



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

California Endangered Species Act
Incidental Take Permit No. 2081-2023-010-04
(Amendment No. 1)

**STRATFORD-LEMOORE CAPITAL PREVENTATIVE MAINTENANCE
PROJECT (PROJECT)
CALTRANS EA 06-0W820**

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:	David Johnson, Biology Branch Chief
Contact Person:	Roland Garcia, (559) 383-5792
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Amended ITP³ Background:

On May 21, 2024, CDFW received a request from the Permittee for a minor amendment to the ITP and the corresponding fee payment. The request was to notify CDFW of the creation of a child EA for the security amount of \$477,856.48. CDFW finds that this Amendment is a Minor Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4). Issuance of this Amendment will not increase the amount of take of the Covered Species compared to the Project as previously approved, nor will this amendment increase other Project impacts on the Covered Species (i.e., “impacts of taking” as used in Fish and Game Code Section 2081, subd. (b)(2)). Issuance of this Amendment does not affect CDFW’s previous determination that issuance of the ITP meets and is otherwise

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.

³When this incidental take permit and attachments refer to the “ITP”, it means the “Amended ITP” unless the context dictates otherwise.

consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

CDFW now reissues the ITP. The amended ITP includes all of the operative provisions as of the effective date of this amended ITP. Attachment 4 to this amended ITP shows the specific red-line changes made to the ITP as a result of this minor amendment.

II. Effective Date and Expiration Date of this ITP:

The ITP became effective on October 24, 2023, the date it was signed by CDFW. This remains the effective date for take authorization. The Amended ITP shall be executed in the same manner and shall become effective when signed by CDFW. Unless renewed by CDFW, this ITP and its authorization to take the Covered Species shall expire on **December 31, 2032**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 6.11 of this ITP.

III. Project Location:

The Project is located on State Route (SR) 41 between postmiles 28.4 and R40.1, within Kings 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 19 South, Range 20 East, in portions of Sections 16,21, 28, 29, 32 and 33 (Stratford and Lemoore, California, United States Geological Survey 7.5-Minute Quadrangle [USGS quad] map);
- Township 20 South, Range 20 East, in portions of Sections 4, 5, 8, 9, 17, 19, 20 and 30 (Stratford, California, USGS quad map);
- Township 20 South, Range 19 East, in portions of Sections 25, 35 and 36 (Westhaven and Stratford, California, USGS quad maps); and
- Township 21 South, Range 19 East, in portions of Sections 1 and 2 (Westhaven, California, USGS quad map).

The southern end of the Project is located approximately at Nevada Avenue, 4 miles south of the town of Stratford, at Latitude 36.137522 and Longitude -119.879093. The northern end of the Project is located near the intersection of SR 41 and SR 198, in the City of Lemoore, at Latitude 36.281115 and Longitude -119.808138).

IV. Project Description:

The Project includes repaving an 11.7-mile section of SR 41, and in this section, replacing and upgrading culverts, upgrading signs and lights, upgrading existing Metal Beam Guardrail, adding rumble strips, upgrading intelligent transportation systems (e.g., traffic count stations, vehicle classification systems), installing new lighting fixtures, and restoring Covered Species habitat. Detailed descriptions of specific Project activities follow.

Pavement Work

The Project will preserve and resurface the existing lanes of SR 41 from PM 28.4 to 40.1, including three existing ramps located at the SR-198 interchange. Existing asphalt concrete will be removed and repaved with hot-mix asphalt capped by rubberized hot-mix asphalt. After the pavement has been replaced, gravel shoulder backing will be installed from the edge of pavement to 3 feet out from the edge of pavement. The existing edge of pavement has a mix of gravel (old shoulder backing), dirt and weedy vegetation. Where present, existing vegetation will be cleared and grubbed for the new shoulder backing. After the pavement work has been completed, rumble strips will be cut into the pavement on the centerline of SR-41 and each shoulder. Highway lines will then be repainted.

