



**California Department of Fish and Wildlife  
North Central Region  
1701 NIMBUS ROAD  
RANCHO CORDOVA, CA 95670-4599**

California Endangered Species Act  
Incidental Take Permit No. 2081-2024-033-02

**TUDOR FLOOD RISK REDUCTION PROJECT**

**I. Authority:**

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

<b>Permittee:</b>	<b>Sutter Butte Flood Control Agency</b>
<b>Principal Officer:</b>	<b>Michael Bessette, Principal Engineer and Executive Director</b>
<b>Contact Person:</b>	<b>Bjorn Gregersen, (916) 782-9100</b>
<b>Mailing Address:</b>	<b>1445 Butte House Road, Suite B, P.O. Box M Yuba City, CA 95992</b>

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

This ITP is effective as of the date signed by CDFW below. Unless renewed by CDFW, this ITP and its authorization to take the Covered Species shall expire on **October 31, 2026**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.6 of this ITP.

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

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

**III. Project Location:**

The Tudor Flood Risk Reduction Project (Project) is located in Sutter County, California. The Project is located west of Garden Highway (State Route [SR] 99), north of the Feather River, and northwest of the town of Nicolaus (See Figure 1). The Project Area is defined as a corridor along the levee segment that is approximately 1.65 miles long and generally 200 feet wide, for a total of approximately 43.7 acres. The approximate center of the Project Area is located at latitude 38.90265° N and longitude 121.603502° W within the Honcut Headwaters-Lower Feather River Watershed (Hydrologic Unit Code #18020159).

**IV. Project Description:**

The Project purpose is to provide public safety by improving the final section of the Feather River West Levee from its confluence with the Sutter Bypass (station 10+00) to just east of SR 99, approximate station 97+00). Project activities include pipe penetration improvements, a berm tie-in embankment, the construction of a cutoff wall, and surficial geometric corrections, grubbing and grading, trench digging, levee road reconstruction, non-native emergent vegetation removal, and other activities.

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

This ITP covers the following species:

<u>Name</u>	<u>CESA Status</u>
1. Giant garter snake ( <i>Thamnophis gigas</i> )	Threatened <sup>3</sup>

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

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

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in the incidental take of individuals of the Covered Species include: grading, leveling, compaction, excavation, the installation of fencing or barriers, the installation and/or construction of temporary Project facilities and structures, general operation of vehicles and heavy equipment, noise, vibration, dust generating activities, and capture and relocation activities (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 potential crushing or entombment from operation of construction vehicles and equipment, capturing and relocating individuals out of harm’s way, dewatering of the Feather River within the work area, flushing snakes out of shelter leading to increased predation risk, as well as temporary adverse effects to water quality from erosion and siltation. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species from relocation of individuals outside of the Project Area. The areas where

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

authorized take of the Covered Species is expected to occur include: roads, levees, and upland and aquatic habitat along the Feather River West Levee (collectively, the Project Area).

The Project is expected to cause the permanent loss of 0.018 acres of habitat for the Covered Species, and temporary loss of 25.5 acres of upland habitat and 0.087 acres of aquatic habitat for the Covered Species (See Figure 2). 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 Covered Activities, long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

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

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

**VIII. Conditions of Approval:**

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

1. **Legal Compliance:** The 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:** The 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.: 2023010087) certified by Sutter Butte Flood Control Agency on May 18<sup>th</sup>, 2023, as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** The Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and

Streambed Alteration Agreement (LSAA) (EPIMS Notification No. SUT-51904-R2) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.

4. **ESA Compliance:** The Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Feather River West Levee Project Biological Opinion (Biological Opinion No. 08ESMF00-2013-F-0342) 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:** The 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, the Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. The Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
- 6.2. Designated Biologist(s) and Biological Monitor(s). The Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) and Biological Monitor(s) using the Biologist Resume Form (Attachment 2) or another format containing the same information at least 30 days before starting Covered Activities. The Permittee shall ensure that the Designated Biologist(s) and Biological Monitor(s) are knowledgeable and experienced in the biology, natural history, and collecting and handling of the Covered Species. The Designated Biologist(s) and Biological Monitor(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. The Permittee shall obtain CDFW approval of the Designated Biologist(s) and Biological Monitor(s) in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist(s) or Biological Monitor(s) must be changed.
- 6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid

the unauthorized take of an individual of the Covered Species. The Permittee shall provide unfettered access to the Project Site and otherwise facilitate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. The Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.

