



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

California Endangered Species Act
Amended Incidental Take Permit No. 2081-2018-032-03

TRACY HILLS PROJECT

Authority:

This Amended California Endangered Species Act (CESA) Incidental Take Permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² 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: Tracy Phase 2, LLC., Tracy Phase 3, LLC.,
Tracy Phase 4, LLC.

Principal Officer: John Stanek, Authorized Representative

Contact Person: John Palmer, (209) 229-7954

Mailing Address: 888 San Clemente Drive, Suite 100
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Amended ITP Background³:

On April 5, 2018, Tracy Phase 2, LLC., Tracy Phase 3, LLC, Tracy Phase 4, LLC (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

¹ 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”).

² 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.

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

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project-related impacts from the Tracy Hills Project in San Joaquin County, California (Project).

On August 27, 2021, CDFW issued ITP No. 2081-2018-032-03 to Permittee authorizing take of San Joaquin kit fox (*Vulpes macrotis mutica*) and California tiger salamander (*Ambystoma californiense*) (the Covered Species) associated with and incidental to the Project. The Project as described in the ITP originally issued by CDFW includes residential, mixed-use business, commercial development, associated infrastructure, and highway intersection improvements, to be constructed in phases. As described in the original ITP, the Covered Activities associated with the Project were expected to result in a permanent loss of 1,148 acres of habitat for San Joaquin kit fox and 854 acres of habitat for California tiger salamander. 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, Permittee mitigated for permanent habitat loss through the Tracy Hills Habitat Conservation Plan (THHCP). The conservation easement area covers 2,730 acres of land - approximately 2,687 acres of habitat for San Joaquin kit fox and 2,008 acres of upland and 8 acres of aquatic habitat for California tiger salamander.

On August 31, 2023, Permittee submitted a request for a major amendment to ITP No. 2081-2018-032-03 (see Cal. Code Regs., §783.6, subdivision (c)(5)). On September 11, 2023, CDFW received the appropriate fees. On September 29, 2023, CDFW determined that the application for the amendment request was incomplete. On January 29, 2024, after receiving requested additional information, CDFW determined that the application was complete. Since issuance of the original ITP, as construction continues, site information has been accumulated and there have been unforeseen impacts. On October 21, 2024, CDFW issued Amendment No. 1 (Attachment 6) to delete the requirement to hand excavate each burrow, update impact to the THHCP conservation easement area, and provide resolution for the unforeseen impacts.

On December 16, 2024, Permittee submitted a request and appropriate fees for a second major amendment to this CESA ITP to include western burrowing owl (*Athene cunicularia hypugaea*) (burrowing owl) as a Covered Species. Issuance of this second Amendment (Amendment No. 2) will authorize the take of burrowing owl as an additional Covered Species. The Covered Activities associated with the Project are expected to result in a permanent loss of 620 acres of habitat for burrowing owl.

CDFW now amends and reissues this ITP including the revised provisions in the first and second amendments (collectively, the Amended ITP). The Amended ITP includes all of the operative provisions as of the effective date of this Amended ITP. Attachment 7 to this

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Amended ITP shows the specific red-line changes made to the ITP as a result of this Amendment No. 2.

Effective Date and Expiration Date of this ITP:

The original ITP was executed in duplicate original form and became effective when a 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 August 29, 2021. This remains the effective date for the original take authorization. This Amended ITP shall become effective upon execution by the Regional Manager for CDFW’s Bay Delta Region. Unless renewed by CDFW, this Amended ITP’s authorization to take the Covered Species shall expire on **December 31, 2036**.

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 5.8 of this ITP.

Project Location:

The Tracy Hills Project (Project) is located in southwestern San Joaquin County adjacent to and west of Interstate 580 (I-580) and in the southwest portion of the City of Tracy. The approved Tracy Hills Specific Plan (Specific Plan) has been divided into three areas for identifying the development areas covered under the San Joaquin Council of Governments’ *San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP)*, and the Development Area that is covered in this ITP shown as Areas A, B, and C on Figure 1. Of these three areas, this ITP covers only Area C and the Conservation Easement Area. Area C consists of a 1,148-acre development area bordered on the south and southeast by Corral Hollow Road, on the north and northeast by I-580, and on the west and southwest by the Conservation Easement Area (Figure 1).

Project Description:

The Project includes residential, mixed-use business, commercial development, associated infrastructure (e.g., roadways) and highway intersection improvements within the Development Area as shown in Figure 2. Figure 3 provides more detail on the types of specific uses allowed in each zone. Associated infrastructure includes the following:

- New internal roads and expansion of existing roads
- Electric distribution lines and new substation
- Parks, schools, and recreational facilities

- Sewer pipelines and pump stations
- Water supply distribution pipelines, storm drain pipelines, retention basins, and water storage tanks and pump station

Types of Land Use/Development

Residential Development: Most of the Project will be residential housing development in one of three density categories:

- Residential Estate—0.5 to 2.0 dwelling units/acre
- Low Density Residential—2.1 to 5.8 dwelling units/acre
- Medium Density Residential—5.9 to 12.0 dwelling units/acre

The residential development covered by this ITP is currently planned to include approximately 1,084 acres that will be a mix of Residential Estate, Low-Density Residential, and Medium-Density Residential. The mix of densities and residential zoning configurations within the Development Areas may change during the Permit Term; however, the overall boundary of development will remain the same. Additionally, the lower density housing (Residential Estate and Low Density Residential) will be located closest to the Conservation Easement Area.

Mixed-Use Business Park: Currently, a 28.9-acre area at the intersection of I-580 and Lammers Parkway is zoned Mixed-Use Business Park. The Mixed-Use Business Park zoning district allows a broad range of commercial, institutional, and business uses to serve the community and provide employment opportunities. This proposed land use may change to another type described here in the Project Description section of this ITP.

Commercial Development: Currently, a relatively small portion (6.8 acres) of the proposed development is zoned Commercial, along Corral Hollow Road (Figure 2). The purpose of this zone is to provide a mix of retail and services for residents and travelers. This proposed land use may change to another type described here in the Project Description section of this ITP.

Road Construction

In addition to the construction of roads that will be internal to the residential, mixed-use business park, and commercial development described above, the Permittee will submit a future Amendment Request to include expansion of two future interchanges as Covered Activities (Figure 2). The construction of the interchange at Lammers Parkway and I-580 and the expansion of the Corral Hollow Road and I-580 interchange are an estimated 28.1 acres (the footprint of all roads internal to development are included in each of the three

development categories described above). The impact analysis and compensatory mitigation requirements in this ITP have contemplated the 28.1 acres of impact but has not contemplated the design and ongoing operations and maintenance of the interchanges as they relate to nonhabitat-related impacts to the Covered Species (e.g., movement through the landscape or additional source of mortality). CDFW will make a final determination regarding additional compensatory mitigation, if any, needed for this road construction once it receives a formal request to amend the ITP.

Subdrain Encroachment into Conservation Easement Area

A six-inch diameter subdrain was installed, which encroached into the Conservation Easement Area serving as mitigation for Tracy Hills Development Area project impacts to the Covered Species. The subdrain supports a retaining wall that stabilizes a roadway. The purpose of the subdrain is to accommodate rising groundwater in wet years to prevent compromising the integrity of the retaining wall, which could cause the roadway to fail and slide down the hill. The subdrain was designed to release any excessive groundwater to sustain the structural stability of the slope above it. The subdrain allows groundwater to infiltrate the subdrain pipe, but does not convey stormwater or surface flows from the residential development.

The subdrain was installed in the location which discharges to the Conservation Easement Area because that location allowed water to drain out from the lowest point of the keyway area. The subdrain pipe is buried; however, the last two feet of the pipe daylights approximately 11 feet within the Conservation Easement Area. A rip rap splash guard was installed at the discharge location on existing grade to dissipate any water that is discharged from the subdrain pipe.

Excavation was conducted with an excavator which was staged within the Development Area footprint and outside the Conservation Easement Area. The work area was 15 feet by 3 feet. The subdrain was placed and backfilled with the removed soil, using the same equipment, in the same staging area. No equipment operated within the Conservation Easement Area, although ground disturbance occurred to place the six-inch subdrain pipe, backfill it, and install the rip rap splash guard.

Project Timing

Construction activities will occur in three concurrent phases beginning in approximately 2021 and cover a total period of approximately 9 years. The anticipated construction schedule of each Project Phase is as follows (the actual construction schedule may vary by several years, depending on market conditions and other factors):

- Phase I: September 2021–September 2025

- Phase II: September 2025–September 2029
- Phase III: November 2028–July 2030

Prior to completion of construction of Phase I of development in the Permit Area or by September 2025, whichever comes first, fencing will be installed along the Conservation Easement Area boundary adjacent to the Development Area, to prevent humans from entering the Conservation Easement Area and reduce the risk of pets, particularly dogs, from entering the Conservation Easement Area. The fencing will consist of a three-pipe fence, installed with welded wire (“no climb wire”) to act as a barrier or strong deterrent to predators, larger domestic animals, and pedestrians but suspended four to five inches from the ground to allow for kit fox movement.

In addition to the fencing, a firebreak will be constructed and maintained in either one of two configurations, shown in Figure 4, as phases are constructed.

The construction of each Project Phase will occur in the following stages:

- Temporary exclusion fence installation: This consists of installing temporary exclusion fencing between disturbance areas and adjacent aquatic habitat for California tiger salamander along Corral Hollow Creek.
- Clearing and grubbing: This consists of removal of all vegetation, roots, and other matter on the construction site, in preparation for grading. This stage lasts approximately three months per phase.
- Grading: This consists of leveling and contouring the site in preparation for construction and paving. This stage lasts approximately 100 to 150 days per phase. No earth will be imported to or exported from the site. Water will be used to control dust at the site three times per day during this stage.
- Construction and paving: This stage consists of paving roads and other hardscaped surfaces, installing infrastructure and utilities, and building structures. This stage lasts approximately two years per phase.
- Landscaping and finish work: This stage consists of any landscaping the developers install and finish work on the construction prior to selling the houses or other buildings. This stage lasts approximately six months per phase.

Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

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Name	CESA Status⁴
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- | | |
|---|-------------------------|
| 1. San Joaquin kit fox (<i>Vulpes macrotis mutica</i>) | Threatened ⁵ |
| 2. California tiger salamander (<i>Ambystoma californiense</i>) | Threatened ⁶ |
| 3. Western burrowing owl (<i>Athene cunicularia hypugaea</i>) | Candidate ⁷ |

These species and only these species are 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: clearing and grubbing; grading; construction and paving; landscaping and finish work grading; stockpiling soils; soil stabilization; and habitat management and habitat enhancements for Covered Species (Covered Activities). It is anticipated that the Permittee will request a Memorandum of Understanding (Fish & G. Code, § 2081, subd. (b)) prior to the expiration of this ITP that will cover ongoing management activities as set forth in the final management plan and any future amendments approved by CDFW to the final management plan required in Condition of Approval 7.2 (Habitat Acquisition and Protection).

Incidental take of individuals of the Covered Species in the form of mortality (“kill”) may occur as a result of Covered Activities such as loss of most easily traversed wildlife movement corridor in the local region; heavy equipment and vehicle strikes; augering and drilling; discharging water; filling and compacting of soil, crushing or entombment during construction activities; and entrapment or entombment during evictions. Individuals of the Covered Species dispersing onto the Development Area from off-site localities during seasonal movements to and from denning sites, travel corridors, off-site breeding ponds, upland habitat, will be susceptible to injury or mortality from desiccation, predation, being trapped in artificial structures and excavated holes, crushed under vehicular or foot traffic or other construction activities. Individuals residing in underground refugia on-site may be crushed during excavation and vehicular movement, suffocated by soil side-casting or by grading activities and entombed in burrows or dens. Covered Species may also disperse from refugia due to noise and ground vibrations from use of heavy equipment during construction into open areas where they are more susceptible to injury or mortality. Incidental take of

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

⁵ See Cal. Code Regs. Tit. 14 670.5, subd. (b)(6)(E).

⁶ See Cal. Code Regs. Tit. 14 670.5, subd. (b)(3)(G).

⁷ The species status may change following the decision of the Fish and Game Commission to designate the species as threatened or endangered. If the species status changes, CDFW will initiate an amendment to this permit to conform to changes as required by law.

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 capture and relocation out of harm's way as required by this ITP. The areas where authorized take of the Covered Species is expected to occur include: the Development Area and Conservation Easement Area (collectively, the Project Area).

The Project is expected to cause the permanent loss of 1,148 acres of habitat for San Joaquin kit fox, 620 acres for burrowing owl, and 854 acres of habitat for California tiger salamander. 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 tunneling, capture and relocation, disturbance at occupied burrows, and long-term effects due to increased pollution, displacement from preferred habitat, narrowing and elimination of travel corridors resulting in reduced fecundity and gene flow between metapopulations, migration interference due to artificial lighting, increased competition for food and space, den abandonment, increased incidences of vehicle strikes on new or improved roads, exposure to contaminants, rodenticides, domestic pets, trash ingestion or entanglements, entrapment in storm water basins, maintenance activities to storm water basins, eviction from burrows, 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.

Conditions of Approval:

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular, aircraft (e.g., helicopter) ingress and egress, staging and parking, and noise and vibration generating activities that may/will 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.: 2013102053) certified by the City of Tracy on April 26, 2016 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **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.
4. **General Provisions:**
 - 4.1. No Impacts to California Tiger Salamander Aquatic Breeding Habitat: No direct impacts to CTS aquatic breeding habitat within the Development Area from construction-related activities (e.g., stormwater outfalls, road improvements) are authorized under this ITP. Permittee shall apply for an amendment to this ITP and provide specific designs or other plans for these types of impacts when designs are able to be provided. Upon receipt of an amendment request CDFW shall evaluate any additional impacts and provide additional Conditions of Approval if necessary and require compensatory mitigation to meet the full mitigation standard.
 - 4.2. 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.
 - 4.3. 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, collecting 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.

- 4.4. Designated Biologist Authority: To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist(s) 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.
- 4.5. 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. 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 greater than a 12-month period. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout (printed in both English and Spanish) containing this information for workers to carry in the Project Area. The training handout shall contain the following information:
 - 4.5.1. Descriptions of the Covered Species (including photographs) and their habitat needs.
 - 4.5.2. A current report of the occurrences of the Covered Species in the Project Area.
 - 4.5.3. An explanation of the protected status of each Covered Species under the federal and state endangered species acts and legal obligations.
 - 4.5.4. Avoidance and minimization measures that will be followed to reduce impacts on the Covered Species during all Project activities: construction, operations and maintenance, and decommissioning, and the penalties for not following the avoidance and mitigation measures.
 - 4.5.5. Instructions on the procedures that will be implemented if a Covered Species is found on-site, including contact information of a Biological Monitor and U.S. Fish and Wildlife Service (USFWS) personnel.

- 4.6. Construction Monitoring Binder: The Designated Biologist shall maintain a construction-monitoring binder 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 binder is available for review at the Project Area upon request by CDFW.
- 4.7. Trash Abatement: Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of Covered Activities. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week during Covered Activities to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 4.8. Dust Control: Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles for longer than 24 hours.
- 4.9. Erosion Control Materials: Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 4.10. Delineation of Property Boundaries: Before starting Covered Activities along each part of the route in active construction for each phase, Permittee shall clearly delineate the boundaries of the area to be disturbed for development for the specific phase within the Development 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 for each phase.
- 4.11. Delineation of Habitat: Prior to construction, the Permittee shall stake, flag, fence or otherwise conspicuously delineate all environmentally sensitive areas that are to be protected in place and remain undisturbed during construction, including the boundaries between the Development Area and the Conservation Easement Area. The Permittee shall also delineate the boundary of the work area for each Project Phase as they occur. Environmentally sensitive areas are defined as wetland, riparian areas, aquatic areas, and raptor nesting locations. The materials used to delineate environmentally sensitive areas will be removed no later than 30 days following completion of construction.