Culvert Work

A total of 12 culvert locations will be repaired or replaced between PMs 31.33 and 37.63. Existing 18- to 36-inch diameter reinforced concrete pipes will be replaced with pipes of equal or greater size, except the culvert at PM 33.82 that will be repaired using a cured-in-place pipe liner (epoxy-impregnated fiberglass). Flared end sections will be installed at most of the culvert locations, constructed of pre-cast or cast-in-place concrete. Eight culverts will be replaced in full for the Project, while four culverts will only have new end treatments constructed. Rock slope protection (RSP) will be installed at the outlet of four of the culverts. RSP will be placed after the new culverts and end treatments have been installed using a method where rocks are dumped with a front-end loader (or similar) and spread in layers using bulldozers (or similar) to minimize voids. All culvert work will be done when the channels are naturally dry. Culvert replacement involves excavation of the portion of the culvert to be replaced, sections of the road and shoulder, and a trench around the existing culvert. The trench width and depth will extend as necessary to remove the old and install the new culvert and/or end treatment.

Vegetation will be cleared and grubbed in an area approximately 12 feet around the outlet of the culvert. Although the majority of the culvert replacement work will be within this 12-foot area, construction activities may occur within a designated work limit that will be up to 30-feet around the end of the existing culvert, which will be demarcated with species exclusion fencing. Construction equipment will access the work areas from the existing roadway.

Staging and Other Activities

Construction staging areas for vehicle parking and equipment storage will be designated in pre-disturbed, non-vegetated areas within the right-of-way along SR 41. Staging areas will not be located within or adjacent to PM 36.1 and 38.1. New light fixtures will be added to intersections at SR 41/Lansing (PM 33.587) and SR 41/Kansas (PM 34.689), where existing halogen light fixtures will be modified with LED fixtures.

Project activities associated with upgrading intelligent transportation systems (in-pavement wiring with adjacent roadside boxes), replacing metal beam guardrail, and installing and replacing traffic count stations, sign panels, and traffic signals will not occur between PMs 36.1 and 38.1.

Restoration Activities

Permittee will restore approximately 7.7 acres of an 11.6-acre triangle-shaped Permittee-owned parcel at the northeast quadrant of SR 41 and Jackson Avenue (Figure 2). This parcel had suitable habitat for the Covered Species that was damaged by a third party in 2021 when they mowed and disked a portion of the parcel. The restoration site will be cleared of all trash and debris and non-native vegetation will be removed using weed whackers or hand tools. If weeding must be completed after the plants have set seed, they will be collected in large containers and properly disposed. Native seed will be planted using hydroseeding or broadcast methods if needed to minimize impacts to the restoration site. The seed mix will be comprised of locally present, native species, such as allscale saltbush (*Atriplex polycarpa*), iodine bush (*Allenrolfea occidentalis*), bush seepweed (*Sueda nigra*), and alkali sacaton grass (*Sporobolus airoides*). Additional seeding and/or supplemental irrigation may be added if initial germination success is low. If supplemental irrigation is used, it will be provided by a water truck parked on the existing disturbed road shoulder. Invasive species will be controlled during monitoring period using weed whackers or hand tools.

Schedule

Pavement and culvert work will be completed between May of 2024 and July of 2025, for a total of 119 working days, which includes 110 nights. Work will not occur during the winter rainy season. The pavement work and modification of the intelligent transportation systems will occur at night. Culvert work will generally take 1-3 days per culvert. Restoration site preparation and seeding will be completed during the fall through early winter of 2025, to be completed by December 31, 2025. Restoration site maintenance, including weeding and possible supplemental irrigation will be implemented as needed throughout the monitoring and establishment period of the site..

