loss of important shelter used by SJKF for protection, reproduction, and escape from predators. Den excavation within the Project Area may not proceed until the SJKF Den Replacement Plan is approved, in writing, by CDFW's Regional Representative identified in Quarterly Compliance Reports below. The SJKF Den Replacement Plan shall include, but not be limited to, a discussion and map of potential artificial den replacement locations; detailed description of the den excavation methods; and description of the replacement den dimensions (e.g., depth and width of den, width of den entrance, orientation of den entrance, number and placement of entrances to natal dens). Once the SJKF Den Replacement Plan is approved by CDFW, it shall be used for the duration of this ITP. Any proposed changes to the SJKF Den Replacement Plan shall be submitted, in writing, to CDFW and approved by CDFW in writing prior to implementation of any proposed SJKF Den Replacement Plan modifications.
- 6.7. Compliance Monitoring.** The Designated Biologist shall be on-site daily when Covered Activities occur unless all of the following have occurred: SJAS burrows have been avoided or excavated (per SJAS Burrow Avoidance and SJAS Burrow Excavation below); any captured SJAS have been relocated (SJAS Live Trapping and Relocation below); SJKF dens have been identified and avoided per SJKF Den Avoidance below; unoccupied SJKF dens have been excavated (per SJKF Den Excavation below) and initial grading activities are complete. Thereafter, a

Designated Biologist or Designated Monitor shall conduct compliance inspections at least once a week during all work activities. 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) ensure that signs, stakes, and fencing are intact; and (5) ensure that Covered Activities are only occurring in the Project Area. Specific Designated Monitors may conduct burrow flagging, monitoring during fence installation (if used), and compliance inspections upon written approval from CDFW.

- 6.8. Covered Species Observations and Notification.** During all Covered Activities, workers shall inform a Designated Biologist if an individual of the Covered Species is observed at the Project Area. All work in the vicinity of the observed Covered Species, which could injure or kill the animal, shall cease immediately until the Covered Species moves from the Project Area of its own accord or until the Designated Biologist can relocate the Covered Species following the CDFW-approved San Joaquin Antelope Squirrel Mortality Reduction and Relocation Plan. If SJKF is observed and does not vacate the area of its own accord within a reasonable timeframe, or cannot vacate the area, CDFW shall be contacted, and Permittee shall get written concurrence prior to proceeding with relocation and/or rescue of the SJKF. Permittee shall notify CDFW no more than five business days after discovery of a Covered Species within the Project Area via electronic mail to the Regional Representative and Regional Office identified in Quarterly Compliance Reports below.

The Designated Biologists and Designated Monitors shall maintain a record of all Covered Species observed, captured, handled and relocated. This information shall include for each animal: (1) the locations (Global Positioning System (GPS) coordinates and maps), date and time of the observation, handling, or release; (2) the name of the individual(s) that identified and handled the Covered Species; (3) circumstances of the incident; (4) the general condition and health of each individual including any diagnostic markings, sex, age (juvenile or adult); and (6) ambient temperature when handled and released. Permittee shall also submit this information to CDFW's California Natural Diversity Database (CNDDDB) as per CNDDDB Observations below. This information shall also be included in the Quarterly Compliance Reports and Annual Status Reports.

- 6.9. Quarterly Compliance Reports.** The Designated Representative or a Designated Biologist shall compile the observation and inspection records identified in the Inspection Records and Covered Species Observations and Notification above and documentation of night work according to Lighting and Night Work below, into a Quarterly Compliance Report (QCR) and submit it to CDFW, along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. QCRs shall be submitted before the 15th day of the month that it is due via electronic mail to CDFW's Regional Representative, Regional Office,

and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Adam Thompson ([adam.thompson@wildlife.ca.gov](mailto:adam.thompson@wildlife.ca.gov)), the Regional Office e-mail is [RRR.R4@wildlife.ca.gov](mailto:RRR.R4@wildlife.ca.gov), and the Headquarters CESA Program e-mail is [CESA@wildlife.ca.gov](mailto:CESA@wildlife.ca.gov). CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