- 6.4. Education Program.** The 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. The Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.
- 6.5. Construction Monitoring Documentation.** The Designated Biologist(s) and Biological Monitor(s) shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. The Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project site upon request by CDFW.
- 6.6. Trash Abatement.** The Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. The Permittee shall ensure that trash and food items are contained in animal-proof containers and removed, ideally at daily intervals but at least once a

week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.

- 6.7. Dust Control.** The Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. The Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 6.8. Erosion Control Materials.** The Permittee shall prohibit the use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 6.9. Delineation of Property Boundaries.** Before starting Covered Activities along each part of the route in active construction, the Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. The Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. The Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 6.10. Delineation of Habitat.** The Permittee shall clearly delineate the 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.
- 6.11. Project Access.** Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. The Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. The Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If the 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, The 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 of this ITP.

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

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

- 7.1. Notification Before Commencement.** The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Non-compliance.** The Designated Representative shall immediately notify CDFW if the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.
- 7.3. Compliance Monitoring.** The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections a minimum of once a week during periods of inactivity and after clearing, grubbing, and grading are completed. The Designated Biologist shall conduct compliance inspections to:
- (1) minimize incidental take of the Covered Species;
  - (2) prevent unlawful take of species;
  - (3) check for compliance with all measures of this ITP;
  - (4) check all exclusion zones; and

- (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area.

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

**7.4. Quarterly Compliance Report.** The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Quarterly 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. Quarterly 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 Region 2 CESA Desk ([R2CESA@wildlife.ca.gov](mailto:R2CESA@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 the Permittee in writing of the new reporting schedule.

**7.5. Annual Status Report.** The 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 Quarterly Compliance Reports for that year identified in Condition of Approval 7.4; (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.

**7.6. 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 Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation.



**7.7. Final Mitigation Report.** No later than 45 days after completion of all mitigation measures, the 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 Quarterly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.

**7.8. Notification of Take or Injury.** The 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 (916) 358-2900. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured or damaged and the ITP Number. Following initial notification, the 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. The Permittee shall implement and adhere to the following conditions to minimize take of Covered Species:

**8.1. Pre-construction Survey.** No more than 24 hours prior to the commencement of initial ground disturbance, the Designated Biologist shall survey for the Covered Species within 200-feet of suitable aquatic habitat. The Designated Biologist will provide CDFW with a written report that adequately documents the monitoring efforts within 24 hours of commencement of initial ground disturbance. The Project Area shall be re-inspected by the Designated Biologist whenever a lapse in ground disturbance of two weeks or greater has occurred.

**8.2. Seasonal Work Period.** All ground disturbing construction activities that occur within 200 feet of Covered Species aquatic habitat shall occur between May 1 and October 1. If construction needs to occur between October 1 and April 30, exclusion fencing is required. Exclusion fencing shall be installed to exclude Covered Species from the construction area prior to September 15 upon approval of CDFW.

- 8.3. Seasonal Work Period Exception.** The Permittee may conduct work between October 2 and October 31, or April 1 and April 30, provided the ambient air temperatures exceed 75 degrees Fahrenheit (F) during work and maximum daily air temperatures have exceeded 75 degrees (F) for at least three consecutive days immediately preceding work. CDFW may consider requests to work outside of the Seasonal Work Period (Condition of Approval 8.2) on an activity-by-activity basis. The Permittee shall submit these requests in writing for review and approval by CDFW 48 hours preceding construction activities. Requests shall include a justification for the request and any additional information CDFW deems necessary.
- 8.4. 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. The Permittee shall identify the facility before starting Covered Activities. The 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 7.8. Notifications shall include the name of the facility where the animal was taken.
- 8.5. Covered Species Encounters.** When a Covered Species is encountered in the Project Area, the first priority will be to temporally stop activities in the immediate surrounding area that may result in injury, or death of the individual as determined by the Designated Biologist. The Designated Biologist will then assess the situation to select a course of action that will minimize adverse effects on the Covered Species. The Designated Biologist will determine if the appropriate course of action is to avoid contact with the Covered Species and allow it to move out of the Project Area on its own volition to a safe location. The Covered Species shall not be moved solely because it is not moving fast enough, or it is inconvenient for the Project schedule. This protocol only applies to situations where a Covered Species is encountered on the move to a location that contains covered species habitat that will not be damaged or destroyed by the Project.
- 8.6. Capture and Handling.** Uninjured snakes encountered during construction activities shall be allowed to move away from the area on their own volition. Capture and relocation of trapped or injured individuals shall be attempted only by the Designated Biologist with CDFW approval to handle the snakes. The Designated Biologist shall determine whether the animal should be captured and handled and shall minimize capture and handling to the extent feasible as most reptiles will experience stress in response to capture and short-term confinement.
- 8.7. Capture and Relocation Plan.** The Permittee shall develop a Capture and Relocation Plan for the Covered Species and submit it to CDFW for approval 30 days prior to initiating Covered Activities. CDFW will provide a written response within 15 business days of the submittal. The Capture and Relocation Plan shall describe how and where

