



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

California Endangered Species Act  
Incidental Take Permit No. 2081-2018-070-03  
(Amendment No. 1)

**McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT**

**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> CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

**Permittee:** East Bay Regional Park District (EBRPD)  
**Principal Officer:** Becky Tuden  
**Contact Person:** Becky Tuden; (510) 684-7488  
**Mailing Address:** 2950 Peralta Oaks Court  
Oakland, CA 94605

**Amended ITP Background<sup>3</sup>**

On September 26, 2018, East Bay Regional Park District (EBRPD) (Permittee) submitted a CESA ITP application to 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. Permittee sought take coverage authorization for CESA listed species associated with the project-related impacts from the McCosker Sub-Area Creek Restoration and Recreational Improvements Project in Contra Costa County, California (Project). On May 29, 2024, CDFW received a request from Permittee to amend the original ITP and on June 19, 2024 CDFW received the appropriate fees.

<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.

<sup>3</sup>When this incidental take permit and attachments refer to "this ITP," it means the "Amended ITP" unless the context dictates otherwise.

On June 26, 2020, CDFW issued ITP No. 2081-2018-070-03 to Permittee authorizing take of Alameda whipsnake (*Masticophis lateralis euryxanthus*) (the Covered Species) associated with and incidental to the McCosker Sub-Area Creek Restoration and Recreational Improvements Project. The Project as described in the ITP originally issued by CDFW includes creek restoration of Alder Creek and Leatherwood Creek and enhancements and recreational infrastructure improvements. Included in the recreational infrastructure improvements was trail system expansion by adding approximately 1.1 miles of new trails. As described in the original ITP, the Covered Activities associated with this Project were expected to result in a permanent loss of 1.93 acres, conversion of 2.01 acres, and temporary loss of 1.45 acres of Covered Species habitat. Based on the habitat in the Project Area and the proposed impacts, pursuant to CESA, CDFW required permanent protection and perpetual management of compensatory habitat as mitigation for Project-related impacts. To meet this requirement, the Permittee is acquiring 6.84 acres within a 30-acre area located in the Ohlone Regional wilderness, in Alameda County for the permanent protection and management of HM lands and 3.59 acres of restoration and enhancement of Covered Species habitat through trail closure and restoration and creation of new upland and riparian habitat.

Since issuance of the original ITP, design refinements have occurred that have changed the Project description and increased the Project footprint. Per the original ITP, the Pacific Pea Trail was to be constructed concurrently with creek restoration activities during the first phase of construction, which spanned from 2020 to 2023. None of the trail system expansion was completed during the initial construction phase. The Pacific Pea Trail was realigned to reduce impacts because of its original positioning on extremely steep hillslopes. The revised realignment follows the same general path as the original alignment, but features a revised tie-in point to the McCosker sub-area and a switchback to account for steep conditions. The construction details of the trail such as excavation depth, cut/fill balance, impacts to streams, construction methods, etc. remain the same; however, due to the switchback configuration, there will be an increase in the linear feet of constructed trail and an increase in the impact to Covered Species habitat and, therefore, potential take of the Covered Species. The updated alignment footprint will result in 0.12 additional acres of impacts to Covered Species habitat, 0.05 of which are temporary and 0.07 acres of permanent impact/habitat conversion from bay/oak woodland to trail. A conservation easement is being established for 6.84 acres off offsite in Covered Species-occupied habitat in the Ohlone Wilderness that protects high quality habitat in place of low-quality habitat and the Project has also created 0.5 acre of scrub habitat with rock outcrops for the Covered Species within the Project Area. The amendment updates the impacts of the Project based on the refined Project description and includes an additional map showing the Pacific Pea Trail realignment. It also allows for a Mitigation Funding Agreement instead of an endowment fund in Condition of Approval 9.

### **Effective Date and Expiration Date of this ITP:**

The original ITP was executed in duplicate original form and became effective when a

Incidental Take Permit  
No. 2081-2018-070-03  
EAST BAY REGIONAL PARK DISTRICT

MCCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT

duplicate original was acknowledged by signature of the Permittee on the last page of the original ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. The original ITP's effective date was June 26, 2020. This remains the effective date for the original take authorization. The Amended ITP shall be executed in the same manner and shall become effective when CDFW's Habitat Conservation Planning Branch receives the signed Amended ITP. The ITP as originally issued to CDFW expired on December 31, 2024. This Amended ITP's authorization to take the Covered Species has been extended and shall expire on **December 31, 2029**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.10 of this ITP.

### **Project Location:**

The McCosker Sub-Area Creek Restoration and Recreational Improvements Project (Project) is located in the East Bay hills in eastern Contra Costa County (see Figure 1 and Figure 2). It is located at the boundary of Alameda and Contra Costa Counties between Tilden Regional Park and Redwood Regional Park. The Project covers approximately 12.8 acres and is located within three sub-areas totaling 1,168 acres of the Robert Sibley Volcanic Regional Preserve (Sibley Preserve), the McCosker Parcel (McCosker), and the Huckleberry Regional Preserve (Huckleberry Preserve). The approximate center of the entire Project area including the Preserves is 37° 50' 54.885 N latitude and -122° 11' 11.339" W longitude. The approximate center of the Project work area within the McCosker sub-area is 37° 50' 34.289" N latitude and -122° 10' 50.25" W longitude. McCosker is accessed via Pinehurst Road in Orinda. Sibley Preserve is accessed via Skyline Boulevard in Oakland.

The Sibley Preserve sub-area encompasses a 678.71-acre area along the ridgelines of the East Bay hills. The McCosker sub-area comprises a 250-acre area extending from the canyon floor of the eastern face of the East Bay hills to the east-west trending ridgelines of Gudde Ridge. The Huckleberry Preserve encompasses a 240-acre area that borders portions of each of the two sub-areas.

### **Project Description:**

The purpose of the Project is to provide facilities for recreation at the McCosker sub-area and Sibley Preserve, restore and enhance creek functions in the McCosker sub-area, and to connect trails from the McCosker sub-area to the neighboring EBRPD parks. The Project includes two general components: 1) creek restoration and enhancements and 2) recreational infrastructure improvements.

The purpose of the creek restoration component is to restore the ecological functioning of existing culverted creeks in the McCosker sub-area, including providing upstream migration access for native rainbow trout from San Leandro Creek. The two culverted creeks include an

un-named tributary to San Leandro Creek, referred to as Alder Creek, and an un-named tributary to Alder Creek referred to as Leatherwood Creek. Alder and Leatherwood creeks currently flow underground in buried culverts.

The recreation infrastructure improvements include several components. Many of the recreation infrastructure improvements will generally occur within the McCosker sub-area in and/or around two areas referred to as Fiddleneck Field and Fern View Terrace and in the vicinity of the creek restoration areas. These include improvements to the existing Wilcox Staging Area (to be re-named as the Eastport Station Staging Area), improvements to the existing internal roadway system, installation of three bridges over the creek restoration area, trail construction, recreational facility development, and improvements to utility infrastructure such as the addition of a water line, vault toilets, and electrical and communication lines. Recreation components outside of the McCosker sub-area include improvements to the Sibley Main Staging Area, addition of a water tank, and several miles of new trails. See Figure 3 (Project Components: McCosker Sub-Area, excluding the trails crossing into the Western Hills Open Space).

### ***Creek Activities***

#### ***Creek Restoration and Enhancement***

Approximately 2,142 linear feet of Alder Creek and 770 linear feet of Leatherwood Creek will be restored by excavating fill material, daylighting the creek channel, removing the existing failing culverts and drainage structures, constructing in-stream and adjacent-stream enhancements, and planting wetland and riparian vegetation along the daylighted creek channels. Construction of the restored creek channels will require removal of fill, most of which will be transferred to the existing area to be developed into the Fiddleneck Field recreation area.

The reconstructed creek channels will be constructed as a high gradient, step-pool system that would incorporate a mix of cascades and resting pools, including pocket pools in steeper areas and potential spawning sites for rainbow trout. The intent of the creek design is to achieve a stable and self-maintaining creek that requires a low level of management and maintenance. This would allow the creek to exist in a state of dynamic equilibrium where it is properly transporting both water and sediment in a balanced manner.

Ten culverts ranging in diameter from eight (8) to 24 inches currently connect to the existing primary culvert network and will be affected by the Project (see Figure 3 (Project Components: McCosker Sub-Area)). These tributary culverts will be replaced or remain in place. Ten new outfall structures will be installed to dissipate the energy of discharging flows from the newly restored creek channels to downstream areas in the watershed. Rock outfalls and concrete headwalls will be constructed for each drainage culvert outfall.

Incidental Take Permit  
No. 2081-2018-070-03

**EAST BAY REGIONAL PARK DISTRICT**

**McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT**

The existing 114-foot, 60-inch reinforced concrete pipe culverted portion of Alder Creek that flows beneath Pinehurst Road and discharges into San Leandro Creek will be left in place. A new headwall will be installed for this culvert.

### ***Construction Activities***

#### ***Channel Creek Restoration***

Creek restoration activities include: 1) excavation of approximately 30,300 cubic yards of fill material to daylight the creek and create a stable channel, 2) placement of the excavated material within the Fiddleneck Field recreation area, 3) removal of existing culverts and drainage structures, 4) abandonment of approximately 470 linear feet of culvert in-place along Leatherwood Creek, and 5) construction of in-stream and adjacent channel habitats.

Existing structures within the creek alignment will be demolished and utilities will be relocated. Existing structures include approximately seven concrete junction boxes, three concrete headwalls, approximately 70 linear feet of concrete retaining wall, and 2,720 linear feet of 30-inch to 60-inch corrugated metal pipe culvert. Miscellaneous storm drains and drain inlets will also be demolished and removed from the site.

The daylighted creek banks will be laid back to an inclination of 3:1 (horizontal:vertical), except where space limitations require a steeper slope. For slopes 2:1 or steeper, soil lifts interlayered with geogrid may be required. Biotechnical bank stabilization techniques, which include vegetated soil lifts, planted rock toe slopes, and brush mats will be employed in areas where banks are 2:1 or steeper. The majority of biotechnical bank stabilization techniques will be implemented along Alder Creek, but some will also be used along Leatherwood Creek. The new channels will extend about eight to 15 feet below current site grades.

Large wood and woody debris will be installed at suitable locations within the creek restoration area to create and support microhabitat for aquatic species and to create areas of flow constriction, direct or turn flow, and control grade. Approximately 36 trees will be removed under this Project and suitable trees greater than 12 inches diameter at breast height (DBH) will be salvaged and used within various habitat log structures to be built on-site.

#### ***Water Flow Diversion***

Creek flow will be temporarily diverted for work within the McCosker sub-area, including the reconstruction of the creek channel on Alder and Leatherwood Creeks and heightening the riffle on San Leandro Creek. The culverts will be dewatered in lengths that correspond to accessible locations such as junction boxes or limits of work that do not exceed 200- to 300-foot segments. At the end of the construction season the completed channel will be reconnected with the natural creek flow.

The dewatering system will include coffer dams placed at the upstream extent of work, and if needed, at the downstream extents of the work. Fine mesh screen will be used for the dewatering system and fish relocation will occur on open segments of creek that are dewatered. A pump will be installed to lift the streamflow into a gravity pipe that discharges to a protected outfall structure downstream of the work area.

It is assumed that drainages within new trails will be dry during construction. If water is present at the time of construction, temporary coffer dams such as sandbags will be installed and the water will be temporarily diverted around the work area.

### *Vegetation Disturbance during Construction*

During excavation work, predominantly non-native plant species will be removed and later replaced with native riparian vegetation. The creek and fill areas will be cleared and grubbed of surface and sub-surface matter, including vegetation, aggregate road base material, concrete, and abandoned utilities. Depressions resulting from the removal of underground obstructions (including tree stumps and root balls) that extend below proposed finished grades will be cleared and the depressions will be backfilled and compacted.

During excavation work, plant material containing predominantly non-native plant species will be removed from the lower reach of the Alder Creek Project Area. Most of the existing native riparian habitat will remain in the upper reach of Alder Creek. Construction activities for daylighting Alder Creek will occur over a 3.3-acre area and will require the removal of 3.3 acres of existing vegetation and approximately 36 mature native and non-native trees.

The former native riparian habitat in the Leatherwood Creek area has been replaced with non-native grasses, shrubs, noxious non-native weed species, and remnant plants from a former plant nursery operation. During excavation, plant material within the channel will be removed along with a significant quantity of fill. Construction activities involved in daylighting Leatherwood Creek will occur over a 0.7-acre area. No tree removal will be required.

Riparian habitat occurs along San Leandro Creek. Some shrub or understory vegetation may be removed to allow equipment to access to the top of bank near Pinehurst Road. Any temporarily impacted vegetation will be replaced following construction. No tree removal will be required.

### *Riparian Habitat Restoration and Enhancement*

Restoration plantings will be installed in four general zones within the restored and enhanced riparian area: floodplain, lower riparian, upper riparian, and an understory zone. The floodplain will be established adjacent to the active channel and will include willows and other in-stream wetland species such as sedges and rush. The lower riparian bank will be established from the bank toe up to six feet above the thalweg and will include a variety of riparian and wetland species such as willows, mugwort, and western lady fern. The upper

Incidental Take Permit  
No. 2081-2018-070-03

EAST BAY REGIONAL PARK DISTRICT

McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT

riparian bank will be established along the creek banks greater than six feet above the thalweg and will include riparian and woodland species such as coast live oak, snowberry, and yarrow. Understory shrubs such as oso berry and thimbleberry will be installed within existing daylighted sections of Alder Creek to enhance the habitat.

***Creek-Specific Descriptions***

*Alder Creek*

The two primary objectives of the restoration work in Alder Creek are to 1) remove a deteriorating system of culverts and to construct an open, stable channel for conveying creek flows and 2) revegetate the channel corridor to restore riparian ecological function.