- 4.12. 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. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. Project-related construction vehicles will observe a daytime on-site speed limit of 20-mph, except on County and City roads and State and Federal highways. All Project-related traffic will observe a night-time speed limit of 10-mph during construction, except on County and City roads and State and Federal highways. 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.
- 4.13. 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.
- 4.14. 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.
- 4.15. CDFW Access: Permittee shall provide CDFW staff with reasonable access to the Project Area and mitigation lands under Permittee control and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 4.16. 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.
- 4.17. Domestic Animals: With the exception of livestock, service animals, or working animals used by the CDFW-approved long-term land manager and as described in the final management plan (see Condition of Approval 7.2, Habitat Acquisition and

Protection), no domestic animals shall be allowed within the Project Area unless on leash and restricted to designated vehicle parking areas during Covered Activities.

- 4.18. No Loaded Firearms: With the exceptions of law enforcement officers, grazing operators, the CDFW-approved long-term land manager or non-commercial hunting activities as described in the allowed uses of the final management plan (see Condition of Approval 7.2, Habitat Acquisition and Protection), no unsecured (i.e., locked up) or loaded firearms shall be allowed within the Project Area at any time.
- 4.19. Pesticides: No rodenticides or herbicides shall be used within the Project Area until Covered Activities have been completed or in the Conservation Easement Area unless specifically approved in the final management plan required in Condition of Approval 7.2 (Habitat Acquisition and Protection) or in writing by CDFW.
- 4.20. Urban/Suburban Storm Drain Designs and Construction for Areas Adjacent to Natural Lands: To prevent one-way entrainment of California tiger salamander in specially designated area(s) (Figure 5), Permittee shall ensure that grated drop inlets or other types of storm drain infrastructure shall be constructed in a manner or outfitted with devices to prevent entrainment. Permittee shall obtain written acceptance from CDFW confirming that the infrastructure incorporates design elements to avoid and reduce impacts to California tiger salamander prior to installation of such infrastructure.
- 4.21. Submit Designs for Storm Water Infrastructure: Permittee shall submit the plans for storm water-related infrastructure to CDFW for written acceptance prior to Covered Activities occurring for each Project Phase. Infrastructures shall be designed and constructed to prevent conflicts with or take of California tiger salamander.
- 4.22. Development Area Lighting: All lighting shall be designed so that exterior light fixtures are hooded, with lights directed downward or toward the area to be illuminated, with little to no horizontal spread, as low to the ground as feasible and so that backscatter to the nighttime sky is minimized. The design of the lighting will be such that the luminescence or light sources are shielded to prevent light trespass outside the Development Area boundary and neither the lamp nor the reflector interior surface would be visible from outside the footprint of the Development Area except for public roadways. Only narrow spectrum bulbs shall be used to limit the range of species affected by lighting. All lighting will be of minimum necessary brightness consistent for worker safety. The number of lighting fixtures on buildings and roadways shall be limited to the minimum required by the City of Tracy.

5. Monitoring, Notification and Reporting Provisions:

- 5.1. Notification Before Commencement: The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities each Project Phase and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities for each Project Phase.
- 5.2. 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.
- 5.3. Daily Compliance Monitoring: The Designated Biologist shall be on-site daily while Covered Activities occur. This requirement does not apply to allowed activities identified in the final management plan within the Easement Area once approved by CDFW. 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 Project Area 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. Daily compliance inspections by the Designated Biologist may be reduced to a minimum of one day per week only after Permittee obtains written approval from CDFW per Condition of Approval 5.4 (Weekly Compliance Monitoring).
- 5.4. Weekly Compliance Monitoring: During periods of inactivity or after clearing, grubbing, and grading are completed compliance inspections by the Designated Biologist may be reduced to a minimum of one day per week only after Permittee obtains written approval from CDFW for each Project Phase. Daily compliance inspections shall resume if the Designated Biologist or CDFW finds the Permittee is out of compliance with any conditions of this ITP including the failure to maintain the exclusion fencing.

- 5.5. Monthly Compliance Report: The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Conditions of Approval 5.3 and 5.4 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be certified by the Designated Biologist (i.e., signed) and submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Bay Delta Region 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) 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.
- 5.6. Annual Status Report: Permittee shall provide CDFW with an Annual Status Report (ASR) no later than March 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 the year identified; (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.
- 5.7. 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.
- 5.8. Final Mitigation Report: No later than 45 days after completion of all mitigation measures after all Project Phases are complete, 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; for each phase (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.

6. 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.

- 6.1. Seasonal Work Window Restriction: It is anticipated that the initial ground disturbance (such as excavation, clearing and grubbing) for Phase I will take place during the rainy season (October 15, 2021, through April 1, 2022), and that Covered activities shall be subject to Condition of Approval 6.4 (Wet Season Work Restriction) below. After April 1, 2022, Permittee shall limit Covered Activities that will result in either initial ground disturbance (such as excavation, grading, trenching, contouring, or clearing and grubbing) from April 1 through October 31. Once habitat has been removed and exclusion fencing is in place, activities within the exclusion fencing may occur year-round. If areas have become fallow after initial disturbance and grasses, shrubs have become reestablished, then Covered Activities shall only resume during the period from April 1 through October 31, within California tiger salamander habitat areas delineated in Figure 6 and shall only occur outside this work window after habitat (including ground squirrel and gopher burrows) is removed and exclusion fencing is in place.
- 6.2. Daily Work Window Restriction: All Covered Activities shall terminate 30 minutes before sunset and shall not resume until 30 minutes after sunrise unless otherwise approved by the Designated Biologist. Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for the geographic area (http://aa.usno.navy.mil/data/docs/RS_OneYear.php).
- 6.3. Seasonal Work Window Extensions: Permittee shall adhere to the seasonal work window required in Condition of Approval 6.1 (Seasonal Work Window Restriction) unless an expanded work window is approved by CDFW. Permittee shall submit any requests for extensions in writing at least 14 days prior to the desired date of

construction or 14 days prior to the expiration of the seasonal work window. If work is approved the following conditions shall apply:

- 6.3.1. Any work site located within 0.5 miles of California tiger salamander aquatic habitat, including where equipment will be stored overnight, shall be completely fenced with a temporary wildlife exclusion barrier with coverboards (see Measure 6.11). All construction work shall take place within the fenced area. Installation of exclusion fencing does not apply to graveled or well-traveled roads.
 - 6.3.2. All construction vehicle and heavy equipment travel shall be limited to the daylight hours from 30 minutes after sunrise until 30 minutes before sunset, to the maximum extent feasible.
 - 6.3.3. The temporary exclusion barrier shall be installed around any areas within the Development Area of each Project Phase that could become ponded (for more than 24 hours) and provide breeding habitat during rain events. Coverboards shall be placed around the inside and outside perimeter of the temporary exclusion barrier as described in Condition of Approval 6.11 (Covered Species/Conservation Easement Area Permanent Fencing).
- 6.4. Wet Season Work Restriction: If CDFW has approved a seasonal work window extension per Condition of Approval 6.3 (Seasonal Work Window Extensions), then, during the wet season between October 15 through April 30, Covered Activities shall cease 24 hours prior to a 30 percent or greater forecast of rain. Construction may continue 24 hours after the rain ceases and there is less than a 30 percent chance of precipitation in the 24-hour forecast. CDFW may approve work when there is a 30 percent or more chance of precipitation in the 24-hour forecast subject to full implementation of Condition of Approval 6.6 (No Project Phase without Erosion Control) and the following condition:
- 6.4.1. If work is approved when a greater than 30 percent chance of rain is forecast, the Designated Biologist(s) shall survey the Project Area where Covered Activities are planned before they begin each day rain is forecast. If rain exceeds 0.50 inches during a 24-hour period, work shall cease until there is a less than 30 percent change of precipitation in the 24-hour forecast. All night-time work and construction-related traffic shall be suspended during rain events.
- 6.5. Erosion Control: All erosion and sediment control measures shall be installed prior to earth moving Covered Activities. Permittee shall utilize erosion control measures throughout each Project Phase where sediment runoff from exposed slopes could

leave the Project Area and/or enter a stream or pond. Permittee, Designated Representative or other trained staff shall monitor erosion control measures before, during, and after each storm event and repair and/or replace ineffective measures immediately.

- 6.6. No Project Phase without Erosion Control: No Project Phase may be started if that phase and its associated erosion control measures cannot be completed prior to the onset of a storm event if that construction phase may cause the introduction of sediments into a drainage, stream, or pond. Permittee shall consult 72-hour weather forecasts from the National Weather Service prior to startup of any phase of the Project that may result in sediment runoff to the stream.
- 6.7. Geo-Textile and Monofilament Netting Restriction: To minimize the risk of ensnaring and strangling wildlife, Permittee shall not place erosion control materials containing synthetic (e.g., plastic or nylon) monofilament netting. Any geo-textile material or filter fabric used within the Project Area shall not contain any petroleum-based products. Geotextiles, fiber rolls, and other erosion control measures shall be made of loose-weave mesh, such as jute, coconut (coir) fiber, or other products without welded weaves. No geotextile fabrics shall be placed where they may be exposed to stream flows.
- 6.8. Location of Spoil Sites: Spoil sites shall not be located where it may be washed back into a watercourse or within any potential Covered Species habitat throughout the Project Area.
- 6.9. Cover Spoil Piles: Prior to construction of a Project Phase, Permittee shall submit the Project's Stormwater Pollution and Prevention Plan and Dust Control Permit Plan for that Project Phase and comply with each plan's requirements. Permittee shall take any necessary precautions to prevent loose soils or dust from entering streams or stormwater infrastructure that discharges into streams.
- 6.10. Temporary Exclusion Barrier: At least 30 days prior to the initiation of Covered Activities on each Project Phase, the Permittee shall submit to CDFW for written approval plans for an exclusion fencing system for the upcoming active phase, and access routes as appropriate. CDFW has 30 days to respond to each submission of plans, including resubmission of plans that are revised at the request of CDFW. The plans shall include a map indicating location of exclusion fencing in relation to the Project Area, the Project Phase that will be constructed, location of special-status wildlife habitat features, dimension specifications and a description of fencing materials. Permittee shall be responsible for implementation and upkeep of the fencing system. In addition, the following criteria for the exclusion fencing system

shall be met:

- 6.10.1. The exclusion fencing shall consist of material appropriate for exclusion of California tiger salamander.
- 6.10.2. There shall be a section of exclusion fencing placed between disturbance areas and aquatic habitat for California tiger salamander along Corral Hollow Creek to prevent individuals from entering any slated ground disturbance areas from the creek.
- 6.10.3. The exclusion fencing shall either measure at least 36 inches tall above the soil surface or be of an appropriate height for exclusion of California tiger salamander.
- 6.10.4. The Designated Biologist shall inspect the fencing immediately after every rain event to ensure it maintains structural integrity. Holes or burrows which appear to extend under the fencing will be blocked inside the fence line to prevent California tiger salamander from accessing work areas.
- 6.10.5. The bottom of the exclusion fencing shall not allow wildlife to pass through gaps or holes with the bottom of the fencing buried six inches below grade.
- 6.10.6. The exclusion fencing shall be taut between the supporting stakes and shall have the supporting stakes oriented on the inside edge towards the development areas.
- 6.10.7. The exclusion fencing shall feature coverboards inside and outside the perimeter placed at 100-foot intervals and one-way escape doors or an appropriate design for preventing special-status species and other wildlife from being trapped within a Project Phase that is under active construction.
- 6.10.8. The fencing and coverboards shall be inspected every morning for trapped California tiger salamanders during periods when they are likely to be migrating above-ground. These daily-inspection periods include the period from May 1 through August 31 when salamander metamorphs are likely to be migrating away from their natal ponds, and all year on mornings following any rain event greater than 0.1 inches, when adults may be migrating to their breeding ponds. If a California tiger salamander is encountered during these inspections, and is in danger of being harmed, then the Designated Biologist shall temporarily stop all activities that threaten harm, remove the animal from the area, and relocate it to the pre-approved location as described in the Covered Species Relocation Plan (Condition of Approval 6.12 – California

Tiger Salamander Relocation).

- 6.10.9. If fencing becomes damaged, it will be immediately repaired upon detection and the Designated Biologist shall stop work in the vicinity of the fencing as needed to ensure that no California tiger salamanders have entered the construction area.
- 6.10.10. Fencing system entry/exit points for vehicular and pedestrian traffic shall be constructed so wildlife cannot access the area within a Project Phase under active construction during non-work hours.
- 6.10.11. The Designated Biologist shall inspect the Project Area prior to installation of the exclusion fencing. The exclusion fencing system shall remain in place until all construction activities have been completed in the corresponding Project Phase. All components of the exclusion fencing will be removed for storage or disposal off-site immediately upon completion of construction activities. All vegetation slated for removal in the exclusion fencing buffer area shall be inspected by a Designated Biologist prior to the initiation of removal. Exclusion fencing shall be inspected daily by the Designated Biologist and repaired as necessary, including inspection of coverboards and replacement of wetted sponges as necessary to minimize wildlife distress.
- 6.11. Covered Species/Conservation Easement Area Permanent Fencing: Permittee shall provide a Covered Species/Conservation Easement Area Fencing Plan a minimum of 30 days prior to commencing any Covered Activities for approval in writing by CDFW. Fencing structures identified in the plan shall be installed either according to the approved plan or prior to commencement of Covered Activities for each phase, and shall be completed in its entirety (i.e., spans the interface between the Development Area and the Conservation Easement Area) (see Figure 1) by the end of the year 2025. The Permittee shall ensure any permanent fencing is monitored and maintained. Permittee shall ensure that permanent barriers or fencing installed between fully developed areas and Covered Species habitat are maintained in perpetuity.
- 6.12. California Tiger Salamander Relocation: If a California tiger salamander is encountered during these inspections, and is in danger of being harmed, the Designated Biologist shall temporarily stop all activities that threaten harm, remove the animal from the area, and relocate it to the pre-approved relocation location as described in Attachment 5. California tiger salamanders that will be relocated and released by the Designated Biologist outside the construction area, preferably within 300 feet of where it was found, in protected suitable habitat in the Conservation

Easement Area. Under no circumstances will a California tiger salamander be released on a site other than the Conservation Easement Area unless the written permission of the landowner has been obtained prior to the start of construction of each phase.

- 6.13. Open Trenches, Pits or Holes: Any open trenches, pits, holes or other excavations into which Covered Species may fall or become trapped shall either be covered if feasible or have wildlife escape ramps installed as determined by the Designated Biologist at the end of each workday. Prior to the initiation of construction each day and prior to the covering trenches, holes or pits, the Designated Biologist or Biological Monitor shall inspect them for wildlife for movement out of harm's way. If any worker discovers that Covered Species have become trapped, they shall halt Covered Activities and notify the Designated Biologist immediately. Project workers and the Designated Biologist shall allow Covered Species to escape unimpeded, if possible, or a Designated Biologist shall move Covered Species out of harm's way before allowing work to resume.
- 6.14. Open Pipes Restriction: All pipes, culverts, or similar structures with an 11 cm or greater diameter that are stored on-site for one or more overnight periods shall be securely capped on both ends prior to storage when feasible. All pipes, culverts, and similar structures with an 11 cm or greater diameter, debris piles, and pallet stacks shall be thoroughly inspected for wildlife by the Designated Biologist or Construction Monitor prior to utilization. All hollow pipes or posts after they are installed as part of the Project and exposed to the environment shall be capped, screened, or filled with material by Permittee prior to the end of the day in which installation occurs. If any worker discovers that Covered Species are using pipes, culverts, or similar structures, they shall halt Covered Activities and notify the Designated Biologist immediately. Project workers and the Designated Biologist shall allow Covered Species to escape unimpeded, if possible, or a Designated Biologist shall move Covered Species out of harm's way before allowing work to resume.
- 6.15. Notification of Mortality or Injury: Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if 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 three 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.