the Covered Species will be captured and relocated if it becomes necessary to move them to avoid injury or mortality. All capturing and handling shall be conducted by the Designated Biologist with experience and expertise in handling the Covered Species. The Capture and Relocation Plan shall include the name and qualifications of the Designated Biologist responsible for capturing and handling the Covered Species, the methods that will be used to capture and relocate the Covered Species, and a map showing where the Covered Species will be released. The permittee shall quantify the amount, relative location, and quality of suitable habitat (aquatic and terrestrial) for relocation areas, including invasive and non-native species present, available upland burrows, suitable prey items, and potential barriers for movement. The permittee shall also identify a wildlife rehabilitation or veterinary facility that will be used if any captured Covered Species are injured. Relocation areas should be within the same watershed as the Project Area. If a Covered Species is found on the Project Site, the Designated Biologist shall be notified immediately. Covered Species encountered in active construction areas shall be allowed to leave on their own volition. The Designated Biologist shall only relocate the Covered Species if the animal is directly threatened by immediate Covered Activities and the animal is unable to move to a safe area on its own. The Designated Biologist shall only relocate the Covered Species to areas identified in the Capture and Relocation Plan. Relocated animals shall be released as soon as possible. The Designated Representative shall notify CDFW of the incident immediately or no later than noon on the next business day if the incident occurs outside of normal business hours. Notification to CDFW shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location, and circumstances of the incident.

**8.8. Dewatering Aquatic Habitat.** The Permittee shall dewater suitable Covered Species aquatic habitat (e.g., wetlands, drainages, canals) prior to any Covered Activities occurring in the suitable aquatic habitat. The Permittee shall ensure the habitat remains dry for at least 15 consecutive days after April 15 and prior to excavating or filling of aquatic habitat. The Permittee shall limit dewatering to the immediate Project Area and shall ensure that alternative aquatic habitat is available. Prior to the placement of any fill, the Designated Biologist(s) shall visually survey the area for the Covered Species.

**8.9. Open Pipes Restriction.** The Permittee shall thoroughly inspect all construction pipes or similar structures with a diameter of 0.25 inches or greater that are stored for one or more overnight periods for presence of the Covered Species before the pipe is subsequently moved, buried, or capped. If the individual is found within the fenced Project Site and cannot safely escape, the Designated Biologist(s) capture and relocate the individual outside of the area of construction (See Condition of Approval 8.7 Capture and Relocation Plan).

**8.10. Avoid Covered Species Entrapment.** The Permittee shall ensure all excavated locations, steep-walled holes, or trenches more than six (6) inches deep are

completely covered or one or more escape ramps of earth fill or wooden planks are installed at the end of each workday or 30 minutes prior to sunset, whichever occurs first. All steep-walled holes or trenches will be inspected by the Designated Biologist each morning to ensure that Covered Species, or other wildlife, has not become entrapped. All construction pipes, culverts, similar structures, construction equipment, and construction debris left overnight will be inspected for Covered Species by the Designated Biologist prior to being moved.