The creek restoration and enhancement will include approximately 2,142 linear feet of Alder Creek (1,387 linear feet of the main stem, 227 linear feet of the west branch, and 528 linear feet of the east branch) restoration by excavating fill material, daylighting the creek channel by removing the existing underground culverts and drainage structures, constructing in-stream and adjacent enhancements, and planting native wetland and riparian vegetation along the restored creek channel. Approximately 149 linear feet of Alder Creek will be enhanced through installation of native riparian understory vegetation within existing riparian areas. No grading will occur in this enhancement site.

The majority of native riparian habitat in the Alder Creek area has been replaced with non-native grasses and non-native weeds. During excavation work, vegetation disturbance during construction includes removal of plant material containing predominantly non-native plant species from the lower reach of the Alder Creek Project area. Most of the existing native riparian habitat will remain in the upper reach of Alder Creek. Construction activities for daylighting Alder Creek will occur over a 3.3-acre area and will require the removal of 3.3 acres of existing vegetation and approximately 36 mature native and non-native trees.

The main stem of Alder Creek will be designed and reconstructed as a low flow channel ranging from eight to twelve feet wide. The east and west branches of Alder Creek have steeper slopes and will be designed as a boulder cascade channel type.

*Leatherwood Creek*

The three objectives of the restoration work for Leatherwood Creek are to 1) improve the stability of Fiddleneck Field, 2) create an alternate, stable creek channel to transport creek flows and expand the habitat value of the site, and 3) revegetate the channel corridor to restore riparian ecological function.

The creek restoration and enhancement will include approximately 770 linear feet of Leatherwood Creek restoration by abandoning portions of the existing underground culvert in

place and removing portions of existing underground culverts, and re-creating a creek channel adjacent to the abandoned culverts.

The former native riparian habitat in the Leatherwood creek area has been replaced with non-native grasses, shrubs, noxious non-native weed species, and remnant plants from a former plant nursery operation. During excavation vegetation disturbance will include removal of plant material within the channel along with a significant quantity of fill. Construction activities involved in daylighting Leatherwood Creek will occur over a 0.7-acre area. No tree removal will be required.

The Leatherwood Creek will be designed and constructed as a high-gradient, step-pool system that will incorporate a mix of boulder cascades and resting pools.

*San Leandro Creek*

The objective of the enhancement within San Leandro Creek is to facilitate fish passage from San Leandro Creek to Alder Creek.

The creek enhancement will include increasing the height of the existing riffle within San Leandro Creek and installing baffles within an existing culverted portion of Alder Creek beneath Pinehurst Road to facilitate fish passage. The riffle located within upper San Leandro Creek will be raised in order to increase the water surface elevation at the downstream end of the Pinehurst Road culvert. The work will consist of placing no more than 50 cubic yards of cobbles and streambed material on top of the existing riffle and raising the riffle height by 1 to 1.5 feet. The cobble and streambed material will be placed within the channel bed along 20 linear feet of San Leandro Creek. Approximately 10 steel baffles will be installed within this culvert to facilitate fish passage between San Leandro Creek and Alder Creek.

Vegetation disturbance includes removal of some shrub or understory vegetation to allow equipment to access to the top of bank near Pinehurst Road. Any temporarily impacted vegetation will be replaced following construction. No tree removal will be required.

**Recreation Improvements**

Recreational improvements will occur within the Sibley Preserve, McCosker, and the Huckleberry Preserve. Many of the recreational improvements will occur within the McCosker sub-area, generally within Fiddleneck Field, Fern View Terrace, and in the vicinity of the creek restoration areas. Additional improvements will occur within the Sibley Preserve. New trails will be constructed throughout the three sub-areas and the Huckleberry Preserve, and one existing trail that runs through the Sibley and Huckleberry Preserves will be closed and restored.

*Staging Areas*

Incidental Take Permit  
No. 2081-2018-070-03

**EAST BAY REGIONAL PARK DISTRICT**

**McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT**



The existing Sibley Main Staging Area, located in the Sibley Preserve, and the existing Eastport Station Staging Area, located in the McCosker sub-area, will be improved. Modifications to the existing Sibley Main Staging Area will expand the existing parking capacity from 39 spaces to approximately 73 spaces. The total expansion area will be approximately 0.92 acre, including the lower lot, the road to the lower lot, and expansion in areas around the existing parking lot). Additionally, the existing Skyline/Bay Area Ridge Trail connection to the Sibley Main Staging Area will be realigned to accommodate the new parking access road. See Figure 4 (Proposed Parking Layout, Main Sibley Staging Area) for the conceptual parking layout. Expansion of the Sibley Main Staging Area will involve minor grading to modify the existing parking layout and approximately 11,031 square feet of grading in a currently vegetated site.

The Eastport Station Staging Area will undergo minor regrading to add up to five new parking spaces, drainage will be directed to a stormwater treatment feature, a new entry sign will be installed, and the existing pass-through entrance will be replaced with a pass-through gate.

### *Improvements to Existing Roadways*

Improvements are proposed to Ninebark Trail and the Meadow Barley Trail, both within the McCosker sub-area. Grading will occur in conjunction with the creek restoration work and the installation of the bridges. Swales will be added along portions of the some of the roadsides and stormwater treatment areas will be included to treat stormwater runoff.

#### Ninebark Trail/Road

The Ninebark Trail/Road will provide a connection between the Eastport Staging Area and the proposed Fiddleneck Field parking area to accommodate visitors and maintenance and emergency vehicle access. The Ninebark Trail/Road will be an all-weather, gravel surface access road. It will be a two-way road and maintained as a 12-foot wide road. The entire road will be 950 linear feet, consisting of a 660-linear-foot, two-lane segment and a 290-linear-foot, one-lane segment.

#### Meadow Barley Trail/Road

The Meadow Barley Trail/Road will intersect with the Ninebark Trail/Road at the proposed Ninebark Bridge. The Meadow Barley Trail/Road improvements will include reconstructing an 890-linear-foot segment of 12-foot wide all-weather gravel road, stabilizing and repaving an existing 410-linear-foot roadway section, and developing a hammer-head turn-around near the park residence to facilitate emergency and maintenance vehicle circulation. The paved road will match the existing width, which is a minimum of 11 feet wide. The access roads will follow the alignment of the existing gravel and paved roads. A pipe gate will be installed near the Ninebark Bridge to prohibit public vehicle access to the Meadow Barley Trail/Road while accommodating EBRPD vehicles and recreational Trail/Road uses.

Incidental Take Permit  
No. 2081-2018-070-03

**EAST BAY REGIONAL PARK DISTRICT**  
**McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT**

### *Bridge Installation*

Circulation improvements in the McCosker sub-area will include three crossings of Alder Creek: 1) Ninebark Public Vehicle Bridge, 2) Fern View Terrace Maintenance Vehicle Bridge, and 3) Alder Creek Maintenance Vehicle Bridge. The three structures will be designed as arched bridges with natural creek bottoms.

The Ninebark Public Vehicle Bridge will be a fire truck-rated, public vehicle bridge that connects the Eastport Station Staging Area to Fiddleneck Field Recreation Area. The bridge will span approximately 16 feet to extend over the Alder Creek channel. This bridge will also serve as a utility crossing for water and power lines needed for uses within the Fiddleneck Field Recreation Area.

Access to Fern View Terrace will be provided via a single-lane, 12-foot wide bridge, the Fern View Terrace Bridge. This bridge will accommodate light-weight service vehicles and public recreational use. The bridge will connect to the Fern View Terrace from Gudde Ridge Trail/Road across the eastern branch of Alder Creek. The bridge will span approximately 15 feet to extend over the eastern branch of Alder Creek channel.

The Alder Creek Nature Trail/Road Bridge will provide connection between the Meadow Barley Trail/Road and the Gudde Ridge Trail/Road and the Alder Creek Nature Trail/Road. This bridge will span approximately 15 feet to fully extend over the Alder Creek channel.

Project ground-disturbing activities for bridge construction will extend up to 20 feet below the ground surface for the pier supports. The arched bridges and their foundations will lie above the creek bed. Temporary dewatering and/or re-routing of stream flows will be conducted during bridge construction. The soil conditions at each location are highly variable. The foundations will consist of either 1) spread strip footings supported on a uniform bearing pad of at least 18 inches thick or 2) deep foundations such as drilled piers and protective riprap at the foundations to minimize settlement and scour.

### *Trail System Expansion*

The Project will add approximately 1.1 miles of new trails through the three Project sub-areas. The trails will connect the McCosker sub-area to existing trails in Sibley Preserve and Huckleberry Preserve. Also, an approximately 0.6-mile steep and eroded segment of the existing Bay Area Ridge Trail/Skyline Trail will be permanently closed and the area will be restored to native habitat.

### *Trail Construction*

Most of the new trails will be four-foot wide earthen trails. The new trails will be constructed using a combination of small, mechanized equipment, such as a mini-excavator and hand tools. Some vegetation removal within shrubland and grassland habitat will be involved in the

trail construction work. Trails through woodland or riparian habitat will not require tree removal or substantial pruning; trees will be avoided to construct proposed trails. The bed of the new trails will be an average of four-feet wide and an average of two feet on each side of the trail bed will be temporarily disturbed during construction. Disturbed slopes will be revegetated following construction. There will be approximately 1.1 acres of new trail and approximately 1.1 acres of impacted areas adjacent the trail that will be restored following construction.

Pacific Pea Trail, to be constructed within the McCosker and Huckleberry sub-areas, was realigned along the same general path, but has a revised tie-in point to the McCosker sub-area and a switchback to accommodate steep conditions.

Vegetation in disturbed areas resulting from the development of the trail system will be reestablished by 1) scarifying, seeding, and mulching using certified weed-free products; 2) planting native vegetation, transplanted from the vicinity or seeded with native species found in the area; or 3) applying stripping of surface vegetation accumulated from grading activities over areas temporarily disturbed by construction activities to encourage recovery of the natural habitat.

### *Retaining Structures*

Where a trail is required to cross a hillside slope that is too steep or unstable to hold a trail on its own, retention walls or cribbing may be required as a foundation to build upon. Rock is the preferred building material, but if access is limited, timber could be substituted. Construction of retaining structures involves:

- Digging a trench into the outside (downhill) edge of the trail bed that is sized to hold and support the foundation layer of rock;
- Placing rocks parallel to the trail with solid contact with each other;
- Placing rock at four to six-foot increments perpendicular to the trail alignment (it helps tie the retaining structure into the hillside);
- Providing multiple contact points with the various layers offset from one another (similar to brick and mortar where multiple tiers of rock are needed to offer a stable and wide trail bed construction that will provide maximum strength and stability);
- Creating a batter or “lean back” into the hillside enough to support the weight of the associated hillside as tiers are added to the retaining structure;
- Backfilling the excavated area with aggregate base material to allow precipitation to easily drain through the structure; and

Incidental Take Permit  
No. 2081-2018-070-03

**EAST BAY REGIONAL PARK DISTRICT**

**McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT**

- Capping the top of the retaining structure with several inches of native soil that will serve as the trail surface.

*Drainage Crossings (Creek Crossings)*

Where trail construction involves crossing a perennial creek or seasonal or ephemeral drainage, armoring will be installed to reduce impacts to sensitive habitat features, provide channel stability, and minimize channel bed erosion. Natural rock crossings will be constructed. The crossings will be approximately 10 feet wide and will extend the length that the trail crosses through the wetland/water feature, plus an additional three feet on each side of the wetland/water feature. The crossings will be excavated approximately two feet and then approximately two feet of clean material (rock, gravel, and/or soil) will be installed in the cut area.

To minimize the mobilization of sediment to creeks and other water bodies, permanent erosion and sediment control measures will be incorporated where trails cross through riparian zones including: 1) armoring the trail surface through the channel, 2) providing settling areas along the trail where water can infiltrate and sediment can settle out, 3) constructing creek crossings so that they do not greatly alter the cross-sectional shape of the channel, and 4) sloping the approach to a drainage crossing downward toward the drainage and then climbing upward when traveling away from the drainage bed, so that in the event of a blockage in the channel, the water will not be diverted to flow along the trail.

*Natural Rock Crossings*

Where armoring is used to stabilize low water crossings, the armoring will consist of natural rock. Cross drain structures (armored fords) will be constructed at natural low spots (swales) and areas that may flow or pond during wet periods. These features will be constructed to intercept and channel water away from the trail bed and drain and return water to the natural drainage course. The ground surface will be leveled within an approximately four to six-foot wide band equivalent to the maximum width of the narrow, natural surface trail. The length of the crossing from bank to bank and the total area of each crossing varies based on the width of the channel, but it averages 10 feet wide. Rock will be placed below, and sometimes above, the ford to provide energy dissipation. Leveling requires minor grading. Following grading of the underlying bank and beds, gravel will be placed to prevent downcutting and erosion. Natural rock will then be laid into the crossing bed. The materials will be placed or rearranged by hand or mechanical means to obtain a compact, low permeability mass to simulate a natural streambed.

Installation of natural rock crossings will occur as follows: 1) minor excavation of the trail bed to approximately 12 to 24 inches to maintain an out-sloped surface, 2) grading backslopes on the banks, 3) hand placing approximately 132 pounds of rocks at the downstream edge to create an edge with smaller rocks below the edge for flow dissipation, 4) installing stepping

Incidental Take Permit  
No. 2081-2018-070-03

**EAST BAY REGIONAL PARK DISTRICT**

**McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT**

rocks along the upstream edge of the crossing (for trail users to cross on when the creek flows), and 5) filling the spaces between the larger rocks and stepping rocks with gravel (or other small rocks less than three inches in diameter).