Construction Equipment

The following equipment may be used for the Project activities: asphalt paver, pavement roller, backhoe, rubber-tired crane, dump truck, excavator with bucket, flat-bed truck, front-end loader, generator, paint/stripping truck, roller/compactor, saw cutting/stripping equipment, vector truck, tractor, utility terrain vehicle, water truck, hydroseeder, weed-whacker, hand-tools.

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

<u>Name</u>	<u>CESA Status</u> ⁴
1. Tipton kangaroo rat (<i>Dipodomys nitritoides nitratoides</i>)	Endangered ⁵

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

⁴ Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species.

⁵See Cal. Code Regs. tit. 14 § 670.5, subd. (a)(6)(D).

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; transporting construction materials and other project-related traffic; trash and debris removal; seeding; other construction and restoration 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 exclusion 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 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; and increased vulnerability to predation. Even though the proposed work is temporary, the effects could be longer-lasting if feeding or reproduction are impacted.

The areas where authorized take of the Covered Species may occur include the Permittee's right-of-way on SR 41 from PM 28.4 to 40.1 and the 7.7-acre restoration site (Project Area). Though implementation of the Conditions of Approval (outlined below) will reduce the risk of construction personnel encountering individuals, a reasonable likelihood remains that the Covered Species will be present within the Project Area.

The impacts to Covered Species will be directly adjacent to the two-lane highway and within the 7.7-acre restoration site. Burrow entrances were not observed along the highway in the Project Area during baseline surveys for this Project. However, individuals of Covered Species have been observed in the past at several locations in the vicinity of the highway between PM 36.1 and 38.1, including the southeast quadrant of the intersection of SR 41 and Jackson Avenue, near the restoration site. Although most of the highway right-of-way has low quality habitat for Covered Species due to the density of invasive grasses and lack of shrub cover, Covered Species are expected to regularly use the habitats at the outer portions of the right-of-way and in the adjacent properties in this area for dispersal, cover, and foraging.

Individuals of Covered Species may also be present in underground burrows within the right-of-way that are 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.

The Project is expected to result in the permanent loss of up to 0.0003 acres and the temporary disturbance to approximately 7.711 acres of suitable habitat for the Covered Species, of which approximately 7.7 acres are located in the restoration site. The remaining 0.011 acres of temporary disturbance will occur adjacent to the roadway between PM 36.1 and 38.1. Impacts have been calculated based on the Project Description and habitat that is suitable or directly adjacent to habitat that could be occupied by the Covered Species (PM 36.1 to 38.1 and the 7.7-acre restoration site). The other portions of the Project Area are under intensive commercial, residential, and agricultural use and these areas are not expected to be utilized by the Covered Species.

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. **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 (MND) (SCH No. 2022040547) adopted by California Department of Transportation as lead agency for the Project on June 21, 2022 and Addendums No. 1 and No. 2 to the MND approved by the California Department of Transportation on September 29, 2023 and October 9, 2023, respectively, pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

- 3. ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Biological Opinion for this Project (File Numbers 2022-0002722-S7-001 and 2022-0002722-S7-002) pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
- 4. ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
- 5. General Provisions:**

 - 5.1. Designated Representative.** Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
 - 5.2. Designated Biologist(s) and Designated Monitor(s).** Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologists and Designated Monitors 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 Condition of Approval 6.6 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 Biologists and Designated Monitors 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 Biologists and Designated Monitors in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologists or Designated Monitors 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 non-compliance 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 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, hydromulch, 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 discrete areas under active construction (Work Area) between PM 36.1 and 38.1, 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 between PM 36.1 and 38.1, 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. Before starting Covered Activities within the Project Area, the entire 11.6-acre Permittee-owned parcel, within which the 7.7-acre restoration site is located, shall be clearly delineated with 8-foot orange mesh safety fencing raised at least 5 inches off the ground, and clearly marked and maintained as an Environmentally Sensitive Area. Fencing shall be removed following road construction Project Activities to accommodate restoration activities.
- 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 Condition of Approval 5.12. Permittee shall ensure that vehicle speeds do not exceed 15 miles per hour