- 6.10. Annual Status Reports.** 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 QCRs for the previous calendar year ; (2) a record of the Education Program training sessions provided over the reporting year; (3) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (4) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (5) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing, and mitigating Project impacts; (6) a summary of findings from all pre-activity surveys conducted, including but not limited to, the number of times a Covered Species was encountered, location, if avoidance was achieved, and if not, what measures were implemented; (7) all available information about project-related incidental take of the Covered Species; and (8) information about other project impacts on the Covered Species. ASRs shall be submitted via email to the entities identified in Quarterly Compliance Reports above.
- 6.11. CNDDDB Observations.** The Designated Biologist shall submit all observations of Covered Species to CNDDDB within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the ASR.
- 6.12. Final Mitigation Report.** No later than 60 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report, submitted via email to the entities identified in Quarterly Compliance Reports above. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all QCRs 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; (8) any other

pertinent information; and (9) before, during, and after photographic documentation of the project impact areas.

**6.13. Notification of Take or Injury.** Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW through e-mail to the Regional Representative and Regional Office identified in Quarterly Compliance Reports above. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph, explanation as to cause of take or injury, and any other pertinent information. The written report shall be submitted via e-mail to the Regional Representative and Regional Office identified in Quarterly Compliance Reports above.

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

**7.1. Rodenticide Use.** Permittee shall prohibit the use of rodenticides in the Project Area.

**7.2. Lighting and Night Work.** Permittee shall not use temporary, fixed, exterior lighting, including motion-triggered security lighting, that casts light on Covered Species habitat beyond the footprint of the Project Area between sunset and sunrise unless authorized in writing from CDFW. Temporary, exterior, fixed lighting in the Project Area shall be turned on only when people are present. Permittee shall not install new permanent or upgrade existing lighting in the Project Area, except as otherwise identified in the Project Description. The number of nights worked shall be documented in Quarterly Compliance Reports. The documentation shall include the number of nights that work occurred for the quarter that the report covers and a cumulative tabulation of the total number of nights worked since Project initiation.

**7.3. Equipment and Vehicle Fueling.** Permittee shall ensure that all equipment and vehicle fueling, and maintenance occur at least 100 feet from any Covered Species burrows unless otherwise approved in writing by CDFW. Permittee shall ensure that sufficient spill containment and cleanup equipment shall be present at all fueling locations.

**7.4. Vehicle Parking.** Permittee shall not allow vehicles to park on top of, or within 50 feet of Covered Species burrows, except within designated Staging Areas and in

compliance with Additional Measures for SJAS below. Vehicles left overnight shall be located at least 50 feet from any SJAS burrows and 50 to 500 feet from SJKF dens, depending on SJKF activity (per Additional Measures for SJKF below).

- 7.5. Pipes and other Structures Entrapment Prevention.** Permittee shall ensure that all pipes, hoses, conduit, culverts, or similar materials stockpiled in the Project Area are capped or otherwise enclosed at the ends to prevent entry by Covered Species. Permittee shall not leave pipes, conduit, electrical cabinets, or similar materials or structures stockpiled for one or more workday or night periods where Covered Species may enter them and become trapped.
- 7.6. Vehicle, Equipment, and Materials Inspection.** Workers shall inspect under vehicles and equipment for Covered Species before the vehicles and equipment are moved. Workers shall thoroughly inspect all construction pipe, culverts, or other similar structures with a diameter of one inch or greater that are stored for one or more day or night periods for the Covered Species before the object is subsequently moved, buried, or capped. If a Covered Species is present, the worker shall notify a Designated Biologist and wait for the Covered Species to move unimpeded to a safe location or as otherwise directed per Covered Species Observations and Notification, above.
- 7.7. Soil Stockpiles.** Permittee shall ensure that soil stockpiles are placed where soil will not pass into any other "Waters of the State," in accordance with Fish and Game Code section 5650. Permittee shall protect stockpiles to prevent soil erosion.
- 7.8. Barriers to Covered Species Movement.** Except as described in the Project Description, the new roadway shall be constructed without steep curbs, berms, or dikes which prevent Covered Species from crossing the roadway. If curbs are necessary for safety and/or surface runoff, Permittee shall design and construct them as rounded or gently sloping structures as to allow Covered Species to walk over them. If steep dikes are required, design shall include over-site drains or curb/dike breaks spaced at intervals of 25 feet to allow Covered Species passage.
- 7.9. Open Trenches and Excavations.** The Designated Biologists and Designated Monitors shall inspect all open holes, sumps, and trenches within the Project Area at the beginning, middle, and end of each workday for trapped individuals of the Covered Species. To prevent inadvertent entrapment of Covered Species, all open trenches, holes, sumps, and other excavations with sidewalls steeper than a 1:1 (45 degree) slope shall either have an escape ramp of earth or a non-slip material with a less than 1:1 (45 degree) slope or shall be covered when workers or equipment are not actively working in the excavation, day or night. Escape ramps shall be at least 12 inches wide and erected every 15 feet. If a cover will be utilized, the Designated Biologist shall oversee the covering of all excavated, trenches, holes, sumps, or other excavations with a greater than 1:1 (45 degree) slope of any depth