*Closed and Restored Trail*

In areas where a trail is being relocated, the former trail will be restored to as natural a condition as possible to eliminate sources of erosion, create a natural appearance, and help to eliminate trail short cutting. Restoration work will include the following: 1) correcting water flowing into and down the trail and stabilizing the area by placement of rocks in areas of sheet erosion or using jute netting or other biodegradable covering agents so that the speed of water runoff is impeded and gullying inhibited; 2) eliminating ruts and gullies where erosion has occurred by filling in these channels with local soils and gravel and returning the surface to its original shape and contour by pulling the sidecast that was used as fill for outer edge of trail back into cut; 3) scarifying compacted soils to allow new vegetation to establish; 4) reestablishing vegetation through spreading native seeds as well as transplanting of local flora into the old trail bed; 5) removing an existing culvert and an existing pedestrian bridge, and 6) blocking the former alignment from continued use by placing rock/brush, and/or fallen timber. If the gullies and ruts in the closed and restored trail are so severe and deep that they cannot be filled with native soils, check dams will be installed to halt further erosion and allow backfilling to occur through the trapping of sediments. Where required, check dams will be installed by placing rocks, logs, or boards within the channel perpendicular to the flow. Once installed, check dams will be monitored to ensure they are functioning as intended. Once filled, check dams will be left in place and allowed to become part of the slope's natural contour.

*Recreation Facility Development*

Recreation facility development will occur in two main areas in the McCosker sub-area: the 2.8-acre Fiddleneck Field and the 0.3-acre Fern View Terrace.

*Fiddleneck Field*

Fiddleneck Field will include recreation areas and parking to support individual day use activities, camping, and group interpretive program uses for a maximum capacity of 50 visitors per day. Recreation areas will include a meadow, a group gathering area with a shade structure, six to eight picnic tables, a potable water supply, restroom facility, large group barbecue, preparation table, and campfire area.

A new visitor parking lot will be constructed as part of the grading activities for Fiddleneck Field. Other features may include horse hitching posts, a watering trough, secured bicycle storage facilities, and provisions to accommodate electric vehicles.

Prior to initiating development of the recreation area, six underground storage tanks (four 20,000-gallon tanks and two 10,000-gallon tanks) will be removed and disposed of at approved off-site disposal facility.

Prior to initiating fill placement, the site will be cleared and grubbed of surface and subsurface matter including vegetation, aggregate road-base material, concrete and abandoned utilities. These materials will be removed from the site or stockpiled for reuse. Depressions resulting from the removal of underground obstructions (including tree stumps and root balls) that extend below the proposed finished grades will be cleared and the depressions backfilled with suitable compacted material. Stripped material will be disposed of at an approved, off-site disposal facility, unless otherwise noted. Exposed subgrade soils will be scarified to a depth of six inches or the full depth of any existing shrinkage cracks. The development of this site will add riparian and oak woodlands and informal meadows.

### Fern View Terrace

Fern View Terrace will be an informal site for passive day use activities only. Individual picnic tables will be installed on graded pads and existing concrete walls will be retained. Construction will require clearing and grubbing of approximately 0.3 acres to define the picnic pads and access routes, while retaining the existing terraces and mature trees within the site.

### *Improvements to Utility Infrastructure*

Utility infrastructure improvements include the addition of a new water line, potable water supply system, and water storage tank, modifications to facilitate irrigation, connections to existing electrical and communication services to meet recreation and maintenance needs, improvements to manage sewage and trash, installation of fencing and gates to control site access, and installation of vault toilet restrooms.

### Water

An approximately 3,200-linear-foot water line will be installed extending from a natural spring in the northern portion of the McCosker sub-area to Fiddleneck Field. The water line will connect to a 4,000-gallon storage tank and treatment system to provide potable water and, if necessary, fire suppression to Fiddleneck Field. The trench will be approximately 16 inches wide and will be dug to a depth of up to three feet. An approximately 15-foot-wide construction access area will be required along the length of the water line. An existing 18-inch culvert running beneath the access road where the water line will be installed will be replaced. See Figure 3 (Project Components: McCosker Sub-Area).

A new 1,000-gallon water tank will be installed at the existing Sibley backpack camp to meet the water usage associated with camping activities for this campsite. The tank will be installed on a 100-square-foot concrete pad of sufficient strength to support the tank.

Incidental Take Permit  
No. 2081-2018-070-03

EAST BAY REGIONAL PARK DISTRICT

McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT

The existing pumphouse structure located near Pinehurst Road will be removed. The 10,000-gallon tank will be retained and used as a source of irrigation water.

#### Electrical and Communication

Electrical and communications services will be developed to meet recreation and maintenance needs. These utilities will be connected to the existing, on-site utility infrastructure. This will involve undergrounding approximately 1,100 linear feet of existing overhead power and communication lines that run north and south extending from the Pinehurst Road boundary to the park security/staff residence and Fiddleneck Field. Existing overhead electrical lines and poles will be removed. Most of the overhead lines and poles will be removed by hand and pulled down with a winch. Poles and lines located in or adjacent to already disturbed areas may be removed with equipment. Utility-related project components will require ground disturbance no deeper than ten feet.

#### Vault Toilets, Trash, and Fencing

Precast vault toilets will be incorporated into the design of Fiddleneck Field. On-site placement of the precast concrete vault toilet building will consist of burying a sealed 14-foot by 4-inch by 11-foot by 11-inch vault to a 5-foot depth. Excavation for each vault toilet will require approximately 32 cubic yards of soil removal.

A trash disposal area will be provided to store animal-proof cans at the Eastport Station Staging Area, Fiddleneck Field, and Fern View Terrace.

A low fence will be installed along Alder Creek to direct pedestrian circulation and protect the riparian habitat corridor. Existing barb wire will be used at the perimeter of grazed areas to direct grazing activities and limit livestock from entering the developed recreation areas. Metal pipe gates with self-closing, pass-through gates that could accommodate hikers, cyclists, and equestrians will be used at locations where fenced areas cross trails. Figure 5 (Construction Activities for Proposed Actions) summarizes all the proposed project components, work areas, and construction duration.

#### ***Construction Timing and Access***

Construction of the creek restoration and public access and recreation facility project elements is anticipated to occur over two to three work seasons between 2019 and 2021. Construction of Alder Creek Nature Trail, Kitchen Orchard Terrace Trail, and Leatherwood Creek Trail will occur concurrently with the McCosker sub-area creek restoration and recreation improvements. Construction activities will occur over a three to five-month summer period extending to October 31. Restoration planting may occur throughout the calendar year. Construction will not occur during winter, but will begin again the following summer. Hours of work will be between 7:00 AM and 5:00 PM Monday through Friday. Access to the construction sites will be from Pinehurst Road via Canyon Road in the Town of Moraga.

Incidental Take Permit  
No. 2081-2018-070-03

EAST BAY REGIONAL PARK DISTRICT

McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT

Following completion of the creek restoration, public access, and recreation construction activities, this area will remain closed for about one year (one full growing season) to allow the vegetation to become established.

Construction of the Sibley Main Staging Area parking and water tank installation project elements may occur concurrent with the McCosker Creek Restoration and Recreation improvements or may be phased over time. Construction activities will occur over a three to five-month summer period. Construction will not occur during winter, but will pick up again the following summer. Hours of work will be between 7:00 AM and 5:00 PM Monday through Friday. Access to the construction sites will be from Skyline Boulevard.

**Construction Equipment**

Anticipated construction equipment to be used for Project components is shown in Table 1 below:

**Table 1:**

**CONSTRUCTION EQUIPMENT USAGE BY RECREATION FACILITY PROJECT COMPONENTS**

Sub-area	Equipment	Construction Usage			
		Project Component	Number	Duration of Use (weeks)	Daily Use (hours/day)
McCosker	Scraper	Mass Excavation	1	5	8
Preserve, McCosker	Excavator	Excavation, placing rock material, sorting soil	3	40	8
Preserve, McCosker	Dozer	Fill Placement	1	40	8
McCosker	Pump	Dewatering	2	40	24
Preserve, McCosker	Haul Trucks	Earthwork, import rock material, off haul debris	1	30	6
McCosker	Crane	Bridge and vault toilet placement	1	2	6
Preserve, McCosker	Grader	Road work	1	3	8
Preserve, McCosker	Paving Machine	Road work	1	2	8
McCosker	Mini-excavator	Trenching for water system	1	2	8
Trail Construction all sub-areas	Mini-excavator, (e.g., SWECO), Hand Tools	Excavation for trail project	2	20/season	12
Trail Construction all sub-areas & Huckleberry	Mini-excavator, (e.g., SWECO), Hand Tools	Fill placement for trail project	2	20/season	12
Trail Construction all sub-areas & Huckleberry	Chainsaw, brush cutters, mowers, hand tools	Vegetation clearing for trail project	8	20/season	12
Trail Construction all sub-areas & Huckleberry	Mini-excavator, (e.g., SWECO), hand tools, boulder buster	Rock work for trail project	2	20/season	12

Incidental Take Permit  
No. 2081-2018-070-03

**EAST BAY REGIONAL PARK DISTRICT**

**McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT**



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

This ITP covers the following species:

<b>Name</b>	<b>CESA Status</b>
1. Alameda Whipsnake ( <i>Masticophis lateralis euryxanthus</i> )	Threatened <sup>3</sup>

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

**Impacts of the Taking on Covered Species:**

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include excavation; grading; vegetation clearing; grubbing; backfilling; compaction; culvert removal; culvert replacement; removal of drainage structures, seven concrete junction boxes, three concrete headwalls, and 70 feet of concrete retaining wall; planting wetland and riparian vegetation along creek channels; stockpiling soil and materials; vehicle movement and hauling; trenching; headwall and retaining wall installation; outfall installation, bridge installation; construction of in-stream and channel habitats; tree removal; road and parking lot construction; drilling for pier supports or installing bearing pads for spread strip footings; construction of trails, retaining structures, drainage crossings and rock crossings; fill placement; concrete mixing and laying; and removal of electrical lines and poles (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality (“kill”) may occur as a result of Covered Activities such as collapse or excavation of occupied burrows that results in crushing or suffocation of underground individuals during vegetation removal, grubbing, grading, excavation, compaction, and trenching; entombment of individuals from deposition of stockpiled material or spoils over occupied burrows; crushing due to movement of construction vehicles, compaction of soils, and entrapment and burial within trenches or open excavations; uncovering burrow systems through excavation; and vehicle/equipment strikes during site preparation and hauling materials and spoils. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species from disturbance in the vicinity of dens or burrows by activities such as removal of culverts and other drainage structures in which the Covered Species might take shelter, planting wetland and riparian vegetation along creek channels, headwall and retaining wall installation, bridge installation, construction of in-stream and channel habitats, tree removal, road and parking lot construction, concrete pouring, electrical line and pole removal, and construction of trails, retaining structures, drainage crossings, and rock crossings. Also, incidental take may occur during relocation of the Covered Species. The areas where authorized take of the Covered Species is expected

---

<sup>3</sup>See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(4)(D).

to occur include: staging areas, haul roads, existing and new trails, Fiddleneck Field area, Fern View Terrace area, expansion of parking areas, and in the creek restoration areas (collectively, the Project Area).

Overall, the Project is expected to cause the permanent loss of 1.93 acres, recreational impacts resulting in habitat conversion of 2.01 acres, and temporary loss of 1.45 acres of Covered Species habitat. The realignment of Pacific Pea Trail will also cause an additional temporary loss of 0.05 acre and permanent loss of 0.07 acre (0.12 acre total). See Figure 6 (Original and Updated Pacific Pea Trail Realignments). Ultimately, the Project will restore/improve 3.59 acres of Covered Species habitat through creation of new riparian habitat as well as closure and restoration of a trail. The 3.59 acres includes 3.31 acres of riparian habitat on Alder and Leatherwood Creek and 0.28 acres of trail closure and restoration. It does not include 0.30 acres of aquatic habitat restoration funded by the California Department of Transportation for the Pigeon Pass Route 84 Realignment Project in Alder Creek, the additional 0.20 acres of perennial aquatic habitat restoration in Alder Creek or the 0.11 acres of intermittent aquatic habitat restoration in Leatherwood Creek. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise and vibrations from excavation, grading, grubbing, backfilling, compaction, road and parking lot construction, vehicle hauling, and drilling for pier supports; capture and relocation, construction foot traffic, impediment to movement across the landscape by erosion control materials, and long-term effects due to mortalities from vehicle recreational use, spread of disease from recreational use, increase in avian and mammalian predatory species from food waste related to recreational use, increased pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

#### **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.

Incidental Take Permit  
No. 2081-2018-070-03

**EAST BAY REGIONAL PARK DISTRICT**

**McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT**

**Conditions of Approval:**

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

1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Environmental Impact Report (SCH No.: 2017062055) certified by East Bay Regional Park District on November 20, 2018 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 (LSA) Agreement (Notification No. 1600-2018-0323-R3 for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the McCosker Sub-Area Creek Restoration and Recreational Improvements Project (2009-F-0159) for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
5. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
6. **General Provisions:**
  - 6.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify

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

- 6.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
- 6.3. Biological Monitoring. During all other Covered Activities where the Designated Biologist is not present, a Designated Biological Monitor or Construction Monitor shall be present on-site. The Designated Biologist may appoint a Designated Biological Monitor(s) and a Construction Monitor(s) to monitor Covered Activities when a Designated Biologist is not needed on-site.
  - 6.3.1. The Designated Biological Monitor is a person(s) appointed by the Designated Biologist who is/are responsible for ensuring that the Conditions of Approval in this ITP are properly performed to prevent take when the Designated Biologist is not present. A person that is educated, has obtained a degree within the biological sciences, and is knowledgeable and experienced in the biology, natural history, and handling of the species covered by this ITP. The Designated Biological Monitor must be approved in advance by CDFW prior to Project initiation.
  - 6.3.2. The Construction Monitor is a person(s) appointed by the Designated Biologist who is/are responsible for ensuring the Conditions of Approval in this ITP are properly performed to prevent take when the Designated Biological Monitor is not present. The appointed Construction Monitor(s) are required to have completed the preconstruction training and must be familiar with the Conditions of Approval in this ITP.
- 6.4. Designated Biologist, Designated Biological Monitor, and Construction Monitor Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist, Designated Biological Monitor, or Construction Monitor shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.

- 6.5. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall 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.
- 6.6. Construction Monitoring Notebook. The Designated Biologist shall maintain a construction-monitoring notebook on-site 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 notebook is available for review at the Project site upon request by CDFW.
- 6.7. 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.
- 6.8. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as synthetic monofilament netting (erosion control matting or monofilament netting that has cross joints in the netting that are bound/stitched) or similar material, in potential Covered Species' habitat. Erosion control products shall be made of loose-weave mesh, such as jute, coconut (coir) fiber, or other products without welded weaves.
- 6.9. Delineation of Property Boundaries. Before starting Covered Activities along each part of the route in active construction, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.