in Work Areas between PM 36.1 and 38.1 and at the 7.7-acre restoration site, 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, laydown sites, materials and 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 between PM 36.1 and 38.1), unless monitoring or temporary exclusion fencing, live trapping, relocation, and burrow excavation have been impleted in accordance with Conditions of Approval 7.13 through 7.16), or as otherwise approved in the Covered Species Mortality Reduction and Relocation Plan (Condition of Approval 6.5). No parking, storage, laydown, or staging areas shall be located at the restoration site. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless otherwise approved, as described in Condition of Approval 5.11 of this ITP. 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 also ensure the storage, use, handling, and disposal of hazardous materials in the Project Area are done so in accordance with all applicable state and federal statutes and in a manner that precludes any possibility for direct exposure to Covered Species.
- 5.14. CDFW Access.** Permittee shall provide CDFW staff with reasonable access to the Project Area under Permittee control and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 5.15. Refuse Removal.** Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

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 Condition of Approval 5.4.

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 in the notification before starting Covered Activities. The Designated Representative shall also notify CDFW no less than 14 calendar days before resuming Covered Activities after a lapse in project work of 30 days or longer.

6.2. Notification of Non-Compliance. The Designated Representative 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 recommended measures to remedy the situation.

6.3. Pre-Activity Survey Report. Prior to starting Covered Activities, Permittee shall prepare and submit to CDFW the results of pre-activity surveys and maps of burrows per Condition of Approval 7.11.

6.4. Inspection Records. The Designated Biologists and Designated Monitors shall prepare written observation and inspection records for compliance monitoring as per Condition of Approval 6.6, summarizing: (1) construction activities observed; (2) integrity of signs, stakes or protective 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 identified in Condition of Approval 6.8.

6.5. Covered Species Mortality Reduction and Relocation Plan(s). Permittee shall submit a Covered Species Mortality Reduction and Relocation Plan to CDFW at least 30 calendar days before starting Covered Activities. Separate Plans may be prepared for the Project construction activities and activities related to the restoration of the 7.7-acre parcel, each provided at least 30-calendar days prior to

starting each of those activities. Burrow excavation and relocation activities shall not proceed until the Mortality Reduction and Relocation Plan has been approved in writing by CDFW's Regional Representative (identified in Condition of Approval 6.8 below). The 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 habitat for Covered Species; (2) a detailed description of methods to be used for the surveys, burrow excavation, capture, handling, and relocation of individuals of the Covered Species; (3) release locations and methods (i.e., soft release, hard release, or another method); (4) artificial burrow design and installation methods (if proposed); (5) description of exclusion fencing locations and fence specifications; (6) monitoring frequency and methods including a description of increased monitoring if implemented instead of exclusion fencing installation; (7) schedule of Covered Species mortality reduction and relocation activities; and (8) identification of a wildlife rehabilitation center or veterinary facility capable of and willing to treat injured individuals of the Covered Species. The Mortality Reduction and Relocation Plan must specify that only the approved Designated Biologists are authorized to capture and handle individuals of the Covered Species. Once the Covered Species Mortality Reduction and Relocation Plan is approved in writing by CDFW, it shall be used for all Covered Species mortality reduction activities for the duration of this ITP. Any proposed changes to the CDFW-approved 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. Compliance Monitoring.** The Designated Biologist shall be on-site daily, for the duration of the day and/or night, to provide monitoring during construction between PM 36.1 and 38.1 unless temporary exclusion fencing, live trapping, relocation, and burrow excavation have been completed according to Conditions of Approval 7.13 through 7.16, 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 between PM 36.1 and 38.1. The Designated Biologist shall be on-site daily, for the duration of the day and/or night, to provide monitoring during restoration activities at the 7.7-acre restoration site.