with barrier material (such as hardware cloth) at the close of each working day or night such that animals are unable to dig or squeeze under the barrier and become entrapped. The outer two feet of the excavation cover shall conform to solid ground so that gaps do not occur between the cover and the ground, and the excavation cover shall be secured with soil staples or by similar means to prevent gaps. Worker(s) shall thoroughly inspect all trenches, holes, sumps, or other excavations for Covered Species (or other wildlife) before they are backfilled. If any Designated Biologists, Designated Monitors, or workers discovers that Covered Species have become trapped, Permittee shall cease all Covered Activities in the vicinity and notify a Designated Biologist immediately. Designated Monitors, Project workers and the Designated Biologists shall allow Covered Species to escape unimpeded if possible before Covered Activities are allowed to continue, or as otherwise directed per Covered Species Observations and Notification, above.

**7.10. Pre-Activity Clearance Surveys and Reporting.** The Designated Biologist(s) shall perform pre-construction surveys for the Covered Species no more than 14 days prior to Covered Activities or prior to resumption of work if there has been a break in work by more than 30 days. The report shall include, but not be limited to, survey methods, date and time of the surveys, weather conditions per survey date (for SJAS surveys), name of the Designated Biologist(s) who performed the surveys, survey results, and map of the locations of each potential and known burrow or den and type of Covered Species use. Permittee shall provide the survey results to CDFW in a written report at least three days prior to the beginning of Covered Activities (per Pre-Activity Survey Report above).

7.10.1. SJAS Surveys: The Designated Biologist(s) shall survey the work area and 50 feet beyond the limits of the work area for individuals of the SJAS and to identify, flag and map the locations of all potential SJAS burrows. Pre-activity surveys shall be conducted under appropriate conditions to detect Covered Species. Conditions considered appropriate for detection of San Joaquin antelope squirrel include temperatures between 68- and 86-degrees Fahrenheit, no more than 80 percent cloud cover, and not under foggy or rainy conditions.

7.10.2. SJKF Surveys. The Designated Biologist shall conduct surveys to identify known and/or natal SJKF dens. Surveys shall include the work area and 50 feet beyond the limits of the work area to identify all potential SJKF dens as well as a buffer zone of 500 feet beyond (where feasible) the limits of the work area to identify known and/or natal SJKF dens. If the Designated Biologist identifies any known and/or natal SJKF dens, the den(s) shall be monitored for at least four consecutive nights with tracking medium and infrared camera to determine the current use of the den(s) or as otherwise approved in the SJKF Den Replacement Plan.



**7.11. Covered Species Injury.** If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately by telephone and electronic mail followed by a written incident report as described in Notification of Take or Injury above. Notification shall include the date, time, location, and circumstances of the incident and the name of the facility where the animal was treated. If Covered Species is found deceased, the Designated Biologist shall immediately collect, bag, and freeze the carcass and consult with CDFW to determine if submittal of the carcass to a laboratory is warranted.