6.16. Handling of California Tiger Salamanders: California tiger salamanders shall be handled and assessed according to The Declining Amphibian Task Force Fieldwork Code of Practice available online at: https://www.fws.gov/southwest/es/NewMexico/documents/SP/Declining_Amphibian_Task_Force_Fieldwork_Code_of_Practice.pdf.

6.17. Injured or Dead California Tiger Salamanders: If an injured California tiger salamander is found during the term of this ITP, the individual shall be evaluated by the Lead Designated Biologist who shall then immediately contact the CDFW Regional Representative, via email and telephone, to discuss the next steps. If the CDFW Regional Representative cannot be contacted immediately, the injured salamander shall be placed in a shaded container and kept moist. If the CDFW Regional Representative is not available or has not responded within 15 minutes of initial attempts, then the following steps shall be taken:

6.17.1. If the injury is minor or healing and the salamander is likely to survive as determined by the Designated Biologist, the salamander shall be released immediately in accordance with the Condition of Approval 6.18 (California Tiger Salamander Relocation During Project Construction).

6.17.2. If it is determined that the California tiger salamander has major or serious injuries as a result of Project-related activities, the Designated Biologist shall immediately take it to the Lindsay Wildlife Museum or another CDFW-approved wildlife rehabilitation or veterinary facility. If taken into captivity, the individual shall remain in captivity and not be released into the wild unless it has been kept in quarantine and the release is authorized by CDFW and USFWS. Permittee shall bear any costs associated with the care or treatment of such injured California tiger salamander. The circumstances of the injury, the procedure followed, and the final disposition of the injured animal shall be documented in a written incident report as described in Condition of Approval 6.15 (Notification of Mortality or Injury).

6.17.3. If the California tiger salamander is found recently deceased (as evidenced by lack of odor or decomposition), a 1/2- inch portion of the tail tip shall be removed and placed in a labeled tissue tube with 95% ethanol. The remaining carcass shall be immediately bagged, labeled, and preserved in a freezer. The label shall include time and date, GPS location, circumstances surrounding death (if known), and ITP tracking number. CDFW shall be consulted on specimen disposal.

6.18. California Tiger Salamander Relocation During Project Construction: The

Designated Biologist shall relocate any California tiger salamander found within the Development Area to an active rodent burrow system nearest to aquatic habitat within the Conservation Easement Area. The California tiger salamander shall be monitored until it is determined that it is not imperiled by predators or other dangers. Relocation areas shall be identified by the Designated Biologist based upon best suitable habitat available and approved by CDFW prior to the start of Covered Activities. The Designated Biologist shall document both locations by photographs and GPS positions. The California tiger salamander shall be photographed and measured (Snout-Vent) for identification purposes prior to relocation. All documentation shall be provided to the CDFW Representative within 24 hours of California tiger salamander relocation.

- 6.19. San Joaquin Kit Fox Sightings: Any sightings of San Joaquin kit fox within or surrounding the Project Area shall be immediately reported to CDFW's Regional Contact. Any San Joaquin kit fox found within the Project Area shall be allowed to disperse on their own unless otherwise approved in writing by CDFW for specific individuals.
- 6.20. San Joaquin Kit Fox Injury: If a San Joaquin kit fox 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 San Joaquin kit fox. The Permittee shall notify CDFW of the injury to the San Joaquin kit fox immediately by telephone and e-mail followed by a written incident report. Notification shall include the name of the facility where the animal was taken.
- 6.21. Clearance Surveys: The Designated Biologist shall survey potential habitat features, such as aquatic and upland areas, and beneath woody debris, for California tiger salamander, for burrowing owls, and for previously unidentified potential San Joaquin kit fox dens during clearing, grubbing and initial site grading. If vegetation or fossorial mammal burrows become reestablished in a previously disturbed area, then the Designated Biologist shall resurvey these areas prior to conducting Covered Activities to ensure Covered Species are not in harm's way. If the Designated Biologist(s) or anyone else discovers California tiger salamander, the Designated Biologist(s) shall move the animal to a safe location nearby (see Condition of Approval 6.18 - California Tiger Salamander Relocation During Project Construction). If the Designated Biologist(s) or anyone else discovers a potential San Joaquin kit fox den, then the status of the den shall be determined per methods outlined in Condition of Approval 6.25 (Confirmed San Joaquin Kit Fox Dens).

- 6.22. Augering and Excavation Surveys: The Designated Biologist shall survey all augering and excavation soils material originating from up to 6-feet below grade in potential California tiger salamander habitat. The Permittee shall ensure auger bits are cleaned by shaking the soil loose and not cleaned by spinning. The Permittee shall ensure excavation is coordinated with the Designated Biologist to allow sufficient time to survey the excavated soil.
- 6.23. San Joaquin Kit Fox Den Surveys: No less than 14 days and no more than 30 days before Covered Activities begin the Designated Biologist shall conduct and direct walking transect surveys to detect potential San Joaquin kit fox dens in the Project Area. The Designated Biologist shall ensure that walking transects are conducted such that 100% visual coverage of the Project Area is achieved. The Designated Biologist shall adjust the transect width based upon vegetation height, topography, and other factors to facilitate the detection of dens and other sign. The Designated Biologist shall use the walking transects to detect and map known dens, potential dens, and sign (tracks, scat, prey remains). Detection dogs may be used if practicable. The status of all dens shall be determined and mapped within the Project Area (including the Conservation Easement Area). Potential dens will be considered to be any subterranean hole on the site that has entrances of appropriate dimensions for which available evidence is insufficient to conclude that it is being used or has been used by a San Joaquin kit fox. For areas within the Development Area that are either vegetated, become vegetated, or where mammal burrows become established or remain undisturbed by Covered Activities, den surveys shall be performed prior to initiating Covered Activities or re-initiating Covered Activities if dormant in sections of the Project Area.
- 6.24. Potential San Joaquin Kit Fox Dens: If potential kit fox den sites are located either during surveys or opportunistically then the Designated Biologist will use an infrared beam camera and track plates or powder, to determine if the den is currently being used. Other signs of occupancy (e.g., scat, fur) will be searched for in and around the burrow and, if found, documented with photographs. The camera and track plates will be placed at the burrow for a minimum of 5 consecutive days and then visually inspected by the Designated Biologist for sign of kit fox on a quarterly basis thereafter either for the term of this ITP or until the den has been permanently impacted by Covered Activities. A 50-foot avoidance buffer shall be used when kit fox occupation is expected but not confirmed.
- 6.25. Confirmed San Joaquin Kit Fox Dens: If a den has been confirmed to be utilized in any way by San Joaquin kit fox, then all Covered Activities shall be immediately halted and the area shall be isolated from human disturbance with a minimum of a 100-foot buffer surrounding the den. Permittee shall provide a written proposal to

CDFW for written approval on specific avoidance and minimization of impacts to the den and its occupants. CDFW must approve the proposal in writing prior to resumption of Covered Activities and entry of personnel or equipment within the 100-foot buffer area.

- 6.26. Burrowing Owl Preconstruction Surveys: Prior to Covered Activities such as heavy equipment use, excavation, grading, etc., (i.e. ground disturbing activities), the Designated Biologist shall conduct preconstruction surveys weekly, beginning more than 30 days and ending no earlier than three days before Covered Activities begin, with the final survey conducted 24 hours prior to beginning Covered Activities. The Designated Biologist shall use the survey methods described in the [CDFW Staff Report on Burrowing Owl Mitigation](#), Appendix D (2012). The Designated Biologist shall submit the results of the surveys prior to the commencement of each phase and to CDFW prior to beginning Covered Activities. If changes in burrowing owl presence are detected (e.g., burrowing owl have moved onsite or changed burrow use), the Designated Biologist shall establish buffers as required in this Permit. If a lapse in Project-related work of 14 calendar days or longer occurs, Permittee shall conduct additional surveys before work may be reinitiated. Preconstruction surveys as described in this Condition of Approval are required prior to commencement of Covered Activities in each development phase of the Project.
- 6.27. Burrow Complex Map: After preconstruction surveys and prior to the commencement of each phase, and prior to beginning Covered Activities for each development phase of the Project, Permittee shall provide to CDFW a map (e.g., KMZ, digital shape file) of the burrowing owl burrow complex(es) and atypical burrows (e.g., culverts, buckled concrete, etc.) of the current Project phase. The map shall include an outline of the Project Area and the current development phase footprint to be construction within the Project Area. The map shall include a title, north arrow, scale bar, and legend.
- 6.28. Burrowing Owl Covered Activity Seasonal Restriction: Permittee shall not conduct Covered Activities during the breeding season February 15 to August 31 within 500 feet of any burrow occupied by burrowing owl until young are fledged and capable of independent survival, and the adults are no longer nesting, unless otherwise approved in writing by CDFW. See Conditions of Approval 6.31 (Burrowing Owl Eviction) and 6.32.4 (Burrow Excavation and Monitoring) for work during the breeding season.

If Covered Activities cannot be avoided while burrowing owls are present on site at any time of year, the Permittee shall implement the No-Disturbance Buffers and Monitoring as required in Conditions of Approval 6.29 (Burrowing Owl No-Disturbance Buffers) and 6.30 (Burrowing Owl Daily Monitoring) below.

6.29. Burrowing Owl No-Disturbance Buffers: Permittee shall clearly delineate a no-disturbance buffer of 500 feet during the nesting season for high-disturbance activities (all construction activities) around all active burrowing owl nest/burrow within and adjacent to an active construction area with posted markers demarcating the area to avoid, using stakes, flags, and/or rope or cord to minimize the disturbance of burrowing owl and their habitat. The nesting season for burrowing owl is February 15 to August 31. During the non-nesting season from September 1 to February 14, Permittee shall delineate a no-disturbance buffer of 150feetaround all active BUOW burrows. The width of the buffers may be changed for low to moderate impact activities with written concurrence from CDFW. Permittee shall delineate the no-disturbance buffer with different materials than those used to delineate the active construction area/Project Area. Permittee shall remove and properly dispose of all materials used for delineation immediately upon completion of the Project.

6.30. Burrowing Owl Daily Monitoring: The Designated Biologist(s) shall be present during clearing, grubbing, grading, excavation, movement of heavy equipment (i.e., ground disturbing activities) to monitor the behavior of any burrowing owl at or within 150 feet, or 500 feet for nesting owls, of the Covered Activities and at least once daily during breeding and non-breeding season. The Designated Biologist(s) and Biological Monitors shall have the authority to stop work if burrowing owls exhibit distress and/or abnormal behavior (e.g., excessive vocalizations, defensive flights at intruders, flushing frequently, or otherwise displaying agitated behavior) from construction activities. Permittee shall not resume Covered Activities until the Designated Biologist has consulted CDFW and both the Designated Biologist and CDFW confirm that the burrowing owl's behavior has normalized. CDFW, in consultation with the Designated Biologist(s), shall determine whether to increase the size of the no-disturbance buffer. Daily monitoring may cease when the area is graded or habitat has been removed, exclusion fencing is in place consistent with Condition of Approval 6.1 (Seasonal Work Restriction) , and no more than seven days have elapsed between the pause in construction activities; the burrow is empty because the nest was abandoned (not as a result of Covered Activities); young are fledged and capable of independent survival; and/or the adults are no longer nesting as determined by the Designated Biologist.

6.31. Burrowing Owl Burrow Evictions: If Covered Activities cannot be avoided while burrowing owl are present on site at any time of year, Permittee shall implement exclusion and eviction (i.e., "passive relocation") per the CDFW-approved burrowing owl eviction plan, unless monitored, excavated, and documented, consistent with Condition of Approval 6.32.4 (Burrow Excavation and Monitoring).

Permittee shall avoid disturbing active burrowing owl burrows unless they are in an area of direct ground disturbance (e.g., grading areas, excavation areas) or the burrow

location poses a risk of direct harm to burrowing owl individuals (within 500 feet of Covered Activities).

6.32. Burrow Excavation and Monitoring: Permittee shall not excavate active burrowing owl burrows until the nestlings are fully fledged and capable of independent survival. Burrow exclusion, excavation, and monitoring shall adhere to the following process:

- 6.32.1. The eviction of burrowing owl from an occupied burrow shall occur between October 1 and February 15 (i.e., outside of the breeding season).
- 6.32.2. Burrow eviction shall occur during morning hours or on cooler days and shall not occur when temperatures exceed 95 degrees Fahrenheit. If eviction must occur during hot weather, the Designated Biologist or Biological Monitor shall be onsite to monitor the excluded owls to ensure that they survive elevated temperatures.
- 6.32.3. Notice of intent to evict owls from burrows shall be provided to CDFW via e-mail at least 48 hours prior to proceeding with eviction.
- 6.32.4. If a burrowing owl needs to be evicted from an occupied burrow and this cannot be avoided during the nesting season (between February 15 and August 31), there is no other option for avoidance and minimization and only if the Designated Biologist has determined that the occupants of the burrow consists of a single adult burrowing owl or consistent with the CDFW-approved eviction plan as follows: the Designated Biologist shall observe the burrow(s) for two hours per day for three consecutive days at sunrise or sunset or install a game camera for three consecutive days to monitor burrow activity. During burrow observation, the Designated Biologist shall remain at a distance that will allow for clear observation but not disturb the owls. Eviction may proceed only after the Biologist determines that the burrow does not contain an active nest.
- 6.32.5. After observation, if it is determined that the burrow does not contain an active nest, the Designated Biologist will determine via close inspection and scoping whether the burrow is active.
- 6.32.6. Once the burrow is determined to longer be an active nest, a one-way door shall be placed over the burrows for a minimum of seven days. During the seven-day period that the one-way door is installed, the Designated Biologist will check the burrow at least twice daily for signs that owls may be trapped inside. If an owl is found inside the burrow, the exclusion process shall be re-initiated as described above.

- 6.32.7. After the doors have been in place for seven days and the burrow has been observed to be empty, the Designated Biologist shall use a scope to ensure no eggs or animals are present in the burrow. The burrow shall be excavated once it is determined that it is empty.
- 6.32.8. The burrow excavation shall be conducted by or under the direct supervision of a Designated Biologist and shall be accomplished using hand tools for active burrows (but not all burrows). An adequate length, as determined by the Biologist, of the burrow shall be excavated, until it is confirmed by the Biologist that no individuals are inside. The burrow shall be backfilled with soil and compacted to ensure that burrowing owl cannot reenter or use the burrow. If burrow excavation reveals burrowing owl eggs, young, or adults, then burrow excavation shall cease immediately and monitoring as described above shall be conducted/resumed. Designated Biologist shall contact the CDFW Regional Representative by phone or email within 24 hours of the observation and get written guidance prior to proceeding if an individual burrowing owl does not vacate the partially excavated burrow within a reasonable timeframe.
- 6.32.9. Evicted burrowing owls shall be passively monitored for approximately two weeks if they can be visually observed by the Designated Biologist within the Project Area and THHCP conservation easement area or other location that is accessible by the Designated Biologist.
- 6.32.10. If the location of the evicted burrowing owl(s) cannot be determined, the Designated Biologist or Biological Monitor shall survey the habitat within 500 feet of the active construction area.
- 6.32.11. The Designated Biologist shall document the location of any known evicted burrowing owls, and a letter shall be provided to CDFW summarizing the eviction effort after two weeks of passive monitoring following eviction. Photographs shall be taken of the eviction and excavation process, including the location of the initial burrow, one-way door installation and monitoring, excavation and closure process, removal of owl habitat, and the area the individual relocated to (if possible). Any evicted owls whose location can be determined and are located on the conservation easement area or another location accessible to the Designated Biologist or Biological Monitor shall be monitored periodically for the duration of construction, focusing on the location of the owls and documenting potential breeding.
- 6.32.12. If the methodology must be modified due to site conditions, Permittee shall submit proposed revisions to the CDFW approved plan, and justification, via

email for CDFW review and written approval prior to initiating any of the modifications.