The Designated Biologist shall conduct compliance inspections to: (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones and exclusionary fencing for presence of Covered Species in work areas or entrapped in the fencing; (5) ensure that signs, stakes, and fencing are intact; and (6) ensure that Covered Activities are only occurring at the Project Area. Specific Designated Monitors may conduct burrow flagging, monitoring during fence installation (if used), and compliance inspections upon written approval from CDFW.

- 6.7. 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 Designated Biologist can relocate the Covered Species following the Covered Species Mortality Reduction and Relocation Plan (Condition of Approval 6.5). Permittee shall notify CDFW within 5 business days of discovery of a Covered Species within the Project Area via electronic mail to the Regional Representative and Regional Office identified in Condition of Approval 6.8.

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 (5) ambient temperature when handled and released. Permittee shall also submit this information to the CNDDDB as per Condition of Approval 6.10. This information shall also be included in the Quarterly Compliance and Annual Status reports (Conditions of Approval 6.8 and 6.9).

- 6.8. Quarterly Compliance Report.** The Designated Representative or a Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 6.4, Covered Species observation/handling/relocation information as in Condition of Approval 6.7, and documentation of night work according to Condition of Approval 7.2 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 e-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 Mary (Mindy) Trask (mary.trask@wildlife.ca.gov), the Regional Office electronic mail is RRR.R4@wildlife.ca.gov, and the Headquarters CESA Program electronic mail is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.
- 6.9. 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 (Condition of Approval 6.11). Each ASR shall include, at a minimum: (1) a summary of all QCRs

for that year identified in Condition of Approval 6.8; (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) representative photographs of Project activities completed during the reporting year; (8) all available information about project-related incidental take of the Covered Species; and (9) information about other project impacts on the Covered Species. ASRs shall be submitted via electronic mail to the entities identified in Condition of Approval 6.8 above.

- 6.10. California Natural Diversity Database Observations.** The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 30 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the ASR.
- 6.11. 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 Condition of Approval 6.8 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 impacts between PM 36.1 and 38.1 and the restoration activities at the 7.7-acre restoration site.
- 6.12. 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 electronic mail to the Regional Representative and Regional Office identified in Condition of Approval 6.8 above. The initial notification

to CDFW shall include information regarding the location, species, 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 electronic mail to the Regional Representative and Regional Office identified in Condition of Approval 6.8 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 or upgrade existing permanent lighting between PMs 36.1 and 38.1 or at the 7.7-acre restoration site. The number of nights worked shall be documented in the QCR (Condition of Approval 6.8). 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 PM 36.1 through PM 38.1 and from the 7.7-acre restoration site 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 (Condition of Approval 5.12) and for which burrows have been excavated per Condition of Approval 7.17. Vehicles left overnight shall be located at least 50 feet from any Covered Species burrows.
- 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 work day 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 1 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 be moved by the Designated Biologist in accordance with the CDFW-approved Mortality Reduction and Relocation Plan (Condition of Approval 6.5).
- 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. The new roadway shall be constructed without steep curbs, berms, or dikes between PM 36.1 and 38.1 which could 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 2 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 discover 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 a Designated Biologist shall capture and relocate the Covered Species as per the Covered Species Mortality Reduction and Relocation Plan (Condition of Approval 6.5).