**7.12. Additional Measures for SJAS:**

7.12.1. SJAS Burrow Avoidance. The Designated Biologist shall establish a no disturbance buffer of 50 feet or greater around suspected or known to be occupied SJAS burrows within and adjacent to the Project Area to be disturbed by Covered Activities. If a 50-foot no-disturbance buffer cannot be established, daily monitoring, live trapping, relocation, and burrow excavation shall occur in accordance with the rest of Additional Measures for SJAS below. Alternatively, a buffer reduction may be requested to allow for burrow preservation where impacts can be reasonably avoided. Any buffer reduction strategy shall be identified in the San Joaquin Antelope Squirrel Mortality Reduction and Relocation Plan and shall include the review and written approval of CDFW prior to the implementation of a reduced buffer.

7.12.2. SJAS Live Trapping and Relocation. The Designated Biologist shall conduct live trapping at all potential SJAS burrows detected within each work area which cannot be avoided per SJAS Burrow Avoidance prior to starting ground- or vegetation-disturbing Covered Activities in that work area, according to the approved San Joaquin Antelope Squirrel Mortality Reduction and Relocation Plan. SJAS shall be relocated only after young of the year are observed above ground and during the main activity period for the species (April 1 to September 30) unless otherwise approved in advance and in writing by CDFW. The Designated Biologist shall relocate any captured SJAS to a release site identified in the approved San Joaquin Antelope Squirrel Mortality Reduction and Relocation Plan. Traps shall only be open during the time of day when on-site temperatures are within the 68-to-86-degree Fahrenheit criterion and only when temperatures are predicted by the National Weather Service to remain within that range for more than four hours. Any captured lactating/nursing female or dependent juvenile of SJAS shall be released immediately at the trap location and

trapping shall cease until young of the year of SJAS are observed above ground and no longer dependent on their mother.

- 7.12.3. SJAS Relocation Weather Constraints. Permittee may submit a written request for approval to conduct trapping and relocation outside of the main activity period for the SJAS (October 1 to March 31). The written request shall include reference to the seven-day forecast predicted by the National Weather Service demonstrating daytime high temperatures (sunrise to sunset) between 68- and 86-degrees Fahrenheit with no prediction of inclement weather (e.g., a predicted 30 percent or greater chance of precipitation). In addition, the written request shall include evidence that young of the year of SJAS (if prior to April 1) and/or adults (if after September 30) are present above ground at the release site approved in the San Joaquin Antelope Squirrel Mortality Reduction and Relocation Plan.
- 7.12.4. SJAS Relocation Additional Timing Constraints. If SJAS trapping and relocation occurs outside of the main activity period (October 1 to March 31), a Designated Biologist shall prepare daily trapping records that shall include, but not be limited to, on-site temperatures and time when traps are opened, when traps are checked, and when animals are relocated; weather conditions (e.g., wind and cloud cover); and the number of traps used. These records may be requested to be submitted daily or weekly to CDFW in the written approval to conduct trapping and relocation outside of the main activity period (per SJAS Relocation Weather Constraints above). Burrow excavation shall occur after the final trapping and only after CDFW has reviewed the final daily trapping records and approved excavation.
- 7.12.5. SJAS Burrow Excavation. Immediately following live trapping activities conducted to address burrows that cannot be avoided (per SJAS Burrow Avoidance above) and prior to beginning Covered Activities within the Project Area, the Designated Biologist, or an approved Designated Monitor under the direct supervision of the Designated Biologist, shall fully excavate by hand any potential SJAS burrows present within the project work limits, according to the approved San Joaquin Antelope Squirrel Mortality Reduction and Relocation Plan. SJAS burrow excavation shall occur during the same weather conditions described in SJAS Live Trapping and Relocation and SJAS Relocation Weather Constraints above. Any SJAS encountered during burrow excavation shall be relocated according to the approved San Joaquin Antelope Squirrel Mortality Reduction and Relocation Plan. All burrow excavation shall be completed within 72 hours of the conclusion of live trapping in that given work area.