- 6.33. Burrowing Owl Observations: Permittee shall ensure all workers inform the Designated Biologist if they encounter a burrowing owl within or near (within 150 feet) of the current Project phase. All Covered Activities with potential to take burrowing owl as determined by the Designated Biologist shall cease until the animal moves away from activities on its own. The Designated Biologist shall make reasonable effort to locate the active burrow(s) and set up and maintain a no-disturbance buffer as specified in this ITP Amendment.
- 6.34. Deterring Predator Attraction: Permittee shall avoid attracting burrowing owl predators to the Project Area during construction to the extent feasible. Equipment conducting Covered Activities not in use for more than seven days will be moved to greater than 500 feet from the remaining burrow complexes.
- 6.35. Burrowing Owl Injury and Nest Abandonment: If a burrowing owl is injured or found dead as a result of Covered Activities within the vicinity of the Project Area, the Designated Biologist shall immediately notify the CDFW Regional Representative. If an individual burrowing owl is found injured, the Designated Biologist shall immediately transport the injured individual to a CDFW-approved wildlife rehabilitation center or veterinary facility identified and approved by CDFW prior to Covered Activities.

The initial notification to CDFW shall include information regarding the location, species, number of animals taken or injured and, if injured, the facility to which the individual was transported. Following initial notification, Permittee shall send the CDFW Regional Representative a written report within two calendar days. The report shall include the common and scientific name, date and time of the finding or incident, geo-referenced location of the animal or carcass (Project name, County, GPS location, and GPS datum), sex (if known), life stage/age class (if known), observer name and contact information, ITP number, a photograph (if possible), explanation as to cause of take or injury, and any other pertinent information.

If adult(s), nestling(s), or egg(s) are abandoned, the Designated Biologist shall recover the nestling(s) or egg(s) and immediately take it to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall bear any cost associated with care and recovery of any injured burrowing owl adults, nestling(s) or egg(s) and hacking (controlled release of captive reared young).

7. 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.

To meet this requirement, Permittee shall provide for the permanent protection, enhancement and management of the lands known as the “Conservation Easement Area” (see Figure 1) dependent upon CDFW acceptance pursuant to Condition of Approval 7.2 (Habitat Acquisition and Protection) below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.3 (Endowment Fund) below. The Conservation Easement Area is approximately 2,730 acres. The Conservation Easement Area contains approximately 2,687 acres of potential habitat for San Joaquin kit fox, 2,008 acres of potential upland and 8 acres of potential aquatic habitat for California tiger salamander, and 2,710 acres of potential habitat for burrowing owl. If CDFW finds these lands are unacceptable, then Permittee shall provide a minimum of 2,700 acres of occupied suitable habitats for Covered Species pursuant to Condition of Approval 7.2 (Habitat Acquisition and Protection) below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.3 (Endowment Fund) below. These lands are hereafter are referred to as Habitat Management (HM) lands. 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 8 below for all uncompleted obligations.

7.1. 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:

- 7.1.1. Land acquisition costs for HM lands identified in Condition of Approval 7.2 (Habitat Acquisition and Protection) below, estimated at \$5,000/acre for 2,730 acres: \$13,650,000. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirement.
- 7.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 7.2.5 (Start-up Activities) below, estimated at \$423,000;

- 7.1.3. Interim management period funding as described in Condition of Approval 7.2.6 (Interim Management (Initial and Capital) below, estimated at \$201,198;
 - 7.1.4. Long-term management funding as described in Condition of Approval 7.3 (Endowment Fund) below, estimated at \$702/acre for 2,730 acres: \$1,916,460. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management;
 - 7.1.5. 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 7.4 (Reimburse CDFW), estimated at \$4,500.
- 7.2. Habitat Acquisition and Protection: To provide for the acquisition and perpetual protection and management of the HM lands, Permittee shall:
- 7.2.1. 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. Permittee shall obtain CDFW written approval of any conservation easement before its execution, amendment, 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);
 - 7.2.2. 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;

- 7.2.3. 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;
- 7.2.4. 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;
- 7.2.5. 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 <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=227736>); (2) conducting a baseline biological assessment and land survey report by June 30, 2022 ; (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;
 - 7.2.5.1. Activities Associated with Burrowing Owl HM Land Enhancements: Provide for the implementation of HM Lands enhancement activities on HM Lands. HM Land enhancement activities include revision of the final management plan for CDFW approval.
- 7.2.6. Interim Management (Initial and Capital): Provide for the interim management of the HM lands. Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the revised final management plan and re-recorded 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 revised final management plan shall include fence repair, 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.

- 7.3. Endowment Fund: 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 7.2.5 (Start-up Activities). Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

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

- 7.3.1. Identify an Endowment Manager: The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended. Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the

property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). Within thirty days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(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);

- 7.3.2. Calculate the Endowment Funds Deposit: After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare 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). Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.
 - 7.3.2.1. 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.
 - 7.3.2.2. 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.
 - 7.3.2.3. 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.
 - 7.3.2.3.1. Three Years Delayed Spending: The endowment shall be established assuming spending will not occur for the first three years after full funding.
 - 7.3.2.3.2. 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.

7.3.3. Transfer Long-term Endowment Funds: Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above. 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.

7.4. 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.

8. Performance Security:

Permittee may proceed with Covered Activities only after Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 7 (Habitat Management Land Acquisition and Restoration) that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

- 8.1. Security Amount: The Security shall be in the amount of \$16,195,158. This amount is based on the cost estimates identified in Condition of Approval 7.1 (Cost Estimates) above.
- 8.2. 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.
- 8.3. Security Timeline: The Security shall be provided to CDFW 30 days before Covered Activities begin.
- 8.4. Security Holder: The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 8.5. 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.
- 8.6. Security Drawing: The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that Permittee has failed to comply with the

Conditions of Approval of this ITP.

8.7. Security Release: The Security (or any portion of the Security then remaining) shall be released to 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.

Joint and Several Liability:

All terms and conditions of this ITP, including those set forth in the attached MMRP, shall be binding upon each Permittee. Notwithstanding California Civil Code section 1431 or any other provision of law, Permittees are jointly and severally liable for performance of all terms, conditions, and obligations of this ITP, including, but not limited to, those set forth in the attached MMRP. Any failure by any Permittee to comply with any term, condition, or obligation set forth in this ITP shall be deemed a failure to comply by all Permittees.

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 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 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:

Permittee shall deliver a fully executed duplicate original ITP by 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

Alternatively, Permittee shall email the digitally signed ITP to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5.

Written notices 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 and other communications shall reference the Project name, Permittee, and ITP Number (2081-2018-032-03) in a cover letter and on any other associated documents. Compliance and monitoring reports shall be submitted electronically to R3CESA@wildlife.ca.gov.

Original cover with attachment(s) to:

Erin Chappell, Regional Manager
California Department of Fish and Wildlife – Bay Delta Region

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TRACY PHASE 2, LLC, TRACY PHASE 3, LLC, TRACY PHASE 4, LLC
TRACY HILLS PROJECT
AMENDMENT NO. 2

2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Telephone: (707) 428-2002; R3CESA@wildlife.ca.gov

and a copy to:

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

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

Andrea Boertien, Environmental Scientist
California Department of Fish and Wildlife, Bay Delta Region – 3
2825 Cordelia Road, Suite 100, Fairfield, CA 94534
Telephone (707) 317-0388; 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, City of Tracy. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Tracy Hills Specific Plan Final Subsequent EIR (SCH No.: 2013102053) dated January 2016 that the City of Tracy certified for the Tracy Hills Specific Plan Project on April 26, 2016. 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

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any such potential effects. CDFW consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

Furthermore, CDFW finds that adding western burrowing owl to the Covered Species in this Amended ITP does not result in 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. While burrowing owl was not considered a candidate for listing under CESA at the time of the EIR's certification, the EIR does analyze the Project's impacts and includes measures to avoid, minimize, and mitigate impacts on the species.

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 (SCH No: 2013102053), 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 2,730 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. 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
7. 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 Permittee as necessary to avoid jeopardy and as required by law.
8. CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).
9. Issuance of this Amendment may increase the amount of take of the Covered Species compared to the Project as originally approved; however, due to thousands of hand excavated burrows showing absence of the Covered Species, and by implementing erosion control in the subdrain outfall conservation easement area per the current LTMP in perpetuity (Amendment No. 1) preconstruction surveys, seasonal restrictions, no-disturbance buffers, monitoring, and mitigation providing nesting, and foraging habitat adjacent to the Project site (Amendment No. 2), it is not expected that this Amendment will increase Project impacts on these species (i.e., "impacts of taking" as used in Fish and Game Code section 2081, subd. (b)(2)).
10. Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

Amendment No. 2 Findings

1. CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

2. Issuance of this Amendment will increase the amount of permitted take of Covered Species compared to the Project as originally approved by adding burrowing owl to the list of Covered Species; however, by implementing avoidance and minimization measures specific to burrowing owl in Amendment No. 2 and requiring compensatory mitigation in the form of conserving burrowing owl habitat, it is not expected that this Amendment will increase Project impacts on this species (i.e., “impacts of taking” as used in Fish and Game Code Section 2081, subdivision (b)(2)).
3. Issuance of this Amendment does not affect CDFW’s previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

Attachments:

FIGURE 1	Tracy Hills Development Area (Area C) and Conservation Easement Area
FIGURE 2	Tracy Hills Land Use Zones Schematic
FIGURE 3	Table of Allowed Uses within Each Zone
FIGURE 4	Firebreak Configuration Options
FIGURE 5	California Tiger Salamander Specially Designated Storm Drain Design Modification Area(s)
FIGURE 6	California Tiger Salamander Aquatic Habitat with Upland Habitat Buffers
FIGURE 7	Burrow Inventory Mapping for Project
ATTACHMENT 1	Amended 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
ATTACHMENT 5	Appendix 5B: Tracy Hills HCP – California Red-Legged Frog & California Tiger Salamander Relocation Plan
ATTACHMENT 6	Major Amendment No. 1 with Track Changes
ATTACHMENT 7	Major Amendment No. 2 with Track Changes

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 2/11/2025

DocuSigned by:
Erin Chappell
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Erin Chappell, Regional Manager
Bay Delta Region

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Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT NO. 2081-2018-032-03, Amendment No. 2**

PERMITTEE: Tracy Phase 2, LLC., Tracy Phase 3, LLC.,
Tracy Phase 4, LLC.