- 7.10. Covered Species Observations.** All workers shall inform a Designated Biologist if the Covered Species is seen within or near the Project Area during implementation of any Covered Activity. All work in the vicinity of the Covered Species, which could injure or kill the animal, shall cease immediately until the Designated Biologist can relocate the Covered Species following the CDFW approved Mortality Reduction and Relocation Plan (Condition of Approval 6.5).
- 7.11. Pre-Activity Clearance Surveys and Reporting.** No more than 14 days prior to initiating Covered Activities between PM 36.1 and 38.1 and at the 7.7-acre restoration site or prior to resumption of work if there has been a break in work by more than 30 days, the Designated Biologist(s) shall survey the Work Area and a 50-foot buffer for individuals of the Covered Species and to identify, flag and map the locations of all potential burrows used by Covered Species. Permittee shall provide the survey results to CDFW in a written report prior to the beginning of Covered Activities (Condition of Approval 6.3).
- 7.12. Covered Species Burrow Avoidance.** The Designated Biologist shall establish a no-disturbance buffer of 50 feet or greater around suspected or known to be occupied Covered Species burrows within and adjacent to the Project Area to be disturbed by Covered Activities. If a 50-foot no-disturbance buffer cannot be established, monitoring or temporary exclusion fencing, live trapping, relocation, and burrow excavation shall occur in accordance with Conditions of Approval 7.13 through 7.16. 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 Mortality Reduction and Relocation Plan (Condition of Approval 6.5) and shall include the review and written approval of CDFW prior to the implementation of a reduced buffer.
- 7.13. Covered Species Exclusion Fencing.** At least 5 days prior to beginning Covered Activities, Permittee shall install exclusion fencing around the perimeter of the active Work Areas located within 50 feet of potential burrows between PM 36.1 and 38.1. The exclusion fencing shall be designed to exclude Covered Species from Covered Activities according to the approved Covered Species Mortality Reduction and Relocation Plan (Condition of Approval 6.5). The exclusion fence shall be supported sufficiently to maintain its integrity under all conditions such as wind and

heavy rain for the duration of the Covered Activities in the Work Area. Exclusion fence shall be removed at the conclusion of Project activities at that Work Area. Permittee may elect to forego exclusion fence installation and replace the Covered Species exclusion effort with increased monitoring by the Designated Biologists and Designated Monitors as approved in the Covered Species Mortality Reduction and Relocation Plan (Condition of Approval 6.5). Exclusion fencing shall not be installed at the 7.7-acre restoration site. Instead, Permittee shall provide compliance monitoring according to Condition of Approval 6.6.

7.14. Covered Species Exclusion Fencing Monitoring and Inspections. The Designated Biologist shall inspect all fence materials prior to installation to ensure they adhere to the approved Covered Species Mortality Reduction and Relocation Plan (Condition of Approval 6.5). The Designated Biologists or Designated Monitors shall accompany the exclusion fence installation, repair, and removal to ensure that Covered Species are not killed or injured during those activities. Permittee shall check the exclusion fence daily during active construction activities and at least once weekly during periods of inactivity to survey for presence of Covered Species in the excluded area that may need to be relocated by a Designated Biologist according to the Covered Species Mortality Reduction and Relocation Plan (Condition of Approval 6.5) and to maintain and repair the fence as necessary to ensure its effectiveness.

7.15. Covered Species Live Trapping and Relocation. The Designated Biologist shall conduct live trapping at all potential Covered Species burrows detected within the Project Area that cannot be avoided per Condition of Approval 7.12 prior to starting ground- or vegetation-disturbing Covered Activities, according to the approved Covered Species Mortality Reduction and Relocation Plan (Condition of Approval 6.5). Trapping shall occur for at least 4 consecutive nights by the Designated Biologist immediately following exclusion fence installation and prior to starting Covered Activities within a Project Area. The Designated Biologist shall relocate any captured adult or non-dependent juvenile to the CDFW-approved receiver site identified in the Mortality Reduction and Relocation Plan (Condition of Approval 6.5). Any lactating or nursing female or dependent juvenile Covered Species shall be released immediately, monitored for their return to a burrow, and planned for either 1) future burrow excavation so adult and dependent juvenile can be captured during excavation and relocated together, or 2) delay of subsequent trapping at the burrow site to allow for juveniles to mature and disperse. Live trapping and relocation shall not occur within the 7.7-acre restoration site, unless otherwise approved in writing by CDFW and addressed in the Covered Species Mortality Reduction and Relocation Plan prepared for the restoration site (Condition of Approval 6.5).