**8.11. Erosion Control.** The Permittee shall install erosion control structures concurrently with construction. The Permittee shall construct these structures, so runoff is directed away from ESAs. The Permittee shall ensure that all fiber rolls and erosion control blankets or netting are made of loose-weave mesh that is not fused at the intersections of the weave, such coconut (coir) fiber, or other products without welded weaves. Permittee shall not use products with plastic monofilament or jute netting or any material with cross joints in the netting that are bound/stitched (such as that found in straw wattles/fiber rolls and some erosion control blankets), which may cause entrapment of the Covered Species. The Permittee shall cover the edges of erosion control blankets or netting with soil, sandbags, or similar materials to prevent Covered Species from crawling underneath the material and become entrapped. The Permittee shall communicate this limitation to the contractor through the use of Special Provisions included in the bid solicitation package.

**9. Compensatory Mitigation and Restoration:** CDFW has determined that compensatory mitigation is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result from implementation of the Covered Activities. Compensatory mitigation shall be in the form of mitigation or conservation bank credits and on-site restoration of Cover Species habitat. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the protected acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall purchase 0.09 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 9.2 below. Purchase of Covered Species credits 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 below for all uncompleted obligations. The Permittee shall also restore on-site 25.5 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.2 below.

**9.1. Covered Species Credits.** The Permittee shall purchase 0.09 acres of Covered Species aquatic credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from initiating Covered Activities authorized in this ITP if Security is provided pursuant to Condition of

Approval 10 below. Prior to purchasing Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities or within 18 months from initiating Covered Activities authorized in this ITP if Security is provided.

**9.2. Habitat Restoration.** The Permittee shall restore on-site the 25.5 acres of Covered Species habitat that will be temporarily disturbed during construction. All temporarily disturbed upland habitat within the Project Area will be restored to pre-Project conditions upon completion of the Project, wherever feasible. Within 90 days of issuance of this ITP, the Permittee shall prepare a Habitat Restoration and Enhancement Plan for CDFW review and approval to facilitate the restoration and enhancement of the 25.5 acres of temporary construction disturbance on-site and shall ensure that the Plan is successfully implemented. The plan shall include maintenance, monitoring, and reporting activities of the restored and enhanced Covered Species habitat shall occur annually for 2 years.

**9.3. Cost Estimates.** For the purposes of determining the Security amount, CDFW has estimated the cost sufficient for CDFW or its contractors to complete the restoration and enhancement of permanently and temporarily disturbed habitat described in Condition of Approval 9 above.

- Covered Species credit acquisition costs identified in Condition of Approval 9.1 are estimated at \$121,000/acre for 0.09 acres: **\$10,890.00**. Credit acquisition costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements.
- CDFW has estimated the cost sufficient for CDFW or its contractors to complete the restoration and enhancement of temporarily disturbed Covered Species habitat described in Condition of Approval 9.2, calculated at **\$181,500.00**.

**10. 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 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 **\$192,390.00** or in the amount identified in 9.3 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 9.1 and 9.2 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.

**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 following 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.** The 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 an escrow agreement, 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:

- Copy of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer Agreement for the purchase of Covered Species credits;
- A Habitat Restoration and Enhancement Plan accepted by CDFW and successfully completed by the Permittee, and
- Timely submission of all required reports including annual monitoring reports to CDFW.

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 impact of the taking is minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

**IX. Amendment:**

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

**X. Stop-Work Order:**

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

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

**XI. Compliance with Other Laws:**

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

**XII. Notices:**

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email or registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, the Permittee, and ITP Number (2081-2024-033-02) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Morgan Kilgour, Regional Manager  
California Department of Fish and Wildlife  
North Central Region  
1701 Nimbus Road  
Rancho Cordova, CA 95760  
(916) 358-2900  
[R2CESA@wildlife.ca.gov](mailto:R2CESA@wildlife.ca.gov)

and a copy to:

[CESA@wildlife.ca.gov](mailto:CESA@wildlife.ca.gov)

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

[R2CESA@wildlife.ca.gov](mailto:R2CESA@wildlife.ca.gov)

### **XIII. Compliance with the California Environmental Quality Act:**

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, Sutter Butte Flood Control Agency. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Environmental Impact Report for the Tudor Flood Risk Reduction Project, (SCH No.: 2023010087) dated May 18, 2023, that the Sutter Butte Flood Control Agency certified for the Tudor Flood Risk Reduction Project on September 18, 2023. 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 the 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 the issuance of this ITP will not result in any significant, adverse impacts on the environment.