- 6.10. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat. Covered Species' habitat, known populations of the Covered Species, and jurisdictional waters shall be clearly indicated on the project plans.
- 6.11. Project Access. Project-related personnel shall access the Project Area using existing routes and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, trails, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 15 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.
- 6.12. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.11 (Project Access) of this ITP.
- 6.13. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 6.14. 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.
- 6.15. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

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

- 7.1. Notification before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting and when ending Covered Activities each

year in which they take place and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.

- 7.2. As-builts Design Plans. Permittee shall submit final as-built design plans for the McCosker Creek Restoration and Recreational Infrastructure Improvement Project for the restoration components to CDFW within 30 business days from completion of initial planting efforts. The plans shall include design elements of the riparian restoration for Alder Creek and Leatherwood Creek (such as channel form, biotechnical stabilization, in-stream habitat features, and revegetation).
- 7.3. Riparian Restoration Revegetation Plan (Revegetation Plan). Prior to Project initiation, Permittee shall prepare and provide for CDFW review and approval a Revegetation Plan. This Revegetation Plan shall contain detailed specifications for minimizing the introduction of invasive weeds and restoring all temporarily disturbed areas and shall ensure that the contractor successfully implements the Revegetation Plan. The Revegetation Plan shall indicate the best time of year for seeding to occur and shall apply to all temporarily disturbed habitat, except the four-foot wide constructed trails.

To facilitate preparation of the Revegetation Plan, a botanist shall perform additional preconstruction surveys prior to construction. Baseline vegetation data included shall be plant species present, vegetation characterization (e.g., tree diameter), and percent cover of plant species. Photo documentation shall be used to show pre-Project conditions.

The Revegetation Plan shall provide measures to restore, improve, or re-establish habitat for the Covered Species on the site and shall include the following elements:

- 7.3.1. Name and Contact information for the property owner of the land on which the mitigation will take place;
- 7.3.2. Identification of the water source for supplemental irrigation, if needed;
- 7.3.3. Topsoil salvage and storage methods for areas that support special status plants;
- 7.3.4. Site preparation guidelines to prepare for planting;
- 7.3.5. Plant materials procurement, including assessment of risk of introduction of plant pathogens through the use of nursery-grown container stock vs. collection and propagation of site-specific plant materials, or use of seed;
- 7.3.6. A planting plan outlining species selection, planting locations and spacing, for each vegetation type to be restored;

- 7.3.7. Planting methods;
  - 7.3.8. Soil amendment recommendations, if needed;
  - 7.3.9. Irrigation plan with proposed rates, schedule, and seasonal guidelines for watering;
  - 7.3.10. Site protection plan to prevent damage to planted vegetation;
  - 7.3.11. Weeding and other vegetation maintenance tasks and schedule, with specific thresholds for acceptance of invasive species;
  - 7.3.12. Performance standards to assess the success of restoration efforts, in comparison to a relevant baseline or reference site and by which remedial actions will be triggered;
  - 7.3.13. Success criteria, which at a minimum requires the restoration sites meet the following performance standards by the fifth year following restoration:
    - 7.3.13.1. Temporarily impacted areas are returned to pre-Project conditions or better;
    - 7.3.13.2. Native vegetation cover shall be at least 80% of baseline/impact area;
    - 7.3.13.3. No groundcover of invasive species may be greater than the baseline/impact;
    - 7.3.13.4. Vegetation cover shall consist of less than 5% cover of invasive plant species rated as "high" by the Cal-IPC at the end of four years;
  - 7.3.14. Monitoring methods and schedule;
  - 7.3.15. Reporting requirements and schedule; and
  - 7.3.16. Adaptive management and corrective actions to achieve the success criteria.
- 7.4. Restoration Monitoring. Restoration monitoring for restoration and enhancement planting at Alder Creek and Leatherwood Creek shall be conducted annually for a period of five years post construction to determine whether the success criteria outlined in Condition of Approval 8.16 (Restoration of Riparian Habitat) have been met. If the survival and/or cover requirements are not projected to meet the success criteria based on annual monitoring, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practices that will achieve the requirements in Condition of Approval 8.16



(Restoration of Riparian Habitat). The restoration monitoring results shall be reported in the Annual Status Report (Condition of Approval 7.8) and summarized in the Final Mitigation Report (Condition of Approval 7.10).

- 7.5. Notification of Non-Compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.
- 7.6. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur and shall inspect the site weekly when the Project is dormant. 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) obtain photo documentation of Covered Activities and site conditions; (5) check all exclusion zones; and (6) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.
- 7.7. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.6 (Compliance Monitoring) into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Andrea Boertien ([Andrea.Boertien@wildlife.ca.gov](mailto:Andrea.Boertien@wildlife.ca.gov)) and Headquarters CESA Program email is [CESA@wildlife.ca.gov](mailto:CESA@wildlife.ca.gov). CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.
- 7.8. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 7.7; (2) a general description of the

status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.

7.9. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.

7.10. Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities for each period they occurred; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.

7.11. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (707) 428-2002. 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.

## 8. Take Minimization Measures:

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

- 8.1. Work Window. The work window for daylighting the culverted creeks shall be limited to April 15 to October 15. Revegetation work using non-motorized equipment may be done at any time, provided that erosion control measures have been implemented. Work in the Alder Creek culvert that runs under Pinehurst Road and in San Leandro Creek shall be limited to June 1 to October 15. If Permittee needs more time to complete Project activities, work may be authorized outside of the work period and extended on a day-by-day or week-by-week basis by CDFW representative, Andrea Boertien. If Permittee requests a work period extension, Permittee shall submit such a request in writing. The request shall: 1) describe the extent of work already completed; 2) detail the activities that remain to be completed; 3) detail the time required to complete each of the remaining activities; and 4) provide photographs of both the current work completed and the proposed site for continued work. The work period extension shall be issued at the discretion of CDFW. CDFW reserves the right to require additional measures to protect biological resources as a condition for granting the extension request.
- 8.2. Time of Day Work Restriction. Permittee shall terminate all Covered Activities 30 minutes before sunset and shall not resume Covered Activities until 30 minutes after sunrise. The Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for determining when Covered Activities shall terminate and resume.
- 8.3. Daily Surveys. If work is to occur outside of exclusion fencing (Condition of Approval 8.4), the Designated Biologist or Biological Monitor shall conduct daily walking surveys for Covered Species prior to the initiation of Covered Activities each day within construction areas outside of exclusion fencing, including excavated areas. If a Covered Species is discovered, the Designated Biologist, Biological Monitor, and Construction Monitor shall have the authority to halt construction until the Covered Species leaves the area of its own accord. If it can be safely captured, it shall be relocated by the Designated Biologist to a suitable location outside the Project Area.
- 8.4. Exclusion Fencing. Temporary wildlife fencing shall be installed and shall surround all areas in which work will take place in a season except for construction of foot-trails (i.e. less than 4 feet in width) prior to Covered Species' breeding season. The exclusion fencing shall consist of non-mesh fencing at least 24 inches tall, designed with a lip to prevent the Covered Species from climbing over the barrier, and buried to a depth of six inches below the soil surface. The soil shall be compacted against both sides of the fence to prevent the Covered Species from gaining access. The stakes shall be placed on the inside the exclusion area side of the fence. No gaps or

Incidental Take Permit  
No. 2081-2018-070-03

EAST BAY REGIONAL PARK DISTRICT

McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT

holes are permitted in the fencing system except for access areas as required for vehicular and pedestrian traffic. The exit/entry points shall be constructed so that it is flush to the ground and shall be designed to allow trapped individuals to leave the Project Area by installing one-way funnels, ramps, or other methods approved by CDFW. Cover boards shall be placed inside the exclusionary fenced area every 150 feet to provide cover for Covered Species within the construction area. An alternative exclusion fencing design may be used after receiving written authorization from CDFW. The exclusion fencing and cover boards shall be inspected daily by the Designated Biologist, Qualified Biologist, or Construction Monitor. However, only the Designated Biologist may relocate wildlife.

Where wildlife exclusion fencing is not installed and ground-disturbing activity is occurring (e.g., trail construction) in the Covered Species habitat, the Designated Biologist shall monitor all Covered Activities involving vehicles and equipment movement or operation, including initial clearing/pruning, staging, and ongoing construction.

The Designated Biologist shall be onsite during installation of the fencing to relocate any Covered Species to an area outside the construction area. After installation fencing shall be inspected by the Designated Biologist or Biological Monitor on a weekly basis to ensure fence integrity. Any needed repairs to the fence shall be performed immediately, if damaged, to ensure that it is functional and without defects. Permittee shall provide refuge opportunities along or near the outer side of the exclusion fence for the Covered Species. After construction is complete, the exclusion fencing shall be removed immediately.

- 8.5. Access Roads. The Designated Biologist shall inspect the entire motorized vehicle access routes to where Covered Activities will be occurring daily. Inspections shall occur in the morning prior to Project-related vehicle access and in the afternoon prior to Project-related vehicles exiting the Project Area. If a Designated Biologist finds a dead Covered Species on the access route, Permittee shall consult with CDFW to determine appropriate contingency measures and shall implement the measures determined appropriate by CDFW.

New access driveways shall not extend beyond the designated construction work area boundary. Construction vehicles shall pass and turn around only within the delineated construction work area boundary or local road network. Where new access is required outside of existing roads or the construction work area, the route shall be clearly marked (flagged and/or staked) prior to use, subject to review and approval of the Designated Biologist and approved by CDFW.

- 8.6. Speed Limit. Project-related vehicles shall observe a 15 mile per hour speed limit on unpaved roads within the limits of construction.

- 8.7. Vehicle and Equipment Inspection. Workers shall inspect for Covered Species under vehicles and equipment before vehicles and equipment are moved. If the Covered Species is present, the worker shall wait for the Covered Species to move unimpeded to a safe location. Alternatively, Designated Biologist shall be contacted to determine if the animal may be safely moved within the conditions of this ITP.
- 8.8. Vegetation Removal Methods. Where possible, hand tools (e.g. trimmer, chain saw, etc.) shall be used to trim or remove vegetation and trees. All vegetation removal shall be monitored by the Designated Biologist or Biological Monitor to minimize impacts to the Covered Species.
- 8.9. Allow Covered Species to Leave. If at any time a Covered Species is found on the site during Project construction, all work shall cease in the immediate vicinity until the Covered Species leaves on its own outside of the construction area or, if it can be captured, it shall be relocated by the Designated Biologist to a suitable location outside of the Project area.
- 8.10. Trench Escape and Inspection. The Designated Biologist, Designated Biological Monitor, or Construction Monitor shall inspect all open holes and trenches within the Project Area at the beginning of each day for trapped animals. To prevent entrapment, any open trenches, pits, or holes with a depth greater than one foot shall be covered at the conclusion of work each day with a hard, non-hear conductive material (e.g. plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood or installed as an earthen slope in each open trench, hole, or pit that is capable of allowing the Covered Species to escape of their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of work each day, the Designated Biologist, Designated Biological Monitor, or Construction Monitor shall inspect the open trench, pit, or hole for the Covered Species. Permittee shall cease all Covered Activities in the vicinity and notify the Designated Biologist immediately if any worker discovers that Covered Species have become trapped. If at any time a trapped Covered Species is discovered by the Designated Biologist or anyone else, the Designated Biologist shall capture and relocate the animal to a safe, nearby location.
- 8.11. Inspection of Pipes and Culverts. All construction pipes, culverts, or similar structures that are stored at the Project site for one or more overnight periods shall be securely capped prior to storage or inspected by the Designated Biologist before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a Covered Species is discovered inside a pipe by the Designated Biologist or anyone else, the Covered Species shall be allowed to leave of its own accord, or if it can be safely captured, it shall be relocated by the Designated Biologist to a suitable location

outside of the Project Area.

- 8.12. Spoils Piles. Spoils piles shall be placed away from small mammal burrows or habitat features such as rocky outcrops or woody debris used by the Covered Species as refugia habitat.
- 8.13. Dewatering. If dewatering is necessary, water from dewatering operations shall be held in a settling container or discharged in an upland location where it will not drain directly into small mammal burrows to avoid potential impact to the Covered Species.
- 8.14. Use of Rodenticide and Poison. At no time during the life of the Project shall rodenticides or other poisons used in the control of rodents be used by the Permittee within the Project Area.
- 8.15. Prevention of Spread of Invasive Species. Permittee shall conduct Covered Activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), from one Project site and/or waterbody to another. Prevention best management practices and guidelines for invasive plants can be found on the Cal-IPC's website at <http://www.cal-ipc.org/ip/prevention/index.php> and *The Declining Amphibian Task Force Fieldwork Code of Practice* guidance can be found at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281282-amphibians>.
- 8.16. Restoration of Riparian Habitat. Riparian habitats shall be restored (as referenced in Condition of Approval 7.3 (Riparian Restoration Revegetation Plan). Revegetation work shall be completed no later than one year after the date of initial construction impacts. The restoration and enhancement planting for Alder Creek and Leatherwood Creek shall occur upon completion of daylighting and channel construction. All restoration and enhancement planting shall be monitored and maintained as necessary for five years following the completion of planting and revegetation. The following success criteria shall apply:
- 8.16.1. All installed trees and shrubs shall have a minimum of 80% survival at the end of five years.
- 8.16.2. Vegetation cover shall consist of less than 5% cover of invasive plant species rated as "high" by the Cal-IPC at the end of four years.
- 8.16.3. Absolute ground cover of naturalized and non-native annual grassland plant species shall be a minimum of 80% at the end of four years.
- 8.16.4. If the survival and/or cover requirements are not meeting these goals, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice to achieve these

requirements over subsequent years until the success criteria is reached. Replacement plants shall be monitored with the same survival and growth requirements as during the initial monitoring period.