- 7.16. Covered Species Weather Constraints During Live Trapping.** During the threat of inclement weather, such as the National Weather Service prediction of a 30 percent or greater chance of rain that can be independently verified by both CDFW and the Permittee, the Designated Biologist shall close all traps for Covered Species. Additionally, the Designated Biologist shall close all traps for Covered Species if the air temperature exceeds 99 degrees Fahrenheit during the nightly trapping period. If the air temperature is predicted to drop below 50 degrees Fahrenheit, traps shall be checked every 3 hours during the trapping period. The Designated Biologist shall place natural bedding for insulation into each trap and shall replace with new material as needed to ensure insulation material is dry and present for each trap night. The Designated Biologist shall cease trapping if captured animals are found to be lethargic, torpid, or are otherwise showing signs of a decrease in body temperature or signs of distress.
- 7.17. Covered Species Burrow Excavation.** Immediately following live trapping activities conducted to address burrows that cannot be avoided (Condition of Approval 7.12) 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 Covered Species burrows that cannot be avoided by 50 feet, in accordance with the approved Covered Species Mortality Reduction and Relocation Plan (Condition of Approval 6.5). Any Covered Species encountered during burrow excavation shall be relocated in accordance with the approved Covered Species Mortality Reduction and Relocation Plan (Condition of Approval 6.5). All burrow excavation shall be completed within 72 hours of the conclusion of live trapping. Burrow excavation shall not occur within the 7.7-acre restoration site, unless otherwise approved in writing by CDFW and addressed in the Covered Species Mortality Reduction and Relocation Plan prepared for the restoration site (Condition of Approval 6.5).
- 7.18. Covered Species Injury.** If a Covered Species is found injured due to Project-related activities, the Designated Biologist shall immediately take it to a CDFW-approved wildlife rehabilitation or veterinary facility identified in the Covered Species Mortality Reduction and Relocation Plan (Condition of Approval 6.5). Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. Permittee shall notify CDFW of the injury to the Covered Species immediately unless the incident occurs outside of normal business hours. In that event, CDFW shall be notified no later than the next business day. Notification to CDFW shall be via electronic mail, followed by a written incident report as described in Condition of Approval 6.12. 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.

8. Habitat Management Land Acquisition and Habitat Restoration: CDFW has determined that permanent protection and perpetual management of compensatory habitat OR restoration of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result from implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW’s estimate of the protected acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall either restore 7.7 acres of Covered Species habitat described in the Project Description (“Restoration Work”) according to Condition of Approval 8.6 below OR shall purchase 0.25 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 8.2 below OR shall provide for both the permanent protection and management of 0.25 acres of Habitat Management (HM) lands pursuant to Condition of Approval 8.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 8.4 below. The initial restoration of Covered Species habitat OR 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 36 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 9 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 as follows:

- 8.1.1. Land acquisition costs for HM lands identified in Condition of Approval 8.3 below, estimated at \$16,892.95/acre for 0.25 acres: **\$4,223.24;**
- 8.1.2. All other costs necessary to review and acquire the land in fee title and record a conservation easement as described in Condition of Approval 8.3.1 and 8.3.2 below: **\$261,100.00;**
- 8.1.3. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 8.3.6 below, estimated at **\$4,496.25;**
- 8.1.4. Interim management period funding as described in Condition of Approval 8.3.7 below, estimated at **\$21,121.38;**
- 8.1.5. Long-term management funding as described in Condition of Approval 8.4 below, estimated at \$531,662.46/acre for 0.25 acres: **\$132,915.62.** Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.

8.1.6. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 8.5, 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**.