### 7.13. Additional Measures for SJKF:

- 7.13.1. SJKF Den Avoidance. Permittee shall avoid destroying any known or potential SJKF dens unless they are in an area of direct ground disturbance (e.g., grading areas, excavation areas) or their location poses a risk of direct harm to SJKF individuals. Dens in an area of temporary disturbance shall remain intact and the Designated Biologist shall block the entrance by installing an object approved in advance, in writing by CDFW to prevent SJKF from entering and utilizing the den during Covered Activities. The Designated Biologist shall remove the object immediately after Covered Activities are completed in that work area when the Designated Biologist has determined that potential resumed use of the den will not result in harm to SJKF. Permittee shall not destroy or modify dens or exclude foxes from dens that are beyond the direct footprint of ground disturbance to preempt their use and den buffer establishment. If a potential SJKF den (any subterranean hole, three inches or larger, for which no evidence is present to conclude that the den is being used or has been used by a SJKF) is discovered or a SJKF is found in an "atypical" den (e.g., a pipe or culvert), Permittee shall establish a minimum 50-foot no-disturbance buffer around the den. If a known den (one that shows evidence of current use or was used in the past) is discovered, Permittee shall establish a minimum no-disturbance buffer of at least 100 feet around the den. If a natal den (den in which SJKF young are reared, typically with two or more openings) is discovered, Permittee shall establish a no-disturbance buffer of at least 200 feet around the den. Natal dens with pups shall have a no-disturbance buffer of at least 500 feet. Permittee shall notify the United States Fish and Wildlife Service (USFWS) and CDFW's Regional Representative immediately via telephone and email if any SJKF -occupied atypical dens, known dens, or natal dens are discovered within or immediately adjacent to the Project Area. An established no-disturbance buffer may be reduced once the SJKF is no longer using the area.
- 7.13.2. SJKF Den Replacement. Permittee shall replace each known and natal SJKF den that cannot be avoided as per SJKF Den Avoidance above, with an artificial den. Permittee shall install one artificial SJKF den for each known den and three artificial dens for each natal den to be collapsed due to unavoidable disturbance. If there are no suitable existing dens within 300 feet of the collapsed den, the Permittee shall install artificial dens within 300 feet of the collapsed den. Artificial natal dens shall be multi-chambered and have multiple entrances. If greater than 10 suitable kit fox dens are located within a 300-foot radius of the collapsed den, Permittee shall consult with CDFW about appropriate location for installation of artificial dens. Artificial den(s) shall be completed before excavation of known and natal SJKF dens can occur (per SJKF Den Excavation below) to compensate for the loss of

important shelter used by SJKF for protection, reproduction, and escape from predators. Den replacement shall be completed in accordance with the CDFW-approved San Joaquin Kit Fox Den Replacement Plan.

7.13.3. SJKF Den Excavation. The Designated Biologist or individuals under direct supervision of the Designated Biologist shall excavate potential or known dens that exhibit signs of SJKF use or characteristics suggestive of SJKF dens (including dens in natural substrate and in/under man-made structures) that cannot be avoided as per SJKF Den Avoidance above, only after the Designated Biologist has determined that SJKF is not currently present after four consecutive nights of monitoring with tracking medium and infrared camera. Potential SJKF dens without any signs of SJKF use or characteristics suggesting it is a SJKF den may be excavated under the direct supervision of the Designated Biologist without advance tracking or camera monitoring. Natal dens shall not be excavated until the pups and adults have vacated the den and then only after concurrence from the USFWS and CDFW. If the excavation process reveals evidence of current use by SJKF, then den excavation shall cease immediately, and tracking or camera monitoring as described above shall be conducted/resumed. Excavation of the den shall only resume when, in the judgment of the Designated Biologist, the SJKF has escaped from the partially excavated den. SJKF dens shall be carefully excavated until it is clear no individuals of SJKF are inside. Dens to be destroyed shall be fully excavated, filled with dirt, and compacted to ensure that SJKF cannot reenter or use the den during the period that Covered Activities would occur in the Project Area. If an individual SJKF does not vacate a den within the work area within a reasonable timeframe, Permittee shall consult with CDFW and the USFWS to obtain written guidance from both agencies prior to proceeding with den destruction. An established SJKF den no-disturbance buffer may be removed once the SJKF is no longer using the area.