### **XIV. Findings Pursuant to CESA:**

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

CDFW finds based on substantial evidence in the ITP application, Environmental Impact Report for the Tudor Flood Risk Reduction Project, the results of consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent protection of land through purchasing Covered Species mitigation or conservation bank credits (2) habitat restoration and

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enhancement; (3) establishment of avoidance zones; (4) worker education; and (5) Quarterly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW’s estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the purchase of 0.09 acres of compensatory habitat from a CDFW-approved mitigation or conservation bank and the restoration and enhancement of 25.5 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being disturbed by the Project, along with the minimization, monitoring, reporting, and enhancement requirements of this ITP which 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 the 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 findings are based, in part, on CDFW’s express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

**XV. Attachments:**

FIGURE 1	Project Location Map
FIGURE 2	Project Impact Maps
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Biologist Resume Form
ATTACHMENT 3	Letter of Credit Form

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

2/6/2025

DocuSigned by:

*Morgan Kilgour*

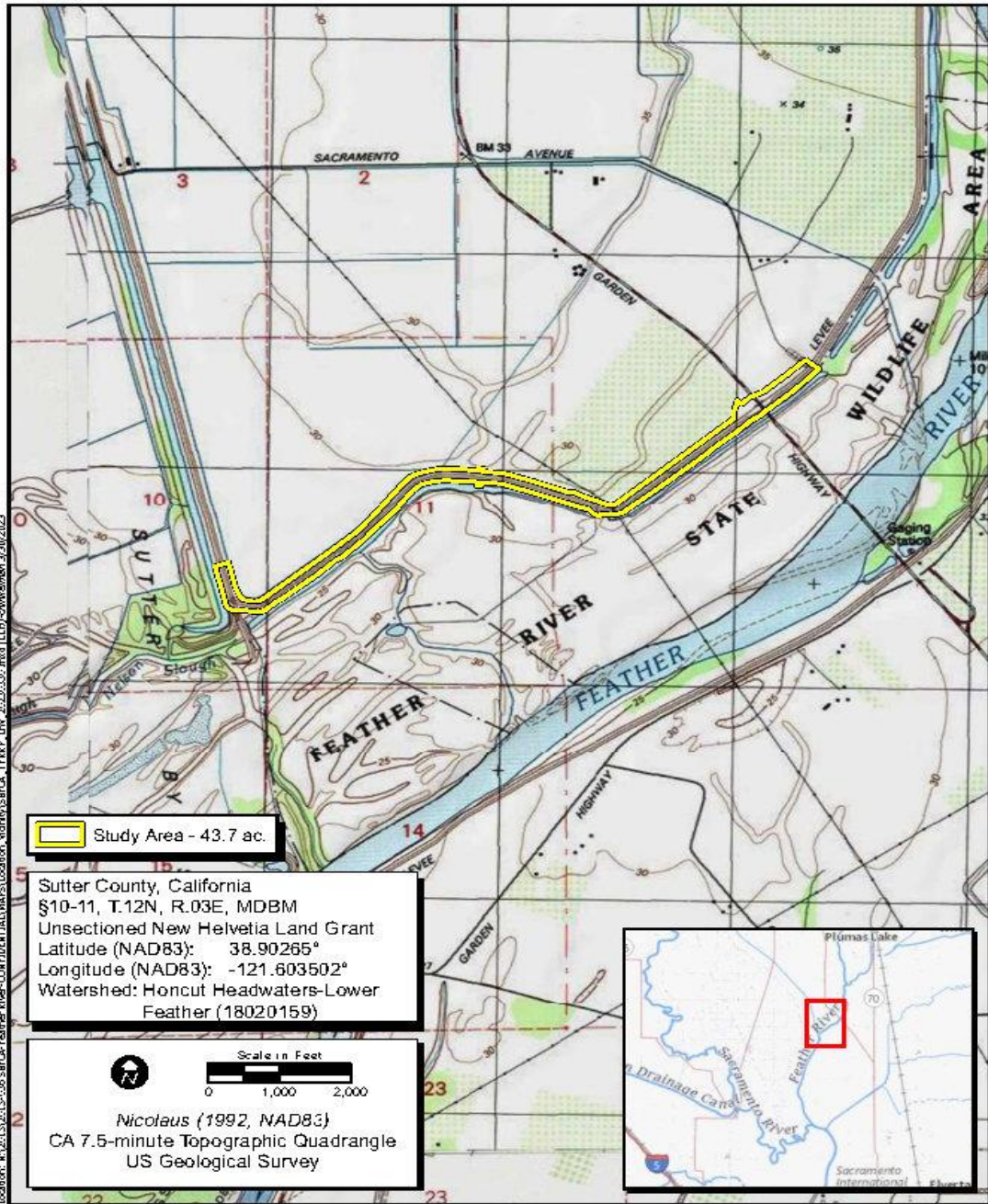
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Morgan Kilgour, Regional Manager  
North Central Region