8.2. Covered Species Credits. If the Permittee elects to purchase Covered Species credits to complete compensatory mitigation obligations, then Permittee shall purchase 0.25 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 36 months from the issuance of the original ITP if Security is provided pursuant to Condition of Approval 9 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 36 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 3 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 4 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 3 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 3 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 required by Condition of Approval 8.3.5. 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 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 3 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.
- 8.6.** Habitat Restoration. If Permittee elects not to provide permanent protection and perpetual management of compensatory habitat, Permittee shall restore on-site the 7.7 acres of Covered Species habitat northeast of SR 41 and Jackson Avenue shown in Figure 2 using locally appropriate, native species for Valley Sink Scrub habitat (*Allenrolfea occidentalis* Shrubland Alliance). Initial planting shall be completed by December 1, 2025, unless otherwise approved in the Habitat Restoration Plan or in advance and in writing by CDFW. At least 3 months before beginning the restoration activities, the Permittee shall prepare and submit a Habitat Restoration Plan for CDFW review and approval, and shall ensure that the Habitat Restoration Plan is successfully implemented.

The Habitat Restoration Plan shall include design plans and implementation measures for restoring existing disturbed areas, such as a project schedule, site preparation, plant materials, application methods and timing, methods to avoid impacting undisturbed areas, maintenance activities during the plant establishment period and monitoring period, and adaptive management. The Habitat Restoration Plan shall include requirements for at least 7 years of annual monitoring and reporting; interim and final performance criteria to track seed germination and establishment (if seeding was used), native herbaceous and shrub cover, plant vigor and health, and invasive species control; and remedial actions to take in the event that performance standards are not being met. The reporting shall include at a minimum a summary of the previous year's monitoring, the status of performance criteria, representative photographs, and remedial actions to be implemented to achieve success criteria. The Habitat Restoration Plan shall establish Year 0 (zero) as the year that plantings will occur. Any subsequent remedial plantings shall start a new 7-year monitoring and reporting period to document the successful establishment of those plantings. Any proposed changes to the CDFW-approved Habitat Restoration Plan shall be submitted in writing to CDFW and approved by CDFW in writing prior to implementation of any proposed Plan modification. CDFW

will determine when final performance criteria have been met and provide written confirmation to the Permittee.

Permittee shall install permanent fencing with a minimum of five “No Parking”, “No Trespassing”, or similar signs around the perimeter of the 11.6-acre parcel to minimize the risk of future trespass. Fencing shall be three-strand barbed wire with the bottom strand smooth, unless otherwise approved in writing by CDFW. Design plans and implementation methods shall be identified in the Habitat Restoration Plan for CDFW review and approval.

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 September 3, 2021.
- 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 **\$477,856.48** or in the amount identified in 8.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 8.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.
- 9.4. Funding of the Child Expenditure Authorization (EA).** Permittee shall create and fund the Child EA with funds equivalent to the Security Amount, as identified in Attachment 3.
- 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 Completion of Habitat Management Land Acquisition.** Even if Security is provided, the Permittee must initiate the restoration of 7.7 acres of Covered Species habitat described the Project Description (“Restoration Work”) according to Condition of Approval 8.6 above OR complete the acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 36 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 (2081-2023-010-04) 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
Telephone (559) 243-4005
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

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

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 (See generally Pub. Resources Code, §§ 21067, 21069). The lead agency's prior environmental review of the Project is set forth in the MND that the California Department of Transportation adopted for the Stratford-Lemoore CAPM Project on June 21, 2022 (State Clearing House No. 2022040547) and Addendums No. 1 and No. 2 to the MND approved by the California Department of Transportation on September 29, 2023 and October 9, 2023, respectively. At the time the lead agency adopted the MND 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 MND 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. None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.

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, MND and Addendums for the Project, the results of site visit on July 7, 2023, 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) restoration of a previously disturbed site to restore Covered Species habitat; (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 permanent protection and perpetual management of compensatory habitat or the restoration of 7.7 acres of habitat for Covered Species 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	Restoration Site
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Biologist Resume Form
ATTACHMENT 3	Master Funding Agreement
ATTACHMENT 4	Amendment 1 with Track Changes

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

ON 7/19/2024

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For Julie A. Vance, Regional Manager
Central Region