PROJECT: Tracy Hills 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
BEFORE DISTURBING SOIL OR VEGETATION OR DURING CONSTRUCTION					
1	No Impacts to California Tiger Salamander Aquatic Breeding Habitat: No direct impacts to CTS aquatic breeding habitat within the Development Area from construction-related activities (e.g., stormwater outfalls, road improvements) are authorized under this ITP. Permittee shall apply for an amendment to this ITP and provide specific designs or other plans for these types of impacts when designs are able to be provided. Upon receipt of an amendment request CDFW shall evaluate any additional impacts and provide additional Conditions of Approval if necessary and require compensatory mitigation to meet the full mitigation standard.	ITP Condition # 4.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	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.	ITP Condition # 4.2	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
3	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, collecting 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 # 4.3	Before commencing ground- or vegetation-disturbing activities	Permittee	
4	Designated Biologist Authority: To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist(s) 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.	ITP Condition # 4.4	Entire Project	Permittee	
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. 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 greater than a 12-month period. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout (printed in both English and Spanish) containing this information for workers to carry in the Project Area. The training handout shall contain the following information:	ITP Condition # 4.5	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	<p>Descriptions of the Covered Species (including photographs) and their habitat needs.</p> <p>A current report of the occurrences of the Covered Species in the Project Area.</p> <p>An explanation of the protected status of each Covered Species under the federal and state endangered species acts and legal obligations.</p> <p>Avoidance and minimization measures that will be followed to reduce impacts on the Covered Species during all Project activities: construction, operations and maintenance, and decommissioning, and the penalties for not following the avoidance and mitigation measures.</p> <p>Instructions on the procedures that will be implemented if a Covered Species is found on-site, including contact information of a biological monitor and U.S. Fish and Wildlife Service (USFWS) personnel.</p>				
6	<p>Construction Monitoring Binder: The Designated Biologist shall maintain a construction-monitoring binder 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 binder is available for review at the Project Area upon request by CDFW.</p>	ITP Condition # 4.6	Before commencing ground- or vegetation-disturbing activities / Entire Project		
7	<p>Trash Abatement: Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of Covered Activities. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week during Covered Activities to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.</p>	ITP Condition # 4.7	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
8	<p>Dust Control: Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles for longer than 24 hours.</p>	ITP Condition # 4.8	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
9	<p>Erosion Control Materials: Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.</p>	ITP Condition # 4.9	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
10	<p>Delineation of Property Boundaries: Before starting Covered Activities along each part of the route in active construction for each phase, Permittee shall clearly delineate the boundaries of the area to be disturbed for development for the specific phase within the Development 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 for each phase.</p>	ITP Condition # 4.10	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
11	<p>Delineation of Habitat: Prior to construction, the Permittee shall stake, flag, fence or otherwise conspicuously delineate all environmentally sensitive areas that are to be protected in place and remain undisturbed during construction, including the boundaries between the Development Area and the Conservation Easement Area. The Permittee shall also delineate the boundary of the work area for each Project Phase as they occur. Environmentally sensitive areas are</p>	ITP Condition # 4.11	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	defined as wetland, riparian areas, aquatic areas, and raptor nesting locations. The materials used to delineate environmentally sensitive areas will be removed no later than 30 days following completion of construction.				
12	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. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. Project-related construction vehicles will observe a daytime on-site speed limit of 20-mph, except on County and City roads and State and Federal highways. All Project-related traffic will observe a night-time speed limit of 10-mph during construction, except on County and City roads and State and Federal highways. 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.	ITP Condition # 4.12	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
13	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.	ITP Condition # 4.13	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
14	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 # 4.14	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
15	CDFW Access: Permittee shall provide CDFW staff with reasonable access to the Project Area and mitigation lands under Permittee control and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.	ITP Condition # 4.15	Entire Project	Permittee	
16	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 # 4.16	End of each Project phase	Permittee	
17	Domestic Animals: With the exception of livestock, service animals, or working animals used by the CDFW-approved long-term land manager and as described in the final management plan (see Condition of Approval 7.2, Habitat Acquisition and Protection), no domestic animals shall be allowed within the Project Area unless on leash and restricted to designated vehicle parking areas during Covered Activities.	ITP Condition # 4.17	Entire Project	Permittee	
18	No Loaded Firearms: With the exceptions of law enforcement officers, grazing operators, the CDFW-approved long-term land manager or non-commercial hunting activities as described in the allowed uses of the final management plan (see Condition of Approval 7.2, Habitat	ITP Condition # 4.18	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	Acquisition and Protection), no unsecured (i.e., locked up) or loaded firearms shall be allowed within the Project Area at any time.				
19	Pesticides: No rodenticides or herbicides shall be used within the Project Area until Covered Activities have been completed or in the Conservation Easement Area unless specifically approved in the final management plan required in Condition of Approval 7.2 (Habitat Acquisition and Protection) or in writing by CDFW.	ITP Condition # 4.19	Entire Project	Permittee	
20	Urban/Suburban Storm Drain Designs and Construction for Areas Adjacent to Natural Lands: To prevent one-way entrainment of California tiger salamander in specially designated area(s) (Figure 5), Permittee shall ensure that grated drop inlets or other types of storm drain infrastructure shall be constructed in a manner or outfitted with devices to prevent entrainment. Permittee shall obtain written acceptance from CDFW confirming that the infrastructure incorporates design elements to avoid and reduce impacts to California tiger salamander prior to installation of such infrastructure.	ITP Condition # 4.20	Entire Project	Permittee/CDFW	
21	Submit Designs for Storm Water Infrastructure: Permittee shall submit the plans for storm water-related infrastructure to CDFW for written acceptance prior to Covered Activities occurring for each Project Phase. Infrastructures shall be designed and constructed to prevent conflicts with or take of California tiger salamander.	ITP Condition # 4.21	Entire Project	Permittee/CDFW	
22	Development Area Lighting: All lighting shall be designed so that exterior light fixtures are hooded, with lights directed downward or toward the area to be illuminated, with little to no horizontal spread, as low to the ground as feasible and so that backscatter to the nighttime sky is minimized. The design of the lighting will be such that the luminescence or light sources are shielded to prevent light trespass outside the Development Area boundary and neither the lamp nor the reflector interior surface would be visible from outside the footprint of the Development Area except for public roadways. Only narrow spectrum bulbs shall be used to limit the range of species affected by lighting. All lighting will be of minimum necessary brightness consistent for worker safety. The number of lighting fixtures on buildings and roadways shall be limited to the minimum required by the City of Tracy.	ITP Condition # 4.22	Entire Project	Permittee	
23	Notification Before Commencement: The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities each Project Phase and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities for each Project Phase.	ITP Condition # 5.1	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
24	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.	ITP Condition # 5.2	Entire Project	Permittee	
25	Daily Compliance Monitoring: The Designated Biologist shall be on-site daily while Covered Activities occur. This requirement does not apply to allowed activities identified in the final management plan within the Easement Area once approved by CDFW. 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 Condition # 5.3	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	ITP; (4) obtain photo documentation of Project Area 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. Daily compliance inspections by the Designated Biologist may be reduced to a minimum of one day per week only after Permittee obtains written approval from CDFW per Condition of Approval 5.4 (Weekly Compliance Monitoring).				
26	Weekly Compliance Monitoring: During periods of inactivity or after clearing, grubbing, and grading are completed compliance inspections by the Designated Biologist may be reduced to a minimum of one day per week only after Permittee obtains written approval from CDFW for each Project Phase. Daily compliance inspections shall resume if the Designated Biologist or CDFW finds the Permittee is out of compliance with any conditions of this ITP including the failure to maintain the exclusion fencing.	ITP Condition # 5.4	Entire Project	Permittee	
27	Monthly Compliance Report: The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Conditions of Approval 5.3 and 5.4 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be certified by the Designated Biologist (i.e., signed) and submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Bay Delta Region 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) 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 # 5.5	Entire Project	Permittee	
28	Annual Status Report: Permittee shall provide CDFW with an Annual Status Report (ASR) no later than March 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 the year identified; (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 # 5.6	Entire Project	Permittee	
29	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 # 5.7	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
30	Seasonal Work Window Restriction: It is anticipated that the initial ground disturbance (such as excavation, clearing and grubbing) for Phase I will take place during the rainy season (October 15, 2021, through April 1, 2022, and that Covered activities shall be subject to Condition of Approval 6.4 (Wet Season Work Restriction) below. After April 1, 2022, Permittee shall limit Covered Activities that will result in either initial ground disturbance (such as excavation, grading, trenching, contouring, or clearing and grubbing) from April 1 through October 31. Once habitat has been removed and exclusion fencing is in place, activities within the exclusion fencing may occur year-round. If areas have become fallow after initial disturbance and grasses, shrubs have become reestablished, then Covered Activities shall only resume during the period from April 1 through October 31, within California tiger salamander habitat areas delineated in Figure 6 and shall only occur outside this work window after habitat (including ground squirrel and gopher burrows) is removed and exclusion fencing is in place.	ITP Condition # 6.1	Entire Project	Permittee	
31	Daily Work Window Restriction: All Covered Activities shall terminate 30 minutes before sunset and shall not resume until 30 minutes after sunrise unless otherwise approved by the Designated Biologist. Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for the geographic area (http://aa.usno.navy.mil/data/docs/RS_OneYear.php).	ITP Condition # 6.2	Entire Project	Permittee	
32	Seasonal Work Window Extensions: Permittee shall adhere to the seasonal work window required in Condition of Approval 6.1 (Seasonal Work Window Restriction) unless an expanded work window is approved by CDFW. Permittee shall submit any requests for extensions in writing at least 14 days prior to the desired date of construction or 14 days prior to the expiration of the seasonal work window. If work is approved the following conditions shall apply: Any work site located within 0.5 miles of California tiger salamander aquatic habitat, including where equipment will be stored overnight, shall be completely fenced with a temporary wildlife exclusion barrier with coverboards (see Measure 6.11). All construction work shall take place within the fenced area. Installation of exclusion fencing does not apply to graveled or well-traveled roads. All construction vehicle and heavy equipment travel shall be limited to the daylight hours from 30 minutes after sunrise until 30 minutes before sunset, to the maximum extent feasible. The temporary exclusion barrier shall be installed around any areas within the Development Area of each Project Phase that could become ponded (for more than 24-hours) and provide breeding habitat during rain events. Coverboards shall be placed around the inside and outside perimeter of the temporary exclusion barrier as described in Condition of Approval 6.11 (Covered Species/Conservation Easement Area Permanent Fencing).	ITP Condition # 6.3	Entire Project	Permittee	
33	Wet Season Work Restriction: If CDFW has approved a seasonal work window extension per Condition of Approval 6.3 (Seasonal Work Window Extensions), then, during the wet season between October 15 through April 30, Covered Activities shall cease 24 hours prior to a 30 percent or greater forecast of rain. Construction may continue 24 hours after the rain ceases and there is less than a 30 percent chance of precipitation in the 24-hour forecast. CDFW may approve work when there is a 30 percent or more chance of precipitation in the 24-hour forecast subject to full implementation of Condition of Approval 6.6 (No Project Phase without Erosion Control) and the following condition:	ITP Condition # 6.4	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	If work is approved when a greater than 30 percent chance of rain is forecast, the Designated Biologist(s) shall survey the Project Area where Covered Activities are planned before they begin each day rain is forecast. If rain exceeds 0.50 inches during a 24-hour period, work shall cease until there is a less than 30 percent change of precipitation in the 24-hour forecast. All night-time work and construction-related traffic shall be suspended during rain events.				
34	Erosion Control: All erosion and sediment control measures shall be installed prior to earth moving Covered Activities. Permittee shall utilize erosion control measures throughout each Project Phase where sediment runoff from exposed slopes could leave the Project Area and/or enter a stream or pond. Permittee, Designated Representative or other trained staff shall monitor erosion control measures before, during, and after each storm event and repair and/or replace ineffective measures immediately.	ITP Condition # 6.5	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
35	No Project Phase without Erosion Control: No Project Phase may be started if that phase and its associated erosion control measures cannot be completed prior to the onset of a storm event if that construction phase may cause the introduction of sediments into a drainage, stream, or pond. Permittee shall consult 72-hour weather forecasts from the National Weather Service prior to startup of any phase of the Project that may result in sediment runoff to the stream.	ITP Condition # 6.6	Entire Project	Permittee	
36	Geo-Textile and Monofilament Netting Restriction: To minimize the risk of ensnaring and strangling wildlife, Permittee shall not place erosion control materials containing synthetic (e.g., plastic or nylon) monofilament netting. Any geo-textile material or filter fabric used within the Project Area shall not contain any petroleum-based products. Geotextiles, fiber rolls, and other erosion control measures shall be made of loose-weave mesh, such as jute, coconut (coir) fiber, or other products without welded weaves. No geotextile fabrics shall be placed where they may be exposed to stream flows	ITP Condition # 6.7	Entire Project	Permittee	
37	Location of Spoil Sites: Spoil sites shall not be located where it may be washed back into a watercourse or within any potential Covered Species habitat throughout the Project Area.	ITP Condition # 6.8	Entire Project	Permittee	
38	Cover Spoil Piles: Prior to construction of a Project Phase, Permittee shall submit the Project's Stormwater Pollution and Prevention Plan and Dust Control Permit Plan for that Project Phase and comply with each plan's requirements. Permittee shall take any necessary precautions to prevent loose soils or dust from entering streams or stormwater infrastructure that discharges into streams.	ITP Condition # 6.9	Entire Project	Permittee	
39	Temporary Exclusion Barrier: At least 30 days prior to the initiation of Covered Activities on each Project Phase, the Permittee shall submit to CDFW for written approval plans for an exclusion fencing system for the upcoming active phase, and access routes as appropriate. CDFW has 30 days to respond to each submission of plans, including resubmission of plans that are revised at the request of CDFW. The plans shall include a map indicating location of exclusion fencing in relation to the Project Area, the Project Phase that will be constructed, location of special-status wildlife habitat features, dimension specifications and a description of fencing materials. Permittee shall be responsible for implementation and upkeep of the fencing system. In addition, the following criteria for the exclusion fencing system shall be met: The exclusion fencing shall consist of material appropriate for exclusion of California tiger salamander.	ITP Condition # 6.10	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	

Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
<p>There shall be a section of exclusion fencing placed between disturbance areas and aquatic habitat for California tiger salamander along Corral Hollow Creek to prevent individuals from entering any slated ground disturbance areas from the creek.</p> <p>The exclusion fencing shall either measure at least 36 inches tall above the soil surface or be of an appropriate height for exclusion of California tiger salamander.</p> <p>The Designated Biologist shall inspect the fencing immediately after every rain event to ensure it maintains structural integrity. Holes or burrows which appear to extend under the fencing will be blocked inside the fence line to prevent California tiger salamander from accessing work areas.</p> <p>The bottom of the exclusion fencing shall not allow wildlife to pass through gaps or holes with the bottom of the fencing buried six inches below grade.</p> <p>The exclusion fencing shall be taut between the supporting stakes and shall have the supporting stakes oriented on the inside edge towards the development areas.</p> <p>The exclusion fencing shall feature coverboards inside and outside the perimeter placed at 100-foot intervals and one-way escape doors or an appropriate design for preventing special-status species and other wildlife from being trapped within a Project Phase that is under active construction.</p> <p>The fencing and coverboards shall be inspected every morning for trapped California tiger salamanders during periods when they are likely to be migrating above-ground. These daily-inspection periods include the period from May 1 through August 31 when salamander metamorphs are likely to be migrating away from their natal ponds, and all year on mornings following any rain event greater than 0.1 inches, when adults may be migrating to their breeding ponds. If a California tiger salamander is encountered during these inspections, and is in danger of being harmed, then the Designated Biologist shall temporarily stop all activities that threaten harm, remove the animal from the area, and relocate it to the pre-approved location as described in the Covered Species Relocation Plan (Condition of Approval 6.12 – California Tiger Salamander Relocation).</p> <p>If fencing becomes damaged, it will be immediately repaired upon detection and the Designated Biologist shall stop work in the vicinity of the fencing as needed to ensure that no California tiger salamanders have entered the construction area.</p> <p>Fencing system entry/exit points for vehicular and pedestrian traffic shall be constructed so wildlife cannot access the area within a Project Phase under active construction during non-work hours.</p> <p>The Designated Biologist shall inspect the Project Area prior to installation of the exclusion fencing. The exclusion fencing system shall remain in place until all construction activities have been completed in the corresponding Project Phase. All components of the exclusion fencing will be removed for storage or disposal off-site immediately upon completion of construction activities. All vegetation slated for removal in the exclusion fencing buffer area shall be inspected by a Designated Biologist prior to the initiation of removal. Exclusion fencing shall be inspected daily by the Designated Biologist and repaired as necessary, including inspection of coverboards and replacement of wetted sponges as necessary to minimize wildlife distress.</p>				