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**Figure 1: Project Location Map**



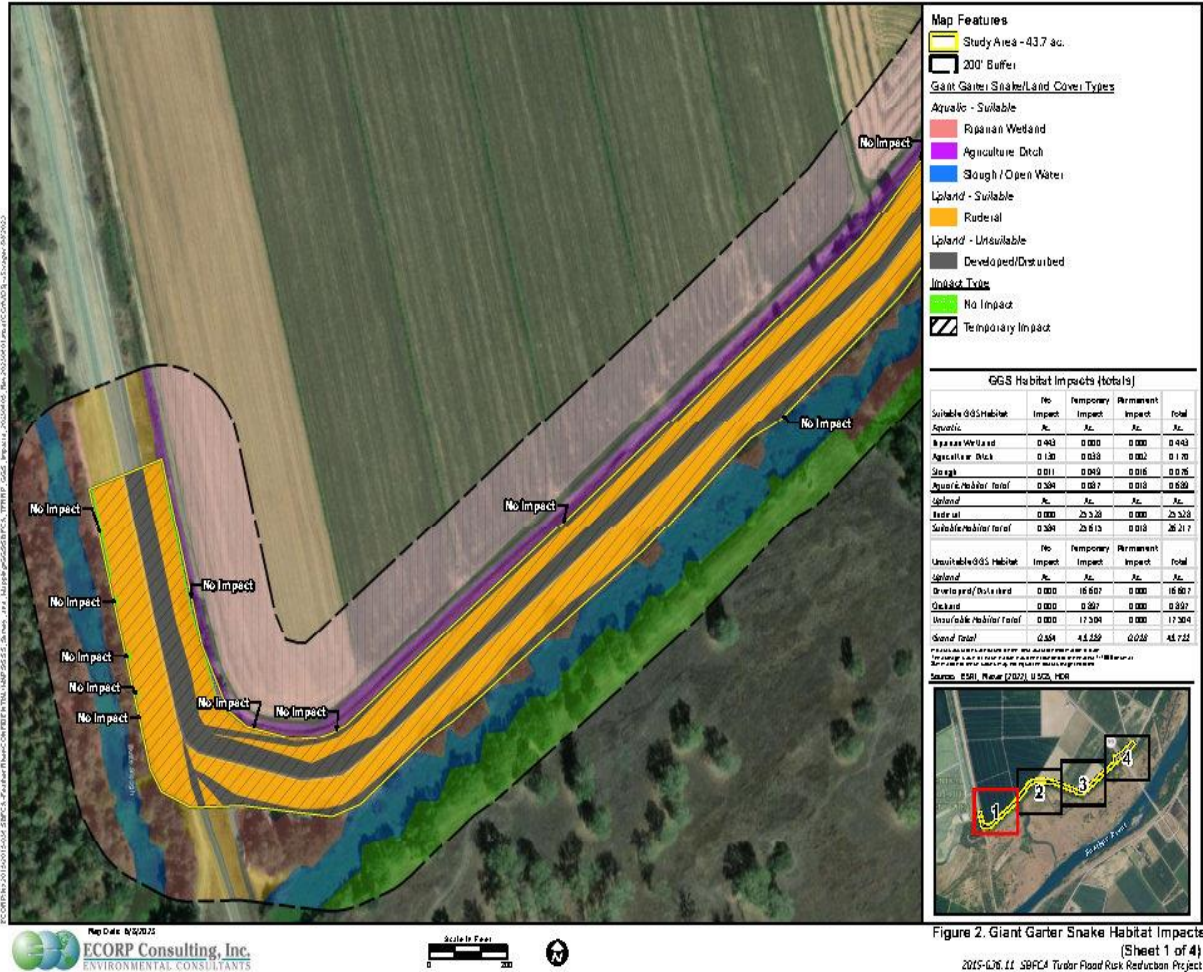
**Figure 1. Study Area Location and Vicinity**