**8. Habitat Management Land Acquisition and Restoration:** CDFW has determined that permanent protection and perpetual management of compensatory habitat and on-site habitat restoration 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 either purchase 12.2 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank pursuant to Covered Species Credits below OR shall provide for both the permanent protection and management of at least 12.2 acres of Habitat Management (HM) lands pursuant to HM

Lands Acquisition and Protection below and the calculation and deposit of the management funds pursuant to Endowment Fund below. Purchase of Covered Species credits OR 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 Security below for all uncompleted obligations.

- 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 Habitat Management Lands Acquisition and Protection below, estimated at 1,366.20/acre for 12.2 acres: **\$16,667.68**. Land acquisition 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 Fee Title and Conservative Easement below: **\$268,600.00**;
  - 8.1.3. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Start-up Activities below, estimated at **\$4,936.80**; including.
  - 8.1.4. Interim management period funding as described in Interim Management below, estimated at **\$55,573.32**;
  - 8.1.5. Long-term management funding as described in Endowment Fund below, estimated at \$10,399.86/acre for 12.2 acres: **\$124,798.27**. 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 Reimburse CDFW below, estimated at **\$12,000.00**.
  - 8.1.7. 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 **\$42,000.00**.

- 8.2. Covered Species Credits.** If the Permittee elects to purchase Covered Species credits to complete compensatory mitigation obligations, then Permittee shall purchase 12.2 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Security below. Prior to purchase of Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities or within 18 months from issuance of this ITP if Security is provided.
- 8.3. 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:
- 8.3.1. Fee Title. 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.
- 8.3.2. 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.
- 8.3.3. HM Lands Approval. Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months

before acquisition and/or transfer of the HM lands, documentation identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;

- 8.3.4. 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;
- 8.3.5. 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.
- 8.3.6. 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;
- 8.3.7. 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.

- 8.4. 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 as per Land Manager above. 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.

- 8.4.1. 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).

- 8.4.2. 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.
- 8.4.2.1. 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.
- 8.4.2.2. 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:
- 8.4.2.2.1. 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.
- 8.4.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
- 8.4.2.2.3. 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.

8.4.3. 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.

8.4.4. 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.

8.5. 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.

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. 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 April 18, 2024.
- 9.2. Funding Memorandum. Permittee has prepared and CDFW has approved, the project-specific Funding Memorandum required by the Master Funding Agreement and attached to this ITP as Attachment 3.
- 9.3. Security Amount. The Security shall be in the amount of **\$524,576.07**. This amount is based on the cost estimates identified in Cost Estimates above.
- 9.4. Funding of the Child Expenditure Authorization (EA). Permittee shall create and fund the Child EA with funds equivalent to the Security Amount.
- 9.5. Compliance with the 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.
- 9.6. 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 (2081-2024-004-04) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Julie A. Vance, Regional Manager  
California Department of Fish and Wildlife  
1234 East Shaw Avenue  
Fresno, California 93710  
[RRR.R4@wildlife.ca.gov](mailto:RRR.R4@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, California 94244-2090  
[CESA@wildlife.ca.gov](mailto:CESA@wildlife.ca.gov)

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

Adam Thompson  
California Department of Fish and Wildlife  
1234 East Shaw Avenue  
Fresno, California 93710  
Telephone (559) 801-1915  
[Adam.Thompson@wildlife.ca.gov](mailto:Adam.Thompson@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, Caltrans. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Kern 33 Culvert Rehabilitation Mitigated Negative Declaration and Initial Study (SCH No. 2021090066) dated March 28, 2022, that Caltrans adopted. At the time the lead agency adopted the Mitigated Negative Declaration and approved the Project. It also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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

### **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, subs. (a)-(b), 783.5, subd. (c)(2).)

CDFW finds based on substantial evidence in the ITP application, MND for the Project, the results of CDFW's site visit on April 10, 2024, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Quarterly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 12.2 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.


**XV. Attachments:**

Figure 1	Project Location Map
Figure 2	Project Impacts Map Book
Attachment 1	Mitigation Monitoring and Reporting Program
Attachment 2	Biologist Resume Form
Attachment 3	Master Funding Agreement Memorandum

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

6/13/2024

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

Incidental Take Permit  
No. 2081-2024-004-04  
CALIFORNIA DEPARTMENT OF TRANSPORTATION  
KERN 33 CULVERT REHABILITATION PROJECT