- 8.17. Abandonment and Restoration of Trails. Permittee shall restore 0.6 miles of trail (approximately 0.28 acres) on the existing Skyline Trail route. Permittee shall provide CDFW with a report of restoration reference site conditions by December 31, 2020. The report shall include absolute percent ground cover of forbs, grasses and shrubs making distinctions between native and nonnative species cover. By December 31, 2021 Permittee shall have completed the 0.6 miles of trail restoration by demonstrating that the site is self-sustaining (i.e. no supplemental watering or weeding needed) to match with a 15 percent margin of error, the groundcover characteristics of the restoration reference site.
- 8.18. Revegetation for Temporary Impacts to Disturbed Soils. All soils exposed or disturbed as a result of Project activities shall be revegetated with native plants or seeded with an erosion control seed mix containing native forbs, shrubs, wildflowers, and grasses. Revegetation shall be completed as soon as possible after earthmoving activities cease each construction season; however, plantings shall be most successful if done during the rainy season. Seeding placed after October 15 shall be applied by hydroseed or shall be covered with broadcast straw, jute netting, coconut fiber blanket, light mulch, or a similar erosion control method. Soils imported to the site for fill shall have similar chemical properties, drainage characteristics and composition to native soils. Soils should be clean of weed seeds and pathogens.
- 8.19. Covered Species Injury. If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately by telephone and e-mail followed by a written incident report as described in Condition of Approval 7.11 (Notification of Take or Injury). Notification shall include the name of the facility where the animal was taken.

**9. Habitat Management Land Acquisition and Restoration:**

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

acreage required to provide for adequate compensation.

Permanent impacts (other than trails) are 1.29 acres and shall be mitigated at a 3:1 ratio (3.87 acres required for mitigation). Permanent impacts due to trail construction are 0.64 acre and shall be mitigated at a 2:1 ratio (1.28 acres required for mitigation). Permanent impacts total 1.93 acres. The project will impact Fern View Terrace and Fiddleneck Field. The existing habitat will be converted for recreational use but will retain some habitat value. The habitat conversion for recreational day-use impacts to Fern View Terrace are 0.26 acres and shall be mitigated at a 1.25:1 mitigation ratio (0.33 acres required for mitigation). The habitat conversion for recreational impacts (including overnight use) to Fiddleneck Field are 1.75 acres and shall be mitigated at a 2:1 ratio (3.50 acres required for mitigation). Habitat conversion impacts total 2.01 acres. The realignment of Pacific Pea Trail will result in an additional permanent impact of 0.07 acre.

Temporary impacts are 1.45 acres that shall be mitigated at a 1:1 ratio (1.45 acres shall be required for mitigation). The realignment of Pacific Pea Trail will result in an additional temporary impact of 0.05 acre.

In sum, the Project as originally described in this ITP will impact 5.39 acres of Covered Species Habitat. The total acreage required for the originally described mitigation shall be 10.43 acres. Creation of 3.59 acres of riparian and upland habitat for the Covered Species shall be credited toward the total required mitigation. The total acreage required for mitigation for Project impacts as originally described in this ITP shall be 6.84 acres.

Impacts associated with the realignment of the Pacific Pea Trail shall be mitigated by the on-site creation of 0.5 acres of scrub habitat with rock outcrops for the Covered Species.

To meet this requirement, the Permittee shall either purchase 6.84 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of 6.84 acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 (Habitat Acquisition and Protection) below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 (Endowment Fund) below. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 (Performance Security) below for all uncompleted obligations. The Permittee shall also restore on-site 1.45 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.6 (Habitat Restoration) below.

Incidental Take Permit  
No. 2081-2018-070-03

**EAST BAY REGIONAL PARK DISTRICT**  
**McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT**



9.1. Cost Estimates. CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands and restoration of temporarily disturbed habitat as follows:

- 9.1.1. Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$102,951/acre for 6.84 acres: **\$704,185**. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;
- 9.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at **\$25,967**;
- 9.1.3. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at **\$22,046**;
- 9.1.4. Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$12,644/acre for 6.84 acres: **\$86,485**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 9.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5 (Reimburse CDFW), estimated at **\$3,000**.
- 9.1.6. Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.6 (Habitat Restoration), calculated at \$2,175/acre for 1.45 acres: **\$3,154**.

9.2. Covered Species Credits. Permittee shall purchase of 6.84 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 Condition of Approval 10 below.

OR:

9.3. Habitat Acquisition and Protection. To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:

- 9.3.1. Fee Title/Conservation Easement. Transfer fee title to 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. 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 does not hold 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 Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e);

- 9.3.2. 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, a formal Proposed Lands for Acquisition Form (see Attachment 2B) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;
- 9.3.3. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;
- 9.3.4. 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.
- 9.3.5. 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 <http://www.dfg.ca.gov/habcon/conplan/mitbank/>); (2) conducting a baseline biological assessment and land survey report within four months of recording

or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;

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

9.4. Funding for Perpetual Management of HM Lands. CDFW and Permittee entered into a Mitigation Funding Agreement (MFA), dated April 28, 2020, which is incorporated herein by reference, that ensures long-term funding for the perpetual management of the HM lands through a mechanism other than a long-term management endowment. Funding for perpetual management of compensatory habitat, pursuant to the MFA must be completed before starting Covered Activities, or within 18 months of the Covered Activities if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

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

9.4.1. Perpetual Management Funding Agreement. In recognition of Permittee's statutorily defined mission, staff expertise, and statutory authority and constraints, CDFW has determined that perpetual management funding for the Project may be accomplished by another mechanism other than a long-term

management endowment. CDFW and Permittee have entered into the MFA, which sets forth the terms and conditions under which Permittee shall ensure funding for the long-term management of the HM lands. The MFA, at minimum:

- 9.4.1.1. Requires Permittee to fund the full annual costs of managing HM lands from Permittee's annual budget;
  - 9.4.1.2. Requires Permittee to fund and maintain a perpetual security endowment (the Reserve Fund) equal to the cost of five years of management funding for the HM lands for the Project, as calculated in the PAR required by Condition of Approval 9.4.3 (Calculate the Long-Term Management Costs for the Reserve Fund Endowment);
  - 9.4.1.3. Allows CDFW unilaterally to call upon the security endowment, after written notice and a reasonable opportunity to cure, in the event of non-performance of any management obligations by Permittee;
  - 9.4.1.4. Requires Permittee to replenish the security endowment in the event CDFW calls on those funds pursuant to Condition of Approval 9.4.1.3; and
  - 9.4.1.5. Requires Permittee to provide a full endowment fund pursuant to Condition of Approval 9.4.2 (Endowment Fund) within 90 days of receipt of written notice from CDFW of a material breach of the MFA by Permittee.
- 9.4.2. Endowment Fund. This section 9.4.2 applies only in the event CDFW provides notice of a material breach of the MFA pursuant to Condition of Approval 9.4.1.5 above and Section 7 of the MFA. A long-term management fund is a sum of money, held in a CDFW-approved fund that provides funds for perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan required by Condition of Approval 9.3.5 (Start-Up Activities). Endowment as used in the original ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions, and appreciation thereon. The Endowment shall be governed by the original 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 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. In the event that funding is not provided through a Perpetual Funding Agreement in accordance

with Condition of Approval 9.4.1 above, such activities shall be funded through the Endowment, and the following requirements shall apply.

9.4.2.1. 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)(4) 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)(4).

9.4.2.2. 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. 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.

9.4.3. Calculate the Long-Term Management Costs for the Reserve Fund Endowment. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter “PAR”) to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.

9.4.3.1. Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the PAR and adjust for any additional administrative, periodic, or annual fees.

9.4.3.2. Endowment Buffers/Assumptions. Permittee shall include in PAR assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:

9.4.3.2.1. 10 Percent Contingency. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.

9.4.3.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.

9.4.3.2.3. Non-annualized Expenses. For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.

9.5. Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable expenses incurred by CDFW such as transaction fees, 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.

9.6. Habitat Restoration. Permittee shall restore on-site the 1.45 acres of Covered Species habitat that will be temporarily disturbed during construction to pre-project or better conditions, including the additional 0.05 and 0.07 acres of temporary and permanent impacts caused by the Pacific Pea Trail realignment. The temporary and permanent impacts have been mitigated by the on-site creation of 0.5 acres of scrub habitat with rock outcrops for the Covered Species. Within six months of issuance of this ITP, the Permittee shall prepare a Vegetation Restoration Plan to facilitate revegetation of the 1.45 acres of temporary construction disturbance on-site and shall ensure that the Plan is successfully implemented by the contractor. The Plan shall include detailed specifications for restoring all temporarily disturbed areas, such as seed mixes and application methods. The plan shall also indicate the best time of year for seeding to occur. Plantings undertaken between June 1 and October 31 shall include regular watering to ensure adequate growth. Condition of Approvals 7.3

Incidental Take Permit  
No. 2081-2018-070-03

EAST BAY REGIONAL PARK DISTRICT  
McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT

(Revegetation Plan), 7.4 (Restoration Monitoring), and 8.18 (Restoration of Covered Species Habitat) describes the measures to restore, improve, or re-establish habitat for the Covered Species on the site, monitoring requirements, and success criteria.

## 10. Performance 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 9 (Habitat Management Land Acquisition and Restoration) that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

- 10.1. Security Amount. The Security shall be in the amount of **\$844,837**. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.
- 10.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.
- 10.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.
- 10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 10.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.
- 10.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.
- 10.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:
  - Written documentation of the acquisition of the HM lands;
  - Copies of all executed and recorded conservation easements;
  - Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and
  - Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the required acquisition,

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

**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.

**Stop-Work Order:**

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 days 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. 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 25 additional days. 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.

**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.

**Notices:**

The Permittee shall deliver a copy of the ITP signed by all parties by e-mail, registered first class mail, or overnight delivery to the following address:

Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program  
Post Office Box 944209

Incidental Take Permit  
No. 2081-2018-070-03  
EAST BAY REGIONAL PARK DISTRICT  
McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT



Sacramento, CA 94244-2090  
[CESA@wildlife.ca.gov](mailto:CESA@wildlife.ca.gov)

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by 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 (2081-2018-070-03) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Erin Chappell, Regional Manager  
California Department of Fish and Wildlife  
Bay Delta Region – 3  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534

and a copy to:

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

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

Andrea Boertien, Environmental Scientist  
California Department of Fish and Wildlife  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
Telephone: (707) 317-0388  
E-mail: [Andrea.Boertien@wildlife.ca.gov](mailto:Andrea.Boertien@wildlife.ca.gov)

**Compliance with CEQA:**

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, East Bay Regional Parks District (EBRPD) Pub. Resources Code, §§ 21067, 21069). The lead agency's prior environmental review of the Project is set forth in the Sibley Volcanic Regional Preserve Final Land Use Plan Amendment Incorporating the McCosker Parcel and the Western Hills Open Space, (SCH No.: 2017062055) dated November 20, 2018 that the EBRPD certified for McCosker Sub-Area Creek Restoration and Recreational

Incidental Take Permit  
No. 2081-2018-070-03  
EAST BAY REGIONAL PARK DISTRICT  
MCCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT

Improvements Project on November 20, 2018. At the time the lead agency certified the EIR and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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

**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 and Game 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, Sibley Volcanic Regional Preserve Final Land Use Plan Amendment Incorporating the McCosker Parcel and the Western Hills Open Space, the results of site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 6.84 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.
- (9) 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.

**Attachments:**

FIGURE 1	Project Location
FIGURE 2	Project Area
FIGURE 3	Project Components: McCosker Sub-Area
FIGURE 4	Proposed Parking Layout, Main Sibley Staging Area
FIGURE 5	Construction Activities for Proposed Actions
FIGURE 6	Original and Updated Pacific Pea Trail Realignments
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2A, 2B	Habitat Management Lands Checklist; Proposed Lands for

ATTACHMENT 3  
ATTACHMENT 4  
ATTACHMENT 5

Acquisition Form  
Letter of Credit Form  
Mitigation Payment Transmittal Form  
Major Amendment No. 1 with Track Changes

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

**ON** 9/6/2024

DocuSigned by:  
*Erin Chappell*  
B77E9A6214EF486...  
\_\_\_\_\_  
Erin Chappell, Regional Manager  
Bay Delta Region

\_\_\_\_\_  
Incidental Take Permit  
No. 2081-2018-070-03  
**EAST BAY REGIONAL PARK DISTRICT**  
**McCOSKER SUB-AREA CREEK RESTORATION AND RECREATIONAL IMPROVEMENTS PROJECT**

## Attachment 5

Amended Incidental Take Permit No. 2081-2018-070-03 (Amendment No. 1)

**1. The ITP Authority has been revised and the ITP Background section has been inserted preceding the Effective Date Expiration section as follows:**

**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> CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

<b>Permittee:</b>	<b>East Bay Regional Park District (EBRPD)</b>
<b>Principal Officer:</b>	<a href="#"><u>Carmen Erasmus</u></a> <a href="#"><u>Becky Tuden</u></a>
<b>Contact Person:</b>	<a href="#"><u>Carmen Erasmus</u></a> <a href="#"><u>Becky Tuden</u></a> ; (510) <a href="#"><u>544-2303684-7488</u></a>
<b>Mailing Address:</b>	<b>2950 Peralta Oaks Court Oakland, CA 94605</b>

### Amended ITP Background<sup>3</sup>

On September 26, 2018, East Bay Regional Park District (EBRPD) (Permittee) submitted a CESA ITP application to 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. Permittee sought take coverage authorization for CESA listed species associated with the project-related impacts from the McCosker Sub-Area Creek Restoration and Recreational Improvements Project in Contra Costa County, California (Project). On May 29, 2024, CDFW received a request from Permittee to amend the original ITP and on June 19, 2024 CDFW received the appropriate fees.

On June 26, 2020, CDFW issued ITP No. 2081-2018-070-03 to Permittee authorizing take of Alameda whipsnake (*Masticophis lateralis euryxanthus*) (the Covered Species) associated with and incidental to the McCosker Sub-Area Creek Restoration and Recreational Improvements Project. The Project as described in the ITP originally issued by CDFW includes creek restoration of Alder Creek and Leatherwood Creek and enhancements and

---

<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.