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
40	Covered Species/Conservation Easement Area Permanent Fencing: Permittee shall provide a Covered Species/Conservation Easement Area Fencing Plan a minimum of 30 days prior to commencing any Covered Activities for approval in writing by CDFW. Fencing structures identified in the plan shall be installed either according to the approved plan or prior to commencement of Covered Activities for each phase, and shall be completed in its entirety (i.e., spans the interface between the Development Area and the Conservation Easement Area) (see Figure 1) by the end of the year 2025. The Permittee shall ensure any permanent fencing is monitored and maintained. Permittee shall ensure that permanent barriers or fencing installed between fully developed areas and Covered Species habitat are maintained in perpetuity.	ITP Condition # 6.11	Before commencing ground- or vegetation-disturbing activities /completed by December 31, 2025	Permittee	
41	California Tiger Salamander Relocation: If a California tiger salamander is encountered during these inspections, and is in danger of being harmed, the Designated Biologist shall temporarily stop all activities that threaten harm, remove the animal from the area, and relocate it to the pre-approved relocation location as described in Attachment 5. California tiger salamanders that will be relocated and released by the Designated Biologist outside the construction area, preferably within 300 feet of where it was found, in protected suitable habitat in the Conservation Easement Area. Under no circumstances will a California tiger salamander be released on a site other than the Conservation Easement Area unless the written permission of the landowner has been obtained prior to the start of construction of each phase.	ITP Condition # 6.12	Entire Project	Permittee	
42	Open Trenches, Pits or Holes: Any open trenches, pits, holes or other excavations into which Covered Species may fall or become trapped shall either be covered if feasible or have wildlife escape ramps installed as determined by the Designated Biologist at the end of each workday. Prior to the initiation of construction each day and prior to the covering trenches, holes or pits, the Designated Biologist or Biological Monitor shall inspect them for wildlife for movement out of harm's way. If any worker discovers that Covered Species have become trapped, they shall halt Covered Activities and notify the Designated Biologist immediately. Project workers and the Designated Biologist shall allow Covered Species to escape unimpeded, if possible, or a Designated Biologist shall move Covered Species out of harm's way before allowing work to resume.	ITP Condition # 6.13	Entire Project	Permittee	
43	Open Pipes Restriction: All pipes, culverts, or similar structures with an 11 cm or greater diameter that are stored on-site for one or more overnight periods shall be securely capped on both ends prior to storage when feasible. All pipes, culverts, and similar structures with an 11 cm or greater diameter, debris piles, and pallet stacks shall be thoroughly inspected for wildlife by the Designated Biologist or Construction Monitor prior to utilization. All hollow pipes or posts after they are installed as part of the Project and exposed to the environment shall be capped, screened, or filled with material by Permittee prior to the end of the day in which installation occurs. If any worker discovers that Covered Species are using pipes, culverts, or similar structures, they shall halt Covered Activities and notify the Designated Biologist immediately. Project workers and the Designated Biologist shall allow Covered Species to escape unimpeded, if possible, or a Designated Biologist shall move Covered Species out of harm's way before allowing work to resume.	ITP Condition # 6.14	Entire Project	Permittee	
44	Notification of Mortality 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	ITP Condition # 6.15	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	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 three 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.				
45	Handling of California Tiger Salamanders: California tiger salamanders shall be handled and assessed according to The Declining Amphibian Task Force Fieldwork Code of Practice available online at: https://www.fws.gov/southwest/es/NewMexico/documents/SP/Declining_Amphibian_Task_Force_Fieldwork_Code_of_Practice.pdf .	ITP Condition # 6.16	Entire Project	Permittee	
46	<p>Injured or Dead California Tiger Salamanders: If an injured California tiger salamander is found during the term of this ITP, the individual shall be evaluated by the Lead Designated Biologist who shall then immediately contact the CDFW Regional Representative, via email and telephone, to discuss the next steps. If the CDFW Regional Representative cannot be contacted immediately, the injured salamander shall be placed in a shaded container and kept moist. If the CDFW Regional Representative is not available or has not responded within 15 minutes of initial attempts, then the following steps shall be taken:</p> <p>If the injury is minor or healing and the salamander is likely to survive as determined by the Designated Biologist, the salamander shall be released immediately in accordance with the Condition of Approval 6.15 (Notification of Mortality or Injury).</p> <p>If it is determined that the California tiger salamander has major or serious injuries as a result of Project-related activities, the Designated Biologist shall immediately take it to the Lindsay Wildlife Museum or another CDFW-approved wildlife rehabilitation or veterinary facility. If taken into captivity, the individual shall remain in captivity and not be released into the wild unless it has been kept in quarantine and the release is authorized by CDFW and USFWS. Permittee shall bear any costs associated with the care or treatment of such injured California tiger salamander. The circumstances of the injury, the procedure followed, and the final disposition of the injured animal shall be documented in a written incident report as described in Condition of Approval 6.18.</p> <p>If the California tiger salamander is found recently deceased (as evidenced by lack of odor or decomposition), a ½- inch portion of the tail tip shall be removed and placed in a labeled tissue tube with 95% ethanol. The remaining carcass shall be immediately bagged, labeled, and preserved in a freezer. The label shall include time and date, GPS location, circumstances surrounding death (if known), and ITP tracking number. CDFW shall be consulted on specimen disposal.</p>	ITP Condition # 6.17	Entire Project	Permittee	
47	California Tiger Salamander Relocation During Project Construction: The Designated Biologist shall relocate any California tiger salamander found within the Development Area to an active rodent burrow system nearest to aquatic habitat within the Conservation Easement Area. The California tiger salamander shall be monitored until it is determined that it is not imperiled by predators or other dangers. Relocation areas shall be identified by the Designated Biologist based upon best suitable habitat available and approved by CDFW prior to the start of Covered Activities. The Designated Biologist shall document both locations by photographs and GPS positions. The California tiger salamander shall be photographed and measured (Snout-Vent)	ITP Condition # 6.18	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	for identification purposes prior to relocation. All documentation shall be provided to the CDFW Representative within 24 hours of California tiger salamander relocation.				
48	San Joaquin Kit Fox Sightings: Any sightings of San Joaquin kit fox within or surrounding the Project Area shall be immediately reported to CDFW's Regional Contact. Any San Joaquin kit fox found within the Project Area shall be allowed to disperse on their own unless otherwise approved in writing by CDFW for specific individuals.	ITP Condition # 6.19	Entire Project	Permittee	
49	San Joaquin Kit Fox Injury: If a San Joaquin kit fox 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 San Joaquin kit fox. The Permittee shall notify CDFW of the injury to the San Joaquin kit fox immediately by telephone and e-mail followed by a written incident report. Notification shall include the name of the facility where the animal was taken.	ITP Condition # 6.20	Entire Project	Permittee	
50	Clearance Surveys: The Designated Biologist shall survey potential habitat features, such as aquatic and upland areas, and beneath woody debris, for California tiger salamander, for burrowing owls, and for previously unidentified potential San Joaquin kit fox dens during clearing, grubbing and initial site grading. If vegetation or fossorial mammal burrows become reestablished in a previously disturbed area, then the Designated Biologist shall resurvey these areas prior to conducting Covered Activities to ensure Covered Species are not in harm's way. If the Designated Biologist(s) or anyone else discovers California tiger salamander, the Designated Biologist(s) shall move the animal to a safe location nearby (see Condition of Approval 6.18 -California Tiger Salamander Relocation during Project Construction). If the Designated Biologist(s) or anyone else discovers a potential San Joaquin kit fox den, then the status of the den shall be determined per methods outlined in Condition of Approval 6.25 (Confirmed San Joaquin Kit Fox Dens).	ITP Condition # 6.21	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
51	Augering and Excavation Surveys: The Designated Biologist shall survey all augering and excavation soils material originating from up to 6-feet below grade in potential California tiger salamander habitat. The Permittee shall ensure auger bits are cleaned by shaking the soil loose and not cleaned by spinning. The Permittee shall ensure excavation is coordinated with the Designated Biologist to allow sufficient time to survey the excavated soil.	ITP Condition # 6.22	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
52	San Joaquin Kit Fox Den Surveys: No less than 14 days and no more than 30 days before Covered Activities begin the Designated Biologist shall conduct and direct walking transect surveys to detect potential San Joaquin kit fox dens in the Project Area. The Designated Biologist shall ensure that walking transects are conducted such that 100% visual coverage of the Project Area is achieved. The Designated Biologist shall adjust the transect width based upon vegetation height, topography, and other factors to facilitate the detection of dens and other sign. The Designated Biologist shall use the walking transects to detect and map known dens, potential dens, and sign (tracks, scat, prey remains). Detection dogs may be used if practicable. The status of all dens shall be determined and mapped within the Project Area (including the Conservation Easement Area). Potential dens will be considered to be any subterranean hole on the site that has entrances of appropriate dimensions for which available evidence is insufficient to conclude that it is being used or has been used by a San Joaquin kit fox. For areas within the Development Area that are either vegetated, become vegetated, or where mammal burrows become established or remain undisturbed by Covered Activities, den	ITP Condition # 6.23	Before commencing ground- or vegetation-disturbing activities / Entire Project		

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	surveys shall be performed prior to initiating Covered Activities or re-initiating Covered Activities if dormant in sections of the Project Area.				
53	Potential San Joaquin Kit Fox Dens: If potential kit fox den sites are located either during surveys or opportunistically then the Designated Biologist will use an infrared beam camera and track plates or powder, to determine if the den is currently being used. Other signs of occupancy (e.g., scat, fur) will be searched for in and around the burrow and, if found, documented with photographs. The camera and track plates will be placed at the burrow for a minimum of 5 consecutive days and then visually inspected by the Designated Biologist for sign of kit fox on a quarterly basis thereafter either for the term of this ITP or until the den has been permanently impacted by Covered Activities. A 50-foot avoidance buffer shall be used when kit fox occupation is expected but not confirmed.	ITP Condition # 6.24	Entire Project	Permittee	
54	Confirmed San Joaquin Kit Fox Dens: If a den has been confirmed to be utilized in any way by San Joaquin kit fox, then all Covered Activities shall be immediately halted and the area shall be isolated from human disturbance with a minimum of a 100-foot buffer surrounding the den. Permittee shall provide a written proposal to CDFW for written approval on specific avoidance and minimization of impacts to the den and its occupants. CDFW must approve the proposal in writing prior to resumption of Covered Activities and entry of personnel or equipment within the 100-foot buffer area.	ITP Condition # 6.25	Entire Project	Permittee	
55	Burrowing Owl Preconstruction Surveys: Prior to Covered Activities such as heavy equipment use, excavation, grading, etc., (i.e. ground disturbing activities), the Designated Biologist shall conduct preconstruction surveys weekly, beginning more than 30 days and ending no earlier than three days before Covered Activities begin, with the final survey conducted 24 hours prior to beginning Covered Activities. The Designated Biologist shall use the survey methods described in the https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline , Appendix D (2012). The Designated Biologist shall submit the results of the surveys prior to the commencement of each phase and to CDFW prior to beginning Covered Activities. If changes in burrowing owl presence are detected (e.g., burrowing owl have moved onsite or changed burrow use), the Designated Biologist shall establish buffers as required in this Permit. If a lapse in Project-related work of 14 calendar days or longer occurs, Permittee shall conduct additional surveys before work may be reinitiated. Preconstruction surveys as described in this Condition of Approval are required prior to commencement of Covered Activities in each development phase of the Project.	ITP Condition # 6.26	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
56	Burrow Complex Map: After preconstruction surveys and prior to the commencement of each phase, and prior to beginning Covered Activities for each development phase of the Project, Permittee shall provide to CDFW a map (e.g., KMZ, digital shape file) of the burrowing owl burrow complex(es) and atypical burrows (e.g., culverts, buckled concrete, etc.) of the current Project phase. The map shall include an outline of the Project Area and the current development phase footprint to be construction within the Project Area. The map shall include a title, north arrow, scale bar, and legend.	ITP Condition # 6.27	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
57	Burrowing Owl Covered Activity Seasonal Restriction: Permittee shall not conduct Covered Activities during the breeding season February 15 to August 31 within 500 feet of any burrow occupied by burrowing owl until young are fledged and capable of independent survival, and the adults are no longer nesting, unless otherwise approved in writing by CDFW. See Conditions of	ITP Condition # 6.28	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	<p>Approval 6.31 (Burrowing Owl Eviction) and 6.32.4 (Burrow Excavation and Monitoring) for work during the breeding season.</p> <p>If Covered Activities cannot be avoided while burrowing owls are present on site at any time of year, the Permittee shall implement the No-Disturbance Buffers and Monitoring as required in Conditions of Approval 6.29 (Burrowing Owl No-Disturbance Buffers) and 6.30 (Burrowing Owl Daily Monitoring) below.</p>				
58	<p>Burrowing Owl No-Disturbance Buffers: Permittee shall clearly delineate a no-disturbance buffer of 500 feet during the nesting season for high-disturbance activities (all construction activities) around all active burrowing owl nest/burrow within and adjacent to an active construction area with posted markers demarcating the area to avoid, using stakes, flags, and/or rope or cord to minimize the disturbance of burrowing owl and their habitat. The nesting season for burrowing owl is February 15 to August 31. During the non-nesting season from September 1 to February 14, Permittee shall delineate a no-disturbance buffer of 150feet around all active BUOW burrows. The width of the buffers may be changed for low to moderate impact activities with written concurrence from CDFW. Permittee shall delineate the no-disturbance buffer with different materials than those used to delineate the active construction area/Project Area. Permittee shall remove and properly dispose of all materials used for delineation immediately upon completion of the Project.</p>	ITP Condition # 6.29	Entire Project	Permittee	
59	<p>Burrowing Owl Daily Monitoring: The Designated Biologist(s) shall be present during clearing, grubbing, grading, excavation, movement of heavy equipment (i.e., ground disturbing activities) to monitor the behavior of any burrowing owl at or within 150 feet, or 500 feet for nesting owls, of the Covered Activities and at least once daily during breeding and non-breeding season. The Designated Biologist(s) and Biological Monitors shall have the authority to stop work if burrowing owls exhibit distress and/or abnormal behavior (e.g., excessive vocalizations, defensive flights at intruders, flushing frequently, or otherwise displaying agitated behavior) from construction activities. Permittee shall not resume Covered Activities until the Designated Biologist has consulted CDFW and both the Designated Biologist and CDFW confirm that the burrowing owl's behavior has normalized. CDFW, in consultation with the Designated Biologist(s), shall determine whether to increase the size of the no-disturbance buffer. Daily monitoring may cease when the area is graded or habitat has been removed, exclusion fencing is in place consistent with Condition of Approval 6.1 (Seasonal Work Restriction) , and no more than seven days have elapsed between the pause in construction activities; the burrow is empty because the nest was abandoned (not as a result of Covered Activities); young are fledged and capable of independent survival; and/or the adults are no longer nesting as determined by the Designated Biologist.</p>	ITP Condition # 6.30	Entire Project	Permittee	
60	<p>Burrowing Owl Burrow Evictions: If Covered Activities cannot be avoided while burrowing owl are present on site at any time of year, Permittee shall implement exclusion and eviction (i.e., "passive relocation") per the CDFW-approved burrowing owl eviction plan, unless monitored, excavated, and documented, consistent with Condition of Approval 6.32.4 (Burrow Excavation and Monitoring).</p> <p>Permittee shall avoid disturbing active burrowing owl burrows unless they are in an area of direct ground disturbance (e.g., grading areas, excavation areas) or the burrow location poses a risk of direct harm to burrowing owl individuals (within 500 feet of Covered Activities).</p>	ITP Condition # 6.31	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
61	<p>Burrow Excavation and Monitoring: Permittee shall not excavate active burrowing owl burrows until the nestlings are fully fledged and capable of independent survival. Burrow exclusion, excavation, and monitoring shall adhere to the following process:</p> <p>The eviction of burrowing owl from an occupied burrow shall occur between October 1 and February 15 (i.e., outside of the breeding season).</p> <p>Burrow eviction shall occur during morning hours or on cooler days and shall not occur when temperatures exceed 95 degrees Fahrenheit. If eviction must occur during hot weather, the Designated Biologist or Biological Monitor shall be onsite to monitor the excluded owls to ensure that they survive elevated temperatures.</p> <p>Notice of intent to evict owls from burrows shall be provided to CDFW via e-mail at least 48 hours prior to proceeding with eviction.</p> <p>If a burrowing owl needs to be evicted from an occupied burrow and this cannot be avoided during the nesting season (between February 15 and August 31), there is no other option for avoidance and minimization and only if the Designated Biologist has determined that the occupants of the burrow consists of a single adult burrowing owl or consistent with the CDFW-approved eviction plan as follows: the Designated Biologist shall observe the burrow(s) for two hours per day for three consecutive days at sunrise or sunset or install a game camera for three consecutive days to monitor burrow activity. During burrow observation, the Designated Biologist shall remain at a distance that will allow for clear observation but not disturb the owls. Eviction may proceed only after the Biologist determines that the burrow does not contain an active nest.</p> <p>After observation, if it is determined that the burrow does not contain an active nest, the Designated Biologist will determine via close inspection and scoping whether the burrow is active.</p> <p>Once the burrow is determined to longer be an active nest, a one-way door shall be placed over the burrows for a minimum of seven days. During the seven-day period that the one-way door is installed, the Designated Biologist will check the burrow at least twice daily for signs that owls may be trapped inside. If an owl is found inside the burrow, the exclusion process shall be re-initiated as described above.</p> <p>After the doors have been in place for seven days and the burrow has been observed to be empty, the Designated Biologist shall use a scope to ensure no eggs or animals are present in the burrow. The burrow shall be excavated once it is determined that it is empty.</p> <p>The burrow excavation shall be conducted by or under the direct supervision of a Designated Biologist and shall be accomplished using hand tools for active burrows (but not all burrows). An adequate length, as determined by the Biologist, of the burrow shall be excavated, until it is confirmed by the Biologist that no individuals are inside. The burrow shall be backfilled with soil and compacted to ensure that burrowing owl cannot reenter or use the burrow. If burrow excavation reveals burrowing owl eggs, young, or adults, then burrow excavation shall cease immediately and monitoring as described above shall be conducted/resumed. Designated Biologist shall contact the CDFW Regional Representative by phone or email within 24 hours of</p>	ITP Condition # 6.32	Entire Project		