2015-036.11 SBFA Tudor Flood Risk Reduction Project



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**Figure 2: Project Impact Maps**

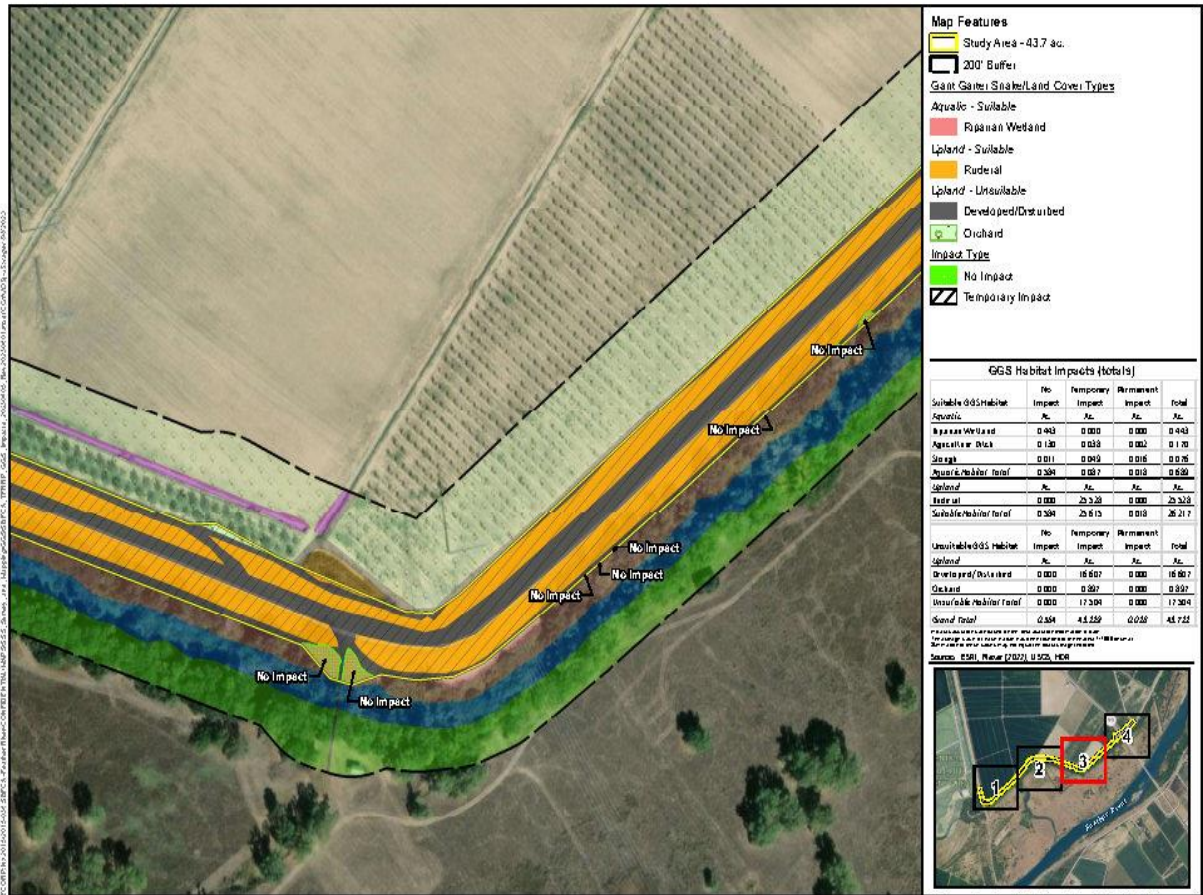


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Figure 2. Giant Garter Snake Habitat Impacts (Sheet 2 of 4)  
 2025-026.11.0004 Tudor Flood Risk Reduction Project

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