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

recreational infrastructure improvements. Included in the recreational infrastructure improvements was trail system expansion by adding approximately 1.1. miles of new trails. As described in the original ITP, the Covered Activities associated with this Project were expected to result in a permanent loss of 1.93 acres, conversion of 2.01 acres, and temporary loss of 1.45 acres of Covered Species habitat. Based on the habitat in the Project Area and the proposed impacts, pursuant to CESA, CDFW required permanent protection and perpetual management of compensatory habitat as mitigation for Project-related impacts. To meet this requirement, the Permittee is acquiring 6.84 acres within a 30-acre area located in the Ohlone Regional wilderness, in Alameda County for the permanent protection and management of HM lands and 3.59 acres of restoration and enhancement of Covered Species habitat through trail closure and restoration and creation of new upland and riparian habitat.

Since issuance of the original ITP, design refinements have occurred that have changed the Project description and increased the Project footprint. Per the original ITP, the Pacific Pea Trail was to be constructed concurrently with creek restoration activities during the first phase of construction, which spanned from 2020 to 2023. None of the trail system expansion was completed during the initial construction phase. The Pacific Pea Trail was realigned to reduce impacts because of its original positioning on extremely steep hillslopes. The revised realignment follows the same general path as the original alignment, but features a revised tie-in point to the McCosker sub-area and a switchback to account for steep conditions. The construction details of the trail such as excavation depth, cut/fill balance, impacts to streams, construction methods, etc. remain the same; however, due to the switchback configuration, there will be an increase in the linear feet of constructed trail and an increase in the impact to Covered Species habitat and, therefore, potential take of the Covered Species. The updated alignment footprint will result in 0.12 additional acres of impacts to Covered Species habitat, 0.05 of which are temporary and 0.07 acres of permanent impact/habitat conversion from bay/oak woodland to trail. A conservation easement is being established for 6.84 acres off offsite in Covered Species-occupied habitat in the Ohlone Wilderness that protects high quality habitat in place of low-quality habitat and the Project has also created 0.5 acre of scrub habitat with rock outcrops for the Covered Species within the Project Area. The amendment updates the impacts of the Project based on the refined Project description and includes an additional map showing the Pacific Pea Trail realignment. It also allows for a Mitigation Funding Agreement instead of an endowment fund in Condition of Approval 9.

**2. The Effective Date and Expiration Date section has been amended as follows:**

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

This~~The original~~ ITP ~~shall be~~ was executed in duplicate original form and ~~shall become~~became effective ~~on~~when a duplicate original ~~is~~was acknowledged by signature of the Permittee on the last page of ~~this~~the original ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. ~~Unless~~

renewed by The original ITP's effective date was June 26, 2020. This remains the effective date for the original take authorization. The Amended ITP shall be executed in the same manner and shall become effective when CDFW's Habitat Conservation Planning Branch receives the signed Amended ITP. The ITP as originally issued to CDFW, this expired on December 31, 2024. This Amended ITP's authorization to take the Covered Species has been extended and shall expire on **December 31, 2024**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.10 of this ITP.

**3. The Project Description section has been amended as follows:**

*Trail Construction*

Most of the new trails will be four-foot wide earthen trails. The new trails will be constructed using a combination of small, mechanized equipment, such as a mini-excavator and hand tools. Some vegetation removal within shrubland and grassland habitat will be involved in the trail construction work. Trails through woodland or riparian habitat will not require tree removal or substantial pruning; trees will be avoided to construct proposed trails. The bed of the new trails will be an average of four-feet wide and an average of two feet on each side of the trail bed will be temporarily disturbed during construction. Disturbed slopes will be revegetated following construction. There will be approximately 1.1 acres of new trail and approximately 1.1 acres of impacted areas adjacent the trail that will be restored following construction.

Pacific Pea Trail, to be constructed within the McCosker and Huckleberry sub-areas, was realigned along the same general path, but has a revised tie-in point to the McCosker sub-area and a switchback to accommodate steep conditions.

Vegetation in disturbed areas resulting from the development of the trail system will be reestablished by 1) scarifying, seeding, and mulching using certified weed-free products; 2) planting native vegetation, transplanted from the vicinity or seeded with native species found in the area; or 3) applying stripping of surface vegetation accumulated from grading activities over areas temporarily disturbed by construction activities to encourage recovery of the natural habitat.

\* \* \*

**4. The Impacts of the Taking on Covered Species section has been amended as follows:**

\* \* \*

Overall, the Project is expected to cause the permanent loss of 1.93 acres, recreational impacts resulting in habitat conversion of 2.01 acres, and temporary loss of 1.45 acres of Co [The realignment of Pacific Pea Trail will also cause an additional temporary loss of 0.05 acre and permanent loss of 0.07 acre \(0.12 acre total\). See Figure 6 \(Original and Updated Pacific Pea Trail Realignments\)](#). Ultimately, the Project will restore/improve 3.59 acres of Covered Species habitat through creation of new riparian habitat as well as closure and restoration of a trail. The 3.59 acres includes 3.31 acres of riparian habitat on Alder and Leatherwood Creek and 0.28 acres of trail closure and restoration. It does not include 0.30 acres of aquatic habitat restoration funded by the California Department of Transportation for the Pigeon Pass Route 84 Realignment Project in Alder Creek, the additional 0.20 acres of perennial aquatic habitat restoration in Alder Creek or the 0.11 acres of intermittent aquatic habitat restoration in Leatherwood Creek. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise and vibrations from excavation, grading, grubbing, backfilling, compaction, road and parking lot construction, vehicle hauling, and drilling for pier supports; capture and relocation, construction foot traffic, impediment to movement across the landscape by erosion control materials, and long-term effects due to mortalities from vehicle recreational use, spread of disease from recreational use, increase in avian and mammalian predatory species from food waste related to recreational use, increased pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

\* \* \*

**5. Condition of Approval 9 has been amended as follows:**

**9. Habitat Management Land Acquisition and Restoration:**

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with 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 acreage required to provide for adequate compensation.

Permanent impacts (other than trails) are 1.29 acres and shall be mitigated at a 3:1 ratio (3.87 acres required for mitigation). Permanent impacts due to trail construction are 0.64 acre and shall be mitigated at a 2:1 ratio (1.28 acres required for mitigation). Permanent impacts total 1.93 acres. The project will impact Fern View Terrace and Fiddleneck Field. The existing habitat will be converted for recreational use but will retain some habitat value. The habitat conversion for recreational day-use impacts to Fern View



Terrace are 0.26 acres and shall be mitigated at a 1.25:1 mitigation ratio (0.33 acres required for mitigation). The habitat conversion for recreational impacts (including overnight use) to Fiddleneck Field are 1.75 acres and shall be mitigated at a 2:1 ratio (3.50 acres required for mitigation). Habitat conversion impacts total 2.01 acres. The realignment of Pacific Pea Trail will result in an additional permanent impact of 0.07 acre.

Temporary impacts are 1.45 acres that shall be mitigated at a 1:1 ratio (1.45 acres shall be required for mitigation). The realignment of Pacific Pea Trail will result in an additional temporary impact of 0.05 acre.

In sum, the Project as originally described in this ITP will impact 5.39 acres of Covered Species Habitat. The total acreage required for the originally described mitigation shall be 10.43 acres. Creation of 3.59 acres of riparian and upland habitat for the Covered Species shall be credited toward the total required mitigation. The total acreage required for mitigation for Project impacts as originally described in this ITP shall be 6.84 acres.

Impacts associated with the realignment of the Pacific Pea Trail shall be mitigated by the on-site creation of 0.5 acres of scrub habitat with rock outcrops for the Covered Species.

\* \* \*

## 6. Conditions of Approval 9.4 has been amended as follows:

9.4 Endowment Fund. If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 9.3, 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 provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 9.3.5. 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.

Funding for Perpetual Management of HM Lands. CDFW and Permittee entered into a Mitigation Funding Agreement (MFA), dated April 28, 2020, which is incorporated herein by reference, that ensures long-term funding for the perpetual management of the HM lands through a mechanism other than a long-term management endowment.

Funding for perpetual management of compensatory habitat, pursuant to the MFA must be completed before starting Covered Activities, or within 18 months of the Covered Activities if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

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

9.4.1 Perpetual Management Funding Agreement. In recognition of Permittee's statutorily defined mission, staff expertise, and statutory authority and constraints, CDFW has determined that perpetual management of the HM lands funding for the Project may be accomplished by establishing another mechanism other than a long-term management endowment. CDFW and Permittee have entered into the MFA, which sets forth the terms and conditions under which Permittee shall ensure funding for the long-term management of the HM lands. The MFA, at minimum:

9.4.1.1 Requires Permittee to fund (the full annual costs of managing HM lands from Permittee's annual budget;

9.4.1.2 Requires Permittee to fund and maintain a perpetual security endowment (the Reserve Fund) equal to the cost of five years of management funding for the HM lands for the Project, as calculated in the PAR required by Condition of Approval 9.4.3 (Calculate the Long-Term Management Costs for the Reserve Fund Endowment)-The-);

9.4.1.3 Allows CDFW unilaterally to call upon the security endowment, after written notice and a reasonable opportunity to cure, in the event of non-performance of any management obligations by Permittee;

9.4.1.4 Requires Permittee to replenish the security endowment in the event CDFW calls on those funds pursuant to Condition of Approval 9.4.1.3; and

9.4.1.5 Requires Permittee to provide a full endowment fund pursuant to Condition of Approval 9.4.2 (Endowment Fund) within 90 days of

receipt of written notice from CDFW of a material breach of the MFA by Permittee.

9.4.19.4.2 Endowment Fund. This section 9.4.2 applies only in the event CDFW provides notice of a material breach of the MFA pursuant to Condition of Approval 9.4.1.5 above and Section 7 of the MFA. A long-term management fund is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 9.3.5- (Start-Up Activities). Endowment as used in ~~this~~the original ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions, and appreciation thereon. The Endowment shall be governed by ~~this~~the original 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~~In the event that funding is not provided through a Perpetual Funding Agreement in accordance with Condition of Approval 9.4.1 above, such activities shall be funded through the Endowment, and the following requirements shall apply.

\* \* \*

9.4.2.2 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. 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.

9.4.3 Calculate the Long-Term Management Costs for the Reserve Fund Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term

management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.

\* \* \*

**7. Condition of Approval 9.6 has been amended as follows:**

9.6 Habitat Restoration. Permittee shall restore on-site the 1.45 acres of Covered Species habitat that will be temporarily disturbed during construction to pre-project or better conditions, including the additional 0.05 and 0.07 acres of temporary and permanent impacts caused by the Pacific Pea Trail realignment. The temporary and permanent impacts have been mitigated by the on-site creation of 0.5 acres of scrub habitat with rock outcrops for the Covered Species. Within six months of issuance of this ITP, the Permittee shall prepare a Vegetation Restoration Plan to facilitate revegetation of the 1.45 acres of temporary construction disturbance on-site and shall ensure that the Plan is successfully implemented by the contractor. The Plan shall include detailed specifications for restoring all temporarily disturbed areas, such as seed mixes and application methods. The plan shall also indicate the best time of year for seeding to occur. Plantings undertaken between June 1 and October 31 shall include regular watering to ensure adequate growth. Condition of Approvals 7.3 (Revegetation Plan), 7.4 (Restoration Monitoring), and 8.18 (Restoration of Covered Species Habitat) describes the measures to restore, improve, or re-establish habitat for the Covered Species on the site, monitoring requirements, and success criteria.

**8. The Notices section has been amended as follows:**

**Notices:**

The Permittee shall deliver a ~~fully executed duplicate original copy of the~~ ITP signed by all parties by e-mail, registered first class mail, or overnight delivery to the following address:

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

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by 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 (2081-2018-070-03) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

~~Gregg Erickson~~[Erin Chappell](#), Regional Manager  
California Department of Fish and Wildlife  
Bay Delta Region – 3  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534

and a copy to:

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

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

Andrea Boertien, Environmental Scientist  
California Department of Fish and Wildlife  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
Telephone: ~~(209) 234-3449~~[707\) 317-0388](tel:317-0388)  
E-mail: [Andrea.Boertien@wildlife.ca.gov](mailto:Andrea.Boertien@wildlife.ca.gov)

## **9. The Findings Pursuant to CESA have been amended as follows:**

### **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 and Game 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, Sibley Volcanic Regional Preserve Final Land Use Plan Amendment Incorporating the McCosker Parcel and the Western Hills Open Space, the results of site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through

the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 6.84 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.
- (9) [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.](#)

**10. Attachments have been amended as follows:**

**Attachments:**

FIGURE 1	Project Location
FIGURE 2	Project Area
FIGURE 3	Project Components: McCosker Sub-Area
FIGURE 4	Proposed Parking Layout, Main Sibley Staging Area
FIGURE 5	Construction Activities for Proposed Actions
<a href="#">FIGURE 6</a>	<a href="#">Original and Updated Pacific Pea Trail Realignments</a>
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2A, 2B	Habitat Management Lands Checklist; Proposed Lands for Acquisition Form
ATTACHMENT 3	Letter of Credit Form
ATTACHMENT 4	Mitigation Payment Transmittal Form
<a href="#">ATTACHMENT 5</a>	<a href="#">Major Amendment No. 1 with Track Changes</a>

**11. The Acknowledgment section has been deleted.**

**ACKNOWLEDGMENT**

~~The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of this ITP, and (3) agrees on behalf of the Permittee to comply with all terms and conditions~~

By: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

**Attachment 1**

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

**INCIDENTAL TAKE PERMIT NO. 2081-2018-070-03**

**PERMITTEE: East Bay Regional Parks District**

**PROJECT: McCosker Sub-Area Creek Restoration and  
Recreational Improvements Project**

**PURPOSE OF THE MMRP**

The purpose of the MMRP is to ensure that the impact minimization and mitigation measures required by the California Department of Fish and Wildlife (CDFW) for the above-referenced Project are properly implemented, and thereby to ensure compliance with section 2081(b) of the Fish and Game Code and section 21081.6 of the Public Resources Code. A table summarizing the mitigation measures required by CDFW is attached. This table is a tool for use in monitoring and reporting on implementation of mitigation measures, but the descriptions in the table do not supersede the mitigation measures set forth in the California Incidental Take Permit (ITP) and in attachments to the ITP, and the omission of a permit requirement from the attached table does not relieve the Permittee of the obligation to ensure the requirement is performed.