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	<p>the observation and get written guidance prior to proceeding if an individual burrowing owl does not vacate the partially excavated burrow within a reasonable timeframe.</p> <p>Evicted burrowing owls shall be passively monitored for approximately two weeks if they can be visually observed by the Designated Biologist within the Project Area and THHCP conservation easement area or other location that is accessible by the Designated Biologist.</p> <p>If the location of the evicted burrowing owl(s) cannot be determined, the Designated Biologist or Biological Monitor shall survey the habitat within 500 feet of the active construction area.</p> <p>The Designated Biologist shall document the location of any known evicted burrowing owls, and a letter shall be provided to CDFW summarizing the eviction effort after two weeks of passive monitoring following eviction. Photographs shall be taken of the eviction and excavation process, including the location of the initial burrow, one-way door installation and monitoring, excavation and closure process, removal of owl habitat, and the area the individual relocated to (if possible). Any evicted owls whose location can be determined and are located on the conservation easement area or another location accessible to the Designated Biologist or Biological Monitor shall be monitored periodically for the duration of construction, focusing on the location of the owls and documenting potential breeding.</p> <p>If the methodology must be modified due to site conditions, Permittee shall submit proposed revisions to the CDFW approved plan, and justification, via email for CDFW review and written approval prior to initiating any of the modifications.</p>				
62	<p>Burrowing Owl Observations: Permittee shall ensure all workers inform the Designated Biologist if they encounter a burrowing owl within or near (within 150 feet) of the current Project phase. All Covered Activities with potential to take burrowing owl as determined by the Designated Biologist shall cease until the animal moves away from activities on its own. The Designated Biologist shall make reasonable effort to locate the active burrow(s) and set up and maintain a no-disturbance buffer as specified in this ITP Amendment.</p>	ITP Condition # 6.33	Entire Project	Permittee	
63	<p>Deterring Predator Attraction: Permittee shall avoid attracting burrowing owl predators to the Project Area during construction to the extent feasible. Equipment conducting Covered Activities not in use for more than seven days will be moved to greater than 500 feet from the remaining burrow complexes.</p>	ITP Condition # 6.34	Entire Project	Permittee	
64	<p>Burrowing Owl Injury and Nest Abandonment: If a burrowing owl is injured or found dead as a result of Covered Activities within the vicinity of the Project Area, the Designated Biologist shall immediately notify the CDFW Regional Representative. If an individual burrowing owl is found injured, the Designated Biologist shall immediately transport the injured individual to a CDFW-approved wildlife rehabilitation center or veterinary facility identified and approved by CDFW prior to Covered Activities.</p> <p>The initial notification to CDFW shall include information regarding the location, species, number of animals taken or injured and, if injured, the facility to which the individual was transported. Following initial notification, Permittee shall send the CDFW Regional Representative a written report within two calendar days. The report shall include the common and scientific name, date and time of the finding or incident, geo-referenced location of the animal or carcass (Project name, County, GPS location, and GPS datum), sex (if known), life stage/age class (if known),</p>	ITP Condition # 6.35	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	<p>observer name and contact information, ITP number, a photograph (if possible), explanation as to cause of take or injury, and any other pertinent information.</p> <p>If adult(s), nestling(s), or egg(s) are abandoned, the Designated Biologist shall recover the nestling(s) or egg(s) and immediately take it to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall bear any cost associated with care and recovery of any injured burrowing owl adults, nestling(s) or egg(s) and hacking (controlled release of captive reared young).</p>				
65	<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>Land acquisition costs for HM lands identified in Condition of Approval 7.2 (Habitat Acquisition and Protection) below, estimated at \$5,000/acre for 2730 acres: \$13,650,000. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirement.</p> <p>Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 7.2.5 (Start-up Activities) below, estimated at \$423,000;</p> <p>Interim management period funding as described in Condition of Approval 7.2.6 (Interim Management (Initial and Capital)) below, estimated at \$201,198;</p> <p>Long-term management funding as described in Condition of Approval 7.3 (Endowment Fund) below, estimated at \$702/acre for 2730 acres: \$1,916,460. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management;</p> <p>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 7.4 (Reimburse CDFW), estimated at \$4,500.</p>	ITP Condition # 7.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
66	<p>Habitat Acquisition and Protection: To provide for the acquisition and perpetual protection and management of the HM lands, Permittee shall:</p>	ITP Condition # 7.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
67	<p>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</p>	ITP Condition # 7.2.1	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
	the conservation easement as a third-party beneficiary. Permittee shall obtain CDFW written approval of any conservation easement before its execution, amendment, 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);				
68	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;	ITP Condition # 7.2.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
69	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 # 7.2.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
70	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 # 7.2.4	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
71	Start-up Activities: Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=227736); (2) conducting a baseline biological assessment and land survey report by June 30, 2022 ; (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 # 7.2.5	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
72	Activities Associated with Burrowing Owl HM Land Enhancements. Provide for the implementation of HM Lands enhancement activities on HM Lands. HM Land enhancement activities include revisions of the final management plan for CDFW approval.	ITP Condition # 7.2.5.1	Within 3 months of the execution of this ITP Amendment No. 2	Permittee	
73	Interim Management (Initial and Capital): Provide for the interim management of the HM lands. Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the revised final management plan and re-recorded 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 revised final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management. Permittee	ITP Condition # 7.2.6	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
	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.				
74	<p>Endowment Fund: 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 7.2.5 (Start-up Activities). 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.</p> <p>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 revised 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 re-recorded conservation easement, and the revised final management plan. Such activities shall be funded through the Endowment.</p>	ITP Conditions # 7.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
75	<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 # 7.3.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
76	<p>Calculate the 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</p>	ITP Conditions # 7.3.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	(Endowment Deposit Amount). Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.		of issuance of the ITP if Security is provided)		
77	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 # 7.3.2.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
78	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.	ITP Conditions #7.3.2.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
79	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. Three Years Delayed Spending: The endowment shall be established assuming spending will not occur for the first three years after full funding. 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.	ITP Conditions # 7.3.2.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
80	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.	ITP Conditions # 7.3.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
81	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 # 7.4	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
82	Performance Security. Permittee may proceed with Covered Activities only after Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 7 (Habitat Management Land Acquisition and Restoration) that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:	ITP Condition # 8.1 – 8.7	Before commencing ground- or vegetation-disturbing activities (or within 18 months	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	<p>Security Amount: The Security shall be in the amount of \$16,195,158. This amount is based on the cost estimates identified in Condition of Approval 7.1 (Cost Estimates) above.</p> <p>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>Security Timeline: The Security shall be provided to CDFW 30 days before Covered Activities begin.</p> <p>Security Holder: The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.</p> <p>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>Security Drawing: The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that Permittee has failed to comply with the Conditions of Approval of this ITP.</p> <p>Security Release: The Security (or any portion of the Security then remaining) shall be released to 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"> • 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. <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 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.</p>		of issuance of the ITP if Security is provided)		
POST-CONSTRUCTION					
83	<p>Final Mitigation Report: No later than 45 days after completion of all mitigation measures after all Project Phases are complete, 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; for each phase (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's</p>	ITP Condition # 5.8	Post-construction and after completion of mitigation	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	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.				

Attachment 7

Amended Incidental Take Permit No. 2081-2018-032-03
(Amendment No. 2)

1. The Authority section has been amended as follows:

This [Amended](#) California Endangered Species Act (CESA) Incidental Take Permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² 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: Tracy Phase 2, LLC., Tracy Phase 3, LLC.,
Tracy Phase 4, LLC.

Principal Officer: John Stanek, Authorized Representative

Contact Person: John Palmer, (209) 229-7954

Mailing Address: 888 San Clemente Drive, Suite 100
Newport Beach, CA 92660

2. The Amended ITP Background section has been amended as follows:

Amended ITP³ Background:

On April 5, 2018, Tracy Phase 2, LLC., Tracy Phase 3, LLC, Tracy Phase 4, LLC (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 Tracy Hills Project in San Joaquin County, California (Project).

On August 27, 2021, CDFW issued ITP No. 2081-2018-032-03 to Permittee authorizing take of San Joaquin kit fox (*Vulpes macrotis mutica*) and California tiger salamander (*Ambystoma*

¹ 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”).

² 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.

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

californiense) (the Covered Species) associated with and incidental to the [Tracy Hills](#) Project. The Project as described in the ITP originally issued by CDFW includes residential, mixed-use business, commercial development, associated infrastructure, and highway intersection improvements, to be constructed in phases. As described in the original ITP, the Covered Activities associated with the Project were expected to result in a permanent loss of 1,148 acres of habitat for San Joaquin kit fox and 854 acres of habitat for California tiger salamander. 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, Permittee mitigated for permanent habitat loss through the Tracy Hills Habitat Conservation Plan (THHCP). The conservation easement area covers 2,730 acres of land - approximately 2,687 acres of habitat for San Joaquin kit fox and 2,008 acres of upland and 8 acres of aquatic habitat for California tiger salamander.

On August 31, 2023, Permittee submitted a request for a “major amendment” to [CESA](#) ITP No. 2081-2018-032-03 (see Cal. Code Regs., §783.6 [subdivision](#) (c)(5)). On September 11, 2023, CDFW received the appropriate fees. [On September 29, 2023, CDFW determined that the application for the amendment request was incomplete. On January 29, 2024, after receiving requested additional information, CDFW determined that the application was complete.](#) Since issuance of the original ITP, ~~the Project is being built in phases~~ as construction continues, site information has been accumulated and there have been unforeseen impacts. [On October 21, 2024, CDFW issued](#) Amendment No. 1 ~~deletes(Attachment 6) to delete~~ the requirement to hand excavate each burrow, updates impact to the THHCP conservation easement area, and provides resolution for the unforeseen impacts.

[On December 16, 2024, Permittee submitted a request and appropriate fees for a second major amendment to this CESA ITP to include western burrowing owl \(*Athene cunicularia hypugaea*\) \(burrowing owl\) as a Covered Species. Issuance of this second Amendment \(Amendment No. 2\) will authorize the take of burrowing owl as an additional Covered Species. The Covered Activities associated with the Project are expected to result in a permanent loss of 620 acres of habitat for burrowing owl.](#)

CDFW now [amends and](#) reissues this ITP including the revised provisions in ~~this~~ [the first major amendment and second amendments](#) (collectively, the Amended ITP). The Amended ITP includes all of the operative provisions as of the effective date of this Amended ITP. Attachment [67](#) to this Amended ITP shows the specific red-line changes made to the [original](#) ITP as a result of this ~~major amendment~~ [Amendment No. 2](#).

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

The original ITP was executed in duplicate original form and became effective when a 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 August 29, 2021. This remains the effective date for the original take authorization. ~~The This~~ Amended ITP shall ~~be executed in the same manner and shall~~ become effective ~~when upon execution by the Regional Manager for CDFW’s Habitat Conservation Planning Branch received the signed Amended ITP Bay Delta Region~~. Unless renewed by CDFW, this Amended ITP’s authorization to take the Covered Species shall expire on **December 31, 2036**.

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 5.8 ~~(and Final Mitigation Report)~~ of this ITP.

* * *

4. The Project Description section in its entirety has been amended as follows:

The Project includes residential, mixed-use business, commercial development, associated infrastructure (e.g., roadways) and highway intersection improvements within the Development Area as shown in Figure 2. Figure 3 provides more detail on the types of specific uses allowed in each zone. Associated infrastructure includes the following:

- New internal roads and expansion of existing roads
- Electric distribution lines and new substation
- Parks, schools, and recreational facilities
- Sewer pipelines and pump stations
- Water supply distribution pipelines, storm drain pipelines, retention basins, and water storage tanks and pump station

Types of Land Use/Development

Residential Development: Most of the Project will be residential housing development in one of three density categories:

- Residential Estate—0.5 to 2.0 dwelling units/acre
- Low Density Residential—2.1 to 5.8 dwelling units/acre
- Medium Density Residential—5.9 to 12.0 dwelling units/acre

The residential development covered by this ITP is currently planned to include approximately 1,084 acres that will be a mix of Residential Estate, Low-Density Residential, and Medium-Density Residential. The mix of densities and residential zoning configurations within the Development Areas may change during the Permit Term; however, the overall boundary of development will remain the same. Additionally, the lower density housing (Residential Estate and Low Density Residential) will be located closest to the Conservation Easement Area.

Mixed-Use Business Park: Currently, a 28.9-acre area at the intersection of I-580 and Lammers Parkway is zoned Mixed-Use Business Park. The Mixed-Use Business Park zoning district allows a broad range of commercial, institutional, and business uses to serve the community and provide employment opportunities. This proposed land use may change to another type described here in the Project Description section of this ITP.

Commercial Development: Currently, a relatively small portion (6.8 acres) of the proposed development is zoned Commercial, along Corral Hollow Road (Figure 2). The purpose of this zone is to provide a mix of retail and services for residents and travelers. This proposed land use may change to another type described here in the Project Description section of this ITP.

Road Construction

In addition to the construction of roads that will be internal to the residential, mixed-use business park, and commercial development described above, the Permittee will submit a future Amendment Request to include expansion of two future interchanges as Covered Activities (Figure 2). The construction of the interchange at Lammers Parkway and I-580 and the expansion of the Corral Hollow Road and I-580 interchange are an estimated 28.1 acres (the footprint of all roads internal to development are included in each of the three development categories described above). The impact analysis and compensatory mitigation requirements in this ITP have contemplated ~~and incorporated~~ the 28.1 acres of impact but has not contemplated the design and ongoing operations and maintenance of the interchanges as they relate to nonhabitat-related impacts to the Covered Species (e.g., movement through the landscape or additional source of mortality). [CDFW will make a final determination regarding additional compensatory mitigation, if any, needed for this road construction once it receives a formal request to amend the ITP.](#)

Subdrain Encroachment into Conservation Easement Area

A six-inch diameter subdrain was installed, which encroached into the Conservation Easement Area serving as mitigation for Tracy Hills Development Area project impacts to the Covered Species. The subdrain supports a retaining wall that stabilizes a roadway. The purpose of the subdrain is to accommodate rising groundwater in wet years to prevent compromising the integrity of the retaining wall, which could cause the roadway to fail and slide down the hill. The subdrain was designed to release any excessive groundwater to sustain the structural stability of the slope above it. The subdrain allows groundwater to infiltrate the subdrain pipe, but does not convey stormwater or surface flows from the residential development.

The subdrain was installed in the location which discharges to the Conservation Easement Area because that location allowed water to drain out from the lowest point of the keyway area. The subdrain pipe is buried; however, the last two feet of the pipe daylights approximately 11 feet within the Conservation Easement Area. A rip rap splash guard was installed at the discharge location on existing grade to dissipate any water that is discharged

from the subdrain pipe.

Excavation was conducted with an excavator which was staged within the Development Area footprint and outside the Conservation Easement Area. The work area was 15 feet by 3 feet. The subdrain was placed and backfilled with the removed soil, using the same equipment, in the same staging area. No equipment operated within the Conservation Easement Area, although ground disturbance occurred to place the six-inch subdrain pipe, backfill it, and install the rip rap splash guard.

Project Timing

Construction activities will occur in three concurrent phases beginning in approximately 2021 and cover a total period of approximately 9 years. The anticipated construction schedule of each Project Phase is as follows (the actual construction schedule may vary by several years, depending on market conditions and other factors):

- Phase I: September 2021–September 2025
- Phase II: September 2025–September 2029
- Phase III: November 2028–July 2030

Prior to completion of construction of Phase I of development in the Permit Area or by September 2025, whichever comes first, fencing will be installed along the Conservation Easement Area boundary adjacent to the Development Area, to prevent humans from entering the Conservation Easement Area and reduce the risk of pets, particularly dogs, from entering the Conservation Easement Area. The fencing will consist of a three-pipe fence, installed with welded wire (“no climb wire”) to act as a barrier or strong deterrent to predators, larger domestic animals, and pedestrians but suspended four to five inches from the ground to allow for kit fox movement.

In addition to the fencing, a firebreak will be constructed and maintained in either one of two configurations, shown in Figure 4, as phases are constructed.

The construction of [each](#) Project Phase will occur in the following stages:

- Temporary exclusion fence installation: This consists of installing temporary exclusion fencing between disturbance areas and adjacent aquatic habitat for California tiger salamander along Corral Hollow Creek.
- Clearing and grubbing: This consists of removal of all vegetation, roots, and other matter on the construction site, in preparation for grading. This stage lasts approximately three months per phase.
- Grading: This consists of leveling and contouring the site in preparation for construction and paving. This stage lasts approximately 100 to 150 days per phase. No earth will be imported to or exported from the site. Water will be used to control

Incidental Take Permit

No. 2081-2018-032-03

TRACY PHASE 2, LLC, TRACY PHASE 3, LLC, TRACY PHASE 4, LLC

TRACY HILLS PROJECT

[AMENDMENT No. 2](#)

dust at the site three times per day during this stage.