**OBLIGATIONS OF PERMITTEE**

Mitigation measures must be implemented within the time periods indicated in the table that appears below. Permittee has the primary responsibility for monitoring compliance with all mitigation measures and for reporting to CDFW on the progress in implementing those measures. These monitoring and reporting requirements are set forth in the ITP itself and are summarized at the front of the attached table.

**VERIFICATION OF COMPLIANCE, EFFECTIVENESS**

CDFW may, at its sole discretion, verify compliance with any mitigation measure or independently assess the effectiveness of any mitigation measure.

**TABLE OF MITIGATION MEASURES**

The following items are identified for each mitigation measure: Mitigation Measure, Source, Implementation Schedule, Responsible Party, and Status/Date/Initials. The Mitigation Measure column summarizes the mitigation requirements of the ITP. The Source column identifies the ITP condition that sets forth the mitigation measure. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure. The Status/Date/Initials column shall be completed by the Permittee during preparation of each Status Report and the Final Mitigation Report, and must identify the implementation status of each mitigation measure, the date that status was determined, and the initials of the person determining the status.



	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
<b>BEFORE DISTURBING SOIL OR VEGETATION</b>					
1	Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with the ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of the ITP.	ITP Condition # 6.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed.	ITP Condition # 6.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
3	<p>Biological Monitoring. During all other Covered Activities where the Designated Biologist is not present, a Designated Biological Monitor or Construction Monitor shall be present onsite. The Designated Biologist may appoint a Designated Biological Monitor(s) and a Construction Monitor(s) to monitor Covered Activities when a Designated Biologist is not needed onsite.</p> <p>6.3.1. The Designated Biological Monitor is a person(s) appointed by the Designated Biologist who is/are responsible for ensuring that the Conditions of Approval in the ITP are properly performed to prevent take when the Designated Biologist is not present. A person that is educated, has obtained a degree within the biological sciences, and is knowledgeable and experienced in the biology, natural history, and handling of the species covered by the ITP. The Designated Biological Monitor must be approved in advance by CDFW prior to Project initiation.</p> <p>6.3.2. The Construction Monitor is a person(s) appointed by the Designated Biologist who is/are responsible for ensuring the Conditions of Approval in the ITP are properly performed to prevent take when the Designated Biological Monitor is not present. The appointed Construction Monitor(s) are required to have completed the preconstruction training and must be familiar with the Conditions of Approval in the ITP.</p>	ITP Condition # 6.3	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
4	Designated Biologist, Designated Biological Monitor, and Construction Monitor Authority. To ensure compliance with the Conditions of Approval of the ITP, the Designated Biologist, Designated Biological Monitor, or Construction Monitor shall have authority to immediately stop any activity that does not comply with the ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.	ITP Condition # 6.4	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
5	Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in the 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.	ITP Condition # 6.5	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
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.	ITP Condition # 6.7	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
7	Delineation of Property Boundaries. Before starting Covered Activities along each part of the route in active construction, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.	ITP Condition # 6.9	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
8	Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat. Covered Species' habitat, known populations of the Covered Species, and jurisdictional waters shall be clearly indicated on the project plans.	ITP Condition # 6.10	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
9	Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.11 (Project Access) of the ITP	ITP Condition # 6.12	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
10	Notification before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting and when ending Covered Activities each year in which they take place and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.	ITP Condition # 7.1	Before commencing ground- or vegetation-disturbing activities	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
11	<p>As-builts Design Plans. Permittee shall submit final as-built design plans for the McCosker Creek Restoration and Recreational Infrastructure Improvement Project for the restoration components to CDFW within 30 business days from completion of initial planting efforts. The plans shall include design elements of the riparian restoration for Alder Creek and Leatherwood Creek (such as channel form, biotechnical stabilization, in-stream habitat features, and revegetation).</p>	ITP Condition # 7.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
12	<p>Riparian Restoration Revegetation Plan (Revegetation Plan). Prior to Project initiation, Permittee shall prepare and provide for CDFW review and approval a Revegetation Plan. This Revegetation Plan shall contain detailed specifications for minimizing the introduction of invasive weeds and restoring all temporarily disturbed areas and shall ensure that the contractor successfully implements the Revegetation Plan. The Revegetation Plan shall indicate the best time of year for seeding to occur and shall apply to all temporarily disturbed habitat, except the four-foot wide constructed trails.</p> <p>To facilitate preparation of the Revegetation Plan, a botanist shall perform additional preconstruction surveys prior to construction. Baseline vegetation data included shall be plant species present, vegetation characterization (e.g., tree diameter), and percent cover of plant species. Photo documentation shall be used to show pre-Project conditions.</p> <p>The Revegetation Plan shall provide measures to restore, improve, or re-establish habitat for the Covered Species on the site and shall include the following elements:</p> <p>7.3.1. Name and Contact information for the property owner of the land on which the mitigation will take place;</p> <p>7.3.2. Identification of the water source for supplemental irrigation, if needed;</p> <p>7.3.3. Topsoil salvage and storage methods for areas that support special status plants;</p> <p>7.3.4. Site preparation guidelines to prepare for planting;</p> <p>7.3.5. Plant materials procurement, including assessment of risk of introduction of plant pathogens through the use of nursery-grown container stock vs. collection and propagation of site-specific plant materials, or use of seed;</p> <p>7.3.6. A planting plan outlining species selection, planting locations and spacing, for each vegetation type to be restored;</p> <p>7.3.7. Planting methods;</p> <p>7.3.8. Soil amendment recommendations, if needed;</p> <p>7.3.9. Irrigation plan with proposed rates, schedule, and seasonal guidelines for watering;</p> <p>7.3.10. Site protection plan to prevent damage to planted vegetation;</p> <p>7.3.11. Weeding and other vegetation maintenance tasks and schedule, with specific thresholds for acceptance of invasive species;</p> <p>7.3.12. Performance standards to assess the success of restoration efforts, in comparison to a</p>	ITP Condition # 7.3	Before commencing ground- or vegetation-disturbing activities	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
	<p>relevant baseline or reference site and by which remedial actions will be triggered;</p> <p>7.3.13. Success criteria, which at a minimum requires the restoration sites meet the following performance standards by the fifth year following restoration:</p> <p>7.3.13.1. Temporarily impacted areas are returned to pre-Project conditions or better;</p> <p>7.3.13.2. Native vegetation cover shall be at least 80% of baseline/impact area;</p> <p>7.3.13.3. No groundcover of invasive species may be greater than the baseline/impact;</p> <p>7.3.13.4. Vegetation cover shall consist of less than 5% cover of invasive plant species rated as "high" by the Cal-IPC at the end of four years;</p> <p>7.3.14. Monitoring methods and schedule;</p> <p>7.3.15. Reporting requirements and schedule; and</p> <p>7.3.16. Adaptive management and corrective actions to achieve the success criteria.</p>				
13	<p>Permittee shall either purchase 6.84 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of 6.84 acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 (Habitat Acquisition and Protection) below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 (Endowment Fund) below. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of the ITP if Security is provided pursuant to Condition of Approval 10 (Performance Security) below for all uncompleted obligations. The Permittee shall also restore on-site 1.45 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.6 (Habitat Restoration) below.</p>	ITP Condition # 9	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
14	<p>Cost Estimates. CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands and restoration of temporarily disturbed habitat as follows:</p> <p>9.1.1. Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$102,951 /acre for 6.84 acres: \$704,185. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;</p> <p>9.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at \$25,967;</p> <p>9.1.3. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at \$22,046;</p> <p>9.1.4. Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$12,644/acre for 6.84 acres: \$86,485. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.</p>	ITP Condition # 9.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	<p>9.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5 (Reimburse CDFW), estimated at \$3,000.</p> <p>9.1.6. Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.6 (Habitat Restoration), calculated at \$2,175/acre for 1.45 acres: \$3,154</p>				
15	<p>Covered Species Credits. Permittee shall purchase 6.84 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 the ITP if Security is provided pursuant to Condition of Approval 10 below.</p> <p>OR:</p>	ITP Condition # 9.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
16	<p>Habitat Acquisition and Protection. To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:</p> <p>9.3.1. Fee Title/Conservation Easement. Transfer fee title to 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. 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 does not hold 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 Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e);</p>	ITP Condition # 9.3.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
17	<p>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, a formal Proposed Lands for Acquisition Form (see Attachment 2B) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;</p>	ITP Condition # 9.3.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
18	HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A). 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;	ITP Condition # 9.3.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
19	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.	ITP Condition # 9.3.4	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
20	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 <a href="http://www.dfg.ca.gov/habcon/conplan/mitbank/">http://www.dfg.ca.gov/habcon/conplan/mitbank/</a> ); (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;	ITP Condition # 9.3.5	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
21	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, signage, continuing trash removal, site monitoring, and vegetation and invasive species management. Permittee shall either (1) provide a 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.	ITP Condition # 9.3.6	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
22	<p><u>Funding for Perpetual Management of HM Lands</u>. CDFW and Permittee entered into a Mitigation Funding Agreement (MFA), dated April 28, 2020, which is incorporated herein by reference, that ensures long-term funding for the perpetual management of the HM lands through a mechanism other than a long-term management endowment. Funding for perpetual management of compensatory habitat, pursuant to the MFA must be completed before starting Covered Activities, or within 18 months of the Covered Activities if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.</p> <p>Permittee shall ensure that the designated long-term land manager implements the perpetual management, maintenance, and monitoring of the HM lands as described in this Amended ITP according to the conservation easement and the final management plan approved by CDFW. 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.</p>	ITP Condition # 9.4	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
23	<p>Perpetual Management Funding Agreement. In recognition of Permittee's statutorily defined mission, staff expertise, and statutory authority and constraints, CDFW has determined that perpetual management funding for the Project may be accomplished by another mechanism other than a long-term management endowment. CDFW and Permittee have entered into the MFA, which sets forth the terms and conditions under which Permittee shall ensure funding for the long-term management of the HM lands. The MFA, at minimum:</p> <p>Requires Permittee to fund the full annual costs of managing HM lands from Permittee's annual budget;</p> <p>Requires Permittee to fund and maintain a perpetual security endowment (the Reserve Fund) equal to the cost of five years of management funding for the HM lands for the Project, as calculated in the PAR required by Condition of Approval 9.4.3 (Calculate the Long-Term Management Costs for the Reserve Fund Endowment);</p> <p>Allows CDFW unilaterally to call upon the security endowment, after written notice and a reasonable opportunity to cure, in the event of non-performance of any management obligations by Permittee;</p> <p>Requires Permittee to replenish the security endowment in the event CDFW calls on those funds pursuant to Condition of Approval 9.4.1.3; and</p> <p>Requires Permittee to provide a full endowment fund pursuant to Condition of Approval 9.4.2 (Endowment Fund) within 90 days of receipt of written notice from CDFW of a material breach of the MFA by Permittee.</p>	ITP Condition # 9.4.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
24	<p>Endowment Fund. This section 9.4.2 applies only in the event CDFW provides notice of a material breach of the MFA pursuant to Condition of Approval 9.4.1.5 above and Section 7 of the MFA. A long-term management fund is a sum of money, held in a CDFW-approved fund that provides funds for perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan required by Condition of Approval 9.3.5 (Start-Up Activities). Endowment as used in the original ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions, and appreciation thereon. The Endowment shall be governed by the original ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.</p> <p>After the interim management period, Permittee shall ensure that the designated long-term 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. In the event that funding is not provided through a Perpetual Funding Agreement in accordance with Condition of Approval 9.4.1 above, such activities shall be funded through the Endowment, and the following requirements shall apply.</p>	ITP Condition # 9.4.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
25	<p>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)(4) 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)(4).;</p>	ITP Conditions # 9.4.2.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
26	<p>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. 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 the ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.</p>	ITP Conditions # 9.4.2.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	



	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
27	Calculate the Long-Term Management Costs for the Reserve Fund Endowment. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.	ITP Conditions # 9.4.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
28	Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the PAR and adjust for any additional administrative, periodic, or annual fees.	ITP Conditions # 9.4.3.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
29	<p>Endowment Buffers/Assumptions. Permittee shall include in PAR assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:</p> <p>9.4.3.2.1. 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.</p> <p>9.4.3.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.</p> <p>9.4.3.2.3. 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.</p>	ITP Conditions # 9.4.3.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
30	Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable expenses incurred by CDFW such as transaction fees, 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.	ITP Conditions # 9.5	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
31	<p>Habitat Restoration. Permittee shall restore on-site the 1.45 acres of Covered Species habitat that will be temporarily disturbed during construction to pre-project or better conditions, including the additional 0.05 and 0.07 acres of temporary and permanent impacts caused by the Pacific Pea Trail Realignment. The temporary and permanent impacts have been mitigated by the creation 0.5 acres of scrub habitat with rock outcrops for the Covered Species. Within six months of issuance of the ITP, the Permittee shall prepare a Vegetation Restoration Plan to facilitate revegetation of the 1.45 acres of temporary construction disturbance on-site and shall ensure that the Plan is successfully implemented by the contractor. The Plan shall include detailed specifications for restoring all temporarily disturbed areas, such as seed mixes and application methods. The plan shall also indicate the best time of year for seeding to occur. Plantings undertaken between June 1 and October 31 shall include regular watering to ensure adequate growth. Condition of Approvals 7.3 (Revegetation Plan), 7.4 (Restoration Monitoring), and 8.18 (Restoration of Covered Species Habitat) describes the measures to restore, improve, or re-establish habitat for the Covered Species on the site, monitoring requirements, and success criteria.</p>	ITP Conditions # 9.6	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
32	<p>The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 9 (Habitat Management Land Acquisition and Restoration) that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:</p> <p>10.1. Security Amount. The Security shall be in the amount of \$844,837. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.</p> <p>10.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.</p> <p>10.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of the ITP, whichever occurs first.</p> <p>10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.</p> <p>10.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.</p> <p>10.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of the ITP.</p> <p>10.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:</p> <ul style="list-style-type: none"> <li>• Written documentation of the acquisition of the HM lands;</li> <li>• Copies of all executed and recorded conservation easements;</li> </ul>	ITP Condition # 10	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	<ul style="list-style-type: none"> <li>• Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and</li> <li>• Timely submission of all required reports.</li> </ul> <p>Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the effective date of the 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.</p>				
<b>DURING CONSTRUCTION</b>					
33	Construction Monitoring Notebook. The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of the ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.	ITP Condition # 6.6	Entire Project	Permittee	
34	Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as synthetic monofilament netting (erosion control matting or monofilament netting that has cross joints in the netting that are bound/stitched) or similar material, in potential Covered Species' habitat. Erosion control products shall be made of loose-weave mesh, such as jute, coconut (coir) fiber, or other products without welded weaves.	ITP Condition # 6.8	Entire Project	Permittee	
35	Project Access. Project-related personnel shall access the Project Area using existing routes and shall not cross Covered Species' habitat outside of or enroute to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, trails, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 15 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel 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 the ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.	ITP Condition # 6.11	Entire Project	Permittee	
36	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.	ITP Condition # 6.13	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
37	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 the ITP.	ITP Condition # 6.14	Entire Project	Permittee	
38	Notification of Non-Compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of the ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in the ITP and/or the MMRP. The Designated Representative shall report any non-compliance with the ITP to CDFW within 24 hours.	ITP Condition # 7.5	Entire Project	Permittee	
39	Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur and shall inspect the site weekly when the Project is dormant. 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 the ITP; (4) obtain photo documentation of Covered Activities and site conditions; (5) check all exclusion zones; and (6) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by the ITP.	ITP Condition # 7.6	Entire Project	Permittee	
40	Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.6 (Compliance Monitoring) into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of the ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of the ITP's approval, the CDFW Regional Representative is Andrea Boertien (Andrea.Boertien@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.	ITP Condition # 7.7	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
41	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 the ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 7.7; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.	ITP Condition # 7.8	Entire Project	Permittee	
42	CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.	ITP Condition # 7.9	Entire Project	Permittee	
43	Work Window. The work window for daylighting the culverted creeks shall be limited to April 15 to October 15. Revegetation work using non-motorized equipment may be done at any time, provided that erosion control measures have been implemented. Work in the Alder Creek culvert that runs under Pinehurst Road and in San Leandro Creek shall be limited to June 1 to October 15.	ITP Condition # 8.1	Entire Project	Permittee	
44	Time of Day Work Restriction. Permittee shall terminate all Covered Activities 30 minutes before sunset and shall not resume Covered Activities until 30 minutes after sunrise. The Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for determining when Covered Activities shall terminate and resume.	ITP Condition # 8.2	Entire Project	Permittee	
45	Daily Surveys. If work is to occur outside of exclusion fencing (Condition of Approval 8.4), the Designated Biologist or Biological Monitor shall conduct daily walking surveys for Covered Species prior to the initiation of Covered Activities each day within construction areas outside of exclusion fencing, including excavated areas. If a Covered Species is discovered, the Designated Biologist, Biological Monitor, and Construction Monitor shall have the authority to halt construction until the Covered Species leaves the area of its own accord. If it can be safely captured, it shall be relocated by the Designated Biologist to a suitable location outside the Project Area.	ITP Condition # 8.3	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
46	<p>Exclusion Fencing. Temporary wildlife fencing shall be installed and shall surround all areas in which work will take place in a season except for construction of foot-trails (i.e. less than 4 feet in width) prior to Covered Species' breeding season. The exclusion fencing shall consist of non-mesh fencing at least 24 inches tall, designed with a lip to prevent the Covered Species from climbing over the barrier, and buried to a depth of six inches below the soil surface. The soil shall be compacted against both sides of the fence to prevent the Covered Species from gaining access. The stakes shall be placed on the inside the exclusion area side of the fence. No gaps or holes are permitted in the fencing system except for access areas as required for vehicular and pedestrian traffic. The exit/entry points shall be constructed so that it is flush to the ground and shall be designed to allow trapped individuals to leave the Project Area by installing one-way funnels, ramps, or other methods approved by CDFW. Cover boards shall be placed inside the exclusionary fenced area every 150 feet to provide cover for Covered Species within the construction area. An alternative exclusion fencing design may be used after receiving written authorization from CDFW. The exclusion fencing and cover boards shall be inspected daily by the Designated Biologist, Qualified Biologist, or Construction Monitor. However, only the Designated Biologist may relocate wildlife.</p> <p>Where wildlife exclusion fencing is not installed and ground-disturbing activity is occurring (e.g., trail construction) in the Covered Species habitat, the Designated Biologist shall monitor all Covered Activities involving vehicles and equipment movement or operation, including initial clearing/pruning, staging, and ongoing construction.</p> <p>The Designated Biologist shall be onsite during installation of the fencing to relocate any Covered Species to an area outside the construction area. After installation fencing shall be inspected by the Designated Biologist or Biological Monitor on a weekly basis to ensure fence integrity. Any needed repairs to the fence shall be performed immediately, if damaged, to ensure that it is functional and without defects. Permittee shall provide refuge opportunities along or near the outer side of the exclusion fence for the Covered Species. After construction is complete, the exclusion fencing shall be removed immediately.</p>	ITP Condition # 8.4	Entire Project	Permittee	
47	<p>Access Roads. The Designated Biologist shall inspect the entire motorized vehicle access routes to where Covered Activities will be occurring daily. Inspections shall occur in the morning prior to Project-related vehicle access and in the afternoon prior to Project-related vehicles exiting the Project Area. If a Designated Biologist finds a dead Covered Species on the access route, Permittee shall consult with CDFW to determine appropriate contingency measures and shall implement the measures determined appropriate by CDFW.</p> <p>New access driveways shall not extend beyond the designated construction work area boundary. Construction vehicles shall pass and turn around only within the delineated construction work area boundary or local road network. Where new access is required outside of existing roads or the construction work area, the route shall be clearly marked (flagged and/or staked) prior to use, subject to review and approval of the Designated Biologist and approved by CDFW.</p>	ITP Condition # 8.5	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
48	Speed Limit. Project-related vehicles shall observe a 15 mile per hour speed limit on unpaved roads within the limits of construction.	ITP Condition # 8.6	Entire Project	Permittee	
49	Vehicle and Equipment Inspection. Workers shall inspect for Covered Species under vehicles and equipment before vehicles and equipment are moved. If the Covered Species is present, the worker shall wait for the Covered Species to move unimpeded to a safe location. Alternatively, Designated Biologist shall be contacted to determine if the animal may be safely moved within the conditions of the ITP.	ITP Condition # 8.7	Entire Project	Permittee	
50	Vegetation Removal Methods. Where possible, hand tools (e.g. trimmer, chain saw, etc.) shall be used to trim or remove vegetation and trees. All vegetation removal shall be monitored by the Designated Biologist or Biological Monitor to minimize impacts to the Covered Species.	ITP Condition # 8.8	Entire Project	Permittee	
51	Allow Covered Species to Leave. If at any time a Covered Species is found on the site during Project construction, all work shall cease in the immediate vicinity until the Covered Species leaves on its own outside of the construction area or, if it can be captured, it shall be relocated by the Designated Biologist to a suitable location outside of the Project area.	ITP Condition # 8.9	Entire Project	Permittee	
52	Trench Escape and Inspection. The Designated Biologist, Designated Biological Monitor, or Construction Monitor shall inspect all open holes and trenches within the Project Area at the beginning of each day for trapped animals. To prevent entrapment, any open trenches, pits, or holes with a depth greater than one foot shall be covered at the conclusion of work each day with a hard, non-hear conductive material (e.g. plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood or installed as an earthen slope in each open trench, hole, or pit that is capable of allowing the Covered Species to escape of their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of work each day, the Designated Biologist, Designated Biological Monitor, or Construction Monitor shall inspect the open trench, pit, or hole for the Covered Species. Permittee shall cease all Covered Activities in the vicinity and notify the Designated Biologist immediately if any worker discovers that Covered Species have become trapped. If at any time a trapped Covered Species is discovered by the Designated Biologist or anyone else, the Designated Biologist shall capture and relocate the animal to a safe, nearby location.	ITP Condition # 8.10	Entire Project	Permittee	
53	Inspection of Pipes and Culverts. All construction pipes, culverts, or similar structures that are stored at the Project site for one or more overnight periods shall be securely capped prior to storage or inspected by the Designated Biologist before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a Covered Species is discovered inside a pipe by the Designated Biologist or anyone else, the Covered Species shall be allowed to leave of its own accord, or if it can be safely captured, it shall be relocated by the Designated Biologist to a suitable location outside of the Project Area.	ITP Condition # 8.11	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
54	Spoils Piles. Spoils piles shall be placed away from small mammal burrows or habitat features such as rocky outcrops or woody debris used by the Covered Species as refugia habitat.	ITP Condition # 8.12	Entire Project	Permittee	
55	Dewatering. If dewatering is necessary, water from dewatering operations shall be held in a settling container or discharged in an upland location where it will not drain directly into small mammal burrows to avoid potential impact to the Covered Species.	ITP Condition # 8.13	Entire Project	Permittee	
56	Use of Rodenticide and Poison. At no time during the life of the Project shall rodenticides or other poisons used in the control of rodents be used by the Permittee within the Project Area.	ITP Condition # 8.14	Entire Project	Permittee	
57	Prevention of Spread of Invasive Species. Permittee shall conduct Covered Activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), from one Project site and/or waterbody to another. Prevention best management practices and guidelines for invasive plants can be found on the Cal-IPC's website at <a href="http://www.cal-ipc.org/ip/prevention/index.php">http://www.cal-ipc.org/ip/prevention/index.php</a> and The Declining Amphibian Task Force Fieldwork Code of Practice guidance can be found at <a href="https://wildlife.ca.gov/Conservation/Survey-Protocols#377281282-amphibians">https://wildlife.ca.gov/Conservation/Survey-Protocols#377281282-amphibians</a> .	ITP Condition # 8.15	Entire Project	Permittee	
58	Abandonment and Restoration of Trails. Permittee shall restore 0.6 miles of trail (approximately 0.28 acres) on the existing Skyline Trail route. Permittee shall provide CDFW with a report of restoration reference site conditions by December 31, 2020. The report shall include absolute percent ground cover of forbs, grasses and shrubs making distinctions between native and nonnative species cover. By December 31, 2021 Permittee shall have completed the 0.6 miles of trail restoration by demonstrating that the site is self-sustaining (i.e. no supplemental watering or weeding needed) to match with a 15 percent margin of error, the groundcover characteristics of the restoration reference site.	ITP Condition # 8.17	Entire Project	Permittee	
59	Revegetation for Temporary Impacts to Disturbed Soils. All soils exposed or disturbed as a result of Project activities shall be revegetated with native plants or seeded with an erosion control seed mix containing native forbs, shrubs, wildflowers, and grasses. Revegetation shall be completed as soon as possible after earthmoving activities cease each construction season; however, plantings shall be most successful if done during the rainy season. Seeding placed after October 15 shall be applied by hydroseed or shall be covered with broadcast straw, jute netting, coconut fiber blanket, light mulch, or a similar erosion control method. Soils imported to the site for fill shall have similar chemical properties, drainage characteristics and composition to native soils. Soils should be clean of weed seeds and pathogens.	ITP Condition # 8.18	Entire Project	Permittee	



	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
60	Covered Species Injury. If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately by telephone and e-mail followed by a written incident report as described in Condition of Approval 7.11 (Notification of Take or Injury). Notification shall include the name of the facility where the animal was taken.	ITP Condition # 8.19	Entire Project	Permittee	
<b>POST-CONSTRUCTION</b>					
61	Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.	ITP Condition # 6.15	Post-construction	Permittee	
62	<p>Restoration of Riparian Habitat. Riparian habitats shall be restored (as referenced in Condition of Approval 7.3 (Riparian Restoration Revegetation Plan). Revegetation work shall be completed no later than one year after the date of initial construction impacts. The restoration and enhancement planting for Alder Creek and Leatherwood Creek shall occur upon completion of daylighting and channel construction. All restoration and enhancement planting shall be monitored and maintained as necessary for five years following the completion of planting and revegetation. The following success criteria shall apply:</p> <p>8.16.1. All installed trees and shrubs shall have a minimum of 80% survival at the end of five years.</p> <p>8.16.2. Vegetation cover shall consist of less than 5% cover of invasive plant species rated as "high" by the Cal-IPC at the end of four years.</p> <p>8.16.3. Absolute ground cover of naturalized and non-native annual grassland plant species shall be a minimum of 80% at the end of four years.</p> <p>8.16.4. If the survival and/or cover requirements are not meeting these goals, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice to achieve these requirements over subsequent years until the success criteria is reached. Replacement plants shall be monitored with the same survival and growth requirements as during the initial monitoring period.</p>	ITP Condition # 8.16	Post-construction	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
63	Restoration Monitoring. Restoration monitoring for restoration and enhancement planting at Alder Creek and Leatherwood Creek shall be conducted annually for a period of five years post construction to determine whether the success criteria outlined in Condition of Approval 8.16 (Restoration of Riparian Habitat) have been met. If the survival and/or cover requirements are not projected to meet the success criteria based on annual monitoring, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practices that will achieve the requirements in Condition of Approval 8.16 (Restoration of Riparian Habitat). The restoration monitoring results shall be reported in the Annual Status Report (Condition of Approval 7.8) and summarized in the Final Mitigation Report (Condition of Approval 7.10).	ITP Condition # 7.4	Post-construction	Permittee	
64	Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities for each period they occurred; (6) an assessment of the effectiveness of the ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.	ITP Condition # 7.10	Post-construction and after completion of mitigation	Permittee	