- Construction and paving: This stage consists of paving roads and other hardscaped surfaces, installing infrastructure and utilities, and building structures. This stage lasts approximately two years per phase.
- Landscaping and finish work: This stage consists of any landscaping the developers install and finish work on the construction prior to selling the houses or other buildings. This stage lasts approximately six months per phase.

5. The Covered Species Subject to Take Authorization Provided by This ITP section in its entirety has been amended as follows:

This ITP covers the following species:

Name	CESA Status⁴
1. San Joaquin kit fox (<i>Vulpes macrotis mutica</i>)	Threatened ⁵
2. California tiger salamander (<i>Ambystoma californiense</i>)	Threatened ⁶
<u>3. Western burrowing owl (<i>Athene cunicularia hypugaea</i>)</u>	<u>Candidate⁷</u>

These species and only these species are the “Covered Species” for the purposes of this ITP.

6. The Impacts of the Taking on Covered Species section has amended as follows:

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: clearing and grubbing; grading; construction and paving; landscaping and finish work grading; stockpiling soils; soil stabilization; and habitat management and habitat enhancements for Covered Species (Covered Activities). It is anticipated that the Permittee will request a Memorandum of Understanding (Fish & G. Code, § 2081, subd. (b) prior to the expiration of this ITP that will cover ongoing management activities as set forth in the final management plan and any future amendments approved by CDFW to the final management plan required in Condition of Approval 7.2 (Habitat Acquisition and Protection).

Incidental take of individuals of the Covered Species in the form of mortality (“kill”) may occur as a result of Covered Activities such as loss of most easily traversed wildlife movement corridor in the local region; heavy equipment and vehicle strikes; augering and drilling⁷; discharging water⁷; filling and compacting of soil, ~~and~~ crushing or entombment during

⁴ [Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species.](#)

⁵ [See Cal. Code Regs. Tit. 14 670.5, subd. \(b\)\(6\)\(E\).](#)

⁶ [See Cal. Code Regs. Tit. 14 670.5, subd. \(b\)\(3\)\(G\).](#)

⁷ [The species status may change following the decision of the Fish and Game Commission to designate the species as threatened or endangered. If the species status changes, CDFW will initiate an amendment to this permit to conform to changes as required by law.](#)

construction activities; [and entrapment or entombment during evictions](#). Individuals of the Covered Species dispersing onto the Development Area from off-site localities during seasonal movements to and from denning sites, travel corridors, off-site breeding ponds, ~~or~~ upland habitat, will be susceptible to injury or mortality from desiccation, predation, being trapped in artificial structures and excavated holes, crushed under vehicular or foot traffic or other construction activities. Individuals residing in underground refugia on-site may be crushed during excavation and vehicular movement, suffocated by soil side-casting or by grading activities and entombed in burrows or dens. Covered Species may also disperse from refugia due to noise and ground vibrations from use of heavy equipment during construction into open areas where they are more susceptible to injury or mortality. 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 capture and relocation; [out of harm's way as required by this ITP](#). The areas where authorized take of the Covered Species is expected to occur include: the Development Area and Conservation Easement Area (collectively, the Project Area).

The Project is expected to cause the permanent loss of 1,148 acres of habitat for San Joaquin kit fox, ~~and~~ [620 acres for burrowing owl](#), and 854 acres of habitat for California tiger salamander. 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 tunneling, capture and relocation, [disturbance at occupied burrows](#), and long-term effects due to increased pollution, displacement from preferred habitat, narrowing and elimination of travel corridors resulting in reduced fecundity and gene flow between metapopulations, migration interference due to artificial lighting, increased competition for food and space, den abandonment, increased incidences of vehicle strikes on new or improved roads, exposure to contaminants, rodenticides, domestic pets, trash ingestion or entanglements, entrapment in storm water basins, maintenance activities to storm water basins, [eviction from burrows](#), and increased vulnerability to predation.

7. The General Provisions section has been amended as follows:

- 4.1. No Impacts to ~~Covered Species~~ California Tiger Salamander Aquatic Breeding Habitat: No direct impacts to ~~Covered Species~~ CTS aquatic breeding habitat within the Development Area from construction-related activities (e.g., stormwater outfalls, road improvements) are authorized under this ITP. Permittee shall apply for an amendment to this ITP and provide specific designs or other plans for these types of impacts when designs are able to be provided. Upon receipt of an amendment request CDFW shall evaluate any additional impacts and provide additional Conditions of Approval if necessary and require compensatory mitigation to meet the full mitigation standard.

- 4.17. ~~No Pets~~ Domestic Animals: With the exception of livestock, [service animals](#), or

working animals used by the CDFW-approved long-term land manager and as described in the final management plan (see Condition of Approval 7.2, Habitat Acquisition and Protection), no domestic animals shall be allowed within the Project Area unless on leash and restricted to designated vehicle parking areas during Covered Activities.

- 4.20. Urban/Suburban Storm Drain Designs and Construction for Areas Adjacent to Natural Lands: To prevent one-way entrainment of ~~Covered Species~~California tiger salamander in specially designated area(s) (Figure 5), Permittee shall ensure that grated drop inlets or other types of storm drain infrastructure shall be constructed in a manner or outfitted with devices to prevent entrainment. Permittee shall obtain written acceptance from CDFW confirming that the infrastructure incorporates design elements to avoid and reduce impacts to ~~Covered Species~~California tiger salamander prior to installation of such infrastructure.
- 4.21. Submit Designs for Storm Water Infrastructure: Permittee shall submit the plans for storm water-related infrastructure to CDFW for written acceptance prior to Covered Activities occurring for each Project Phase. Infrastructures shall be designed and constructed to prevent conflicts with or take of ~~Covered Species~~California tiger salamander.

8. The Take Minimization Measures section has been amended as follows:

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 ~~in addition to the measures outlined in Section 7 of the ITP Application:~~

- 6.3. Seasonal Work Window Extensions: Permittee shall adhere to the seasonal work window required in Condition of Approval 6.1 (Seasonal Work Window Restriction) unless an expanded work window is approved by CDFW. Permittee shall submit any requests for extensions in writing at least 14 days prior to the desired date of construction or 14 days prior to the expiration of the seasonal work window. If work is approved the following conditions shall apply:
- 6.3.1. Any work site located within 0.5 miles of ~~Covered Species~~California tiger salamander aquatic habitat, including where equipment will be stored overnight, shall be completely fenced with a temporary wildlife exclusion barrier with coverboards (see Measure 6.11). All construction work shall take place within the fenced area. Installation of exclusion fencing does not apply to graveled or well-traveled roads.
- 6.3.2. All construction vehicle and heavy equipment travel shall be limited to the daylight hours from 30 minutes after sunrise until 30 minutes before sunset, to the maximum extent feasible.
- 6.3.3. The temporary exclusion barrier shall be installed around any areas within the

Development Area of each Project Phase that could become ponded (for more than 24 -hours) and provide breeding habitat during rain events. Coverboards shall be placed around the inside and outside perimeter of the temporary exclusion barrier as described in Condition of Approval 6.11 (Covered Species/Conservation Easement Area Permanent Fencing).

- 6.4. Wet Season Work Restriction: If CDFW has approved a seasonal work window extension per Condition of Approval 6.3 (Seasonal Work Window Extensions), then, during the wet season between October 15 through April 30, Covered Activities shall cease 24 hours prior to a 30 percent or greater forecast of rain. Construction may continue 24 hours after the rain ceases and there is less than a 30 percent chance of precipitation in the 24-hour forecast. CDFW may approve work when there is a 30 percent or more chance of precipitation in the 24-hour forecast subject to full implementation of Condition of Approval 6.6 (No Project Phase without Erosion Control) and the following condition:
- 6.4. 1. If work is approved when a greater than 30 percent chance of rain is forecast, the Designated Biologist(s) shall survey the Project Area where Covered Activities are planned before they begin each day rain is forecast. If rain exceeds 0.50 inches during a 24-hour period, work shall cease until there is a less than 30 percent change of precipitation in the 24-hour forecast. All night-time work and construction-related traffic shall be suspended during rain events.
- 6.7. Geo-Textile and Monofilament Netting Restriction: To minimize the risk of ensnaring and strangling wildlife, Permittee shall not place erosion control materials containing synthetic (e.g., plastic or nylon) monofilament netting. Any geo-textile material or filter fabric used within the Project Area shall not ~~any~~ contain any petroleum-based products. Geotextiles, fiber rolls, and other erosion control measures shall be made of loose-weave mesh, such as jute, coconut (coir) fiber, or other products without welded weaves. No geotextile fabrics shall be placed where they may be exposed to stream flows.
- 6.10 Temporary Exclusion Barrier: At least 30 days prior to the initiation of Covered Activities on each Project Phase, the Permittee shall submit to CDFW for written approval plans for an exclusion fencing system for the upcoming active phase, and access routes as appropriate. CDFW has 30 days to respond to each submission of plans, including resubmission of plans that are revised at the request of CDFW. The plans shall include a map indicating location of exclusion fencing in relation to the Project Area, the Project Phase that will be constructed, location of special-status wildlife habitat features, dimension specifications and a description of fencing materials. Permittee shall be responsible for implementation and upkeep of the fencing system. In addition, the following criteria for the exclusion fencing system shall be met:
- 6.10.1. The exclusion fencing shall consist of material appropriate for exclusion of

Covered Species California tiger salamander.

- 6.10.2. There shall be a section of exclusion fencing placed between disturbance areas and aquatic habitat for California tiger salamander along Corral Hollow Creek to prevent individuals from entering any slated ground disturbance areas from the creek.
- 6.10.3. The exclusion fencing shall either measure at least 36 inches tall above the soil surface or be of an appropriate height for exclusion of the Covered Species California tiger salamander.
- 6.10.4. The Designated Biologist shall inspect the fencing immediately after every rain event to ensure it maintains structural integrity. Holes or burrows which appear to extend under the fencing will be blocked inside the fence line to prevent California tiger salamander from accessing work areas.
- 6.10.5. The bottom of the exclusion fencing shall not allow wildlife to pass through gaps or holes with the bottom of the fencing buried six inches below grade.
- 6.10.6. The exclusion fencing shall be taut between the supporting stakes and shall have the supporting stakes oriented on the inside edge towards the development areas.
- 6.10.7. The exclusion fencing shall feature coverboards inside and outside the perimeter placed at 100-foot intervals and one-way escape doors or an appropriate design for preventing special-status species and other wildlife from being trapped within a Project Phase that is under active construction.
- 6.10.8. The fencing and coverboards shall be inspected every morning for trapped California tiger salamanders during periods when they are likely to be migrating above-ground. These daily-inspection periods include the period from May 1 through August 31 when salamander metamorphs are likely to be migrating away from their natal ponds, and all year on mornings following any rain event greater than 0.1 inches, when adults may be migrating to their breeding ponds. If a California tiger salamander is encountered during these inspections, and is in danger of being harmed, then the Designated Biologist shall temporarily stop all activities that threaten harm, remove the animal from the area, and relocate it to the pre-approved location as described in the Covered Species Relocation Plan (Condition of Approval 6.12 – Covered Species California Tiger Salamander Relocation).
- 6.10.9. If fencing becomes damaged, it will be immediately repaired upon detection and the Designated Biologist shall stop work in the vicinity of the fencing as needed to ensure that no California tiger salamanders have entered the construction area.
- 6.10.10. Fencing system entry/exit points for vehicular and pedestrian traffic shall be

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constructed so wildlife cannot access the area within a Project Phase under active construction during non-work hours.

- 6.10.11. The Designated Biologist shall inspect the Project Area prior to installation of the exclusion fencing. The exclusion fencing system shall remain in place until all construction activities have been completed in the corresponding Project Phase. All components of the exclusion fencing will be removed for storage or disposal off-site immediately upon completion of construction activities. All vegetation slated for removal in the exclusion fencing buffer area shall be inspected by a Designated Biologist prior to the initiation of removal. Exclusion fencing shall be inspected daily by the Designated Biologist and repaired as necessary, including inspection of coverboards and replacement of wetted sponges as necessary to minimize wildlife distress.
- 6.12. Covered Species California Tiger Salamander Relocation: If a California tiger salamander is encountered during these inspections, and is in danger of being harmed, the Designated Biologist shall temporarily stop all activities that threaten harm, remove the animal from the area, and relocate it to the pre-approved relocation location as described in Attachment 5. California tiger salamanders that will be relocated and released by the Designated Biologist outside the construction area, preferably within 300 feet of where it was found, in protected suitable habitat in the Conservation Easement Area. Under no circumstances will a California tiger salamander be released on a site other than the Conservation Easement Area unless the written permission of the landowner has been obtained prior to the start of construction of each phase.
- 6.13. Open Trenches, Pits or Holes: Any open trenches, pits, holes or other excavations into which Covered Species may fall or become trapped shall either be covered if feasible or have wildlife escape ramps installed as determined by the Designated Biologist at the end of each workday. Prior to the initiation of construction each day and prior to the covering trenches, holes or pits, the Designated Biologist or Biological Monitor shall inspect them for wildlife for movement out of harm's way. If any worker discovers that Covered Species have become trapped, they shall halt Covered Activities and notify the Designated Biologist immediately. Project workers and the Designated Biologist shall allow Covered Species to escape unimpeded, if possible, or a Designated Biologist shall move Covered Species out of harm's way before allowing work to resume.
- 6.14. Open Pipes Restriction: All pipes, culverts, or similar structures with a 4-inch an 11 cm or greater diameter that are stored on-site for one or more overnight periods shall be securely capped on both ends prior to storage when feasible ~~and~~. All pipes, culverts, and similar structures with an 11 cm or greater diameter, debris piles, and pallet stacks shall be thoroughly inspected for wildlife by the Designated Biologist or Construction Monitor prior to utilization. All hollow pipes or posts after they are installed as part of the Project and exposed to the environment shall be capped, screened, or filled with material by Permittee prior to the end of the day in which

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installation occurs. If any worker discovers that Covered Species are using pipes, culverts, or similar structures, they shall halt Covered Activities and notify the Designated Biologist immediately. Project workers and the Designated Biologist shall allow Covered Species to escape unimpeded, if possible, or a Designated Biologist shall move Covered Species out of harm's way before allowing work to resume.

- 6.18. California Tiger Salamander Relocation During Project Construction: The Designated Biologist shall relocate any California tiger salamander found within the Development Area to an active rodent burrow system nearest to aquatic habitat within the Conservation Easement Area. The California tiger salamander shall be monitored until it is determined that it is not imperiled by predators or other dangers. Relocation areas shall be identified by the Designated Biologist based upon best suitable habitat available and approved by CDFW prior to the start of Covered Activities. The Designated Biologist shall document both locations by photographs and GPS positions. The California tiger salamander shall be photographed and measured (Snout-Vent) for identification purposes prior to relocation. All documentation shall be provided to the CDFW Representative within 24 hours of Covered Species California tiger salamander relocation.
- 6.21. Clearance Surveys: The Designated Biologist shall survey potential habitat features, such as aquatic and upland areas, and beneath woody debris, for California tiger salamander, for burrowing owls, and for previously unidentified potential San Joaquin kit fox dens during clearing, grubbing and initial site grading. If vegetation or fossorial mammal burrows become reestablished in a previously disturbed area, then the Designated Biologist shall resurvey these areas prior to conducting Covered Activities to ensure Covered Species are not in harm's way. If the Designated Biologist(s) or anyone else discovers California tiger salamander, the Designated Biologist(s) shall move the animal to a safe location nearby (see Condition of Approval 6.18 - California Tiger Salamander Relocation During Project Construction). If the Designated Biologist(s) or anyone else discovers a potential San Joaquin kit fox den, then the status of the den shall be determined per methods outlined in Condition of Approval 6.25 (Confirmed San Joaquin Kit Fox Dens).
- 6.26. Burrowing Owl Preconstruction Surveys: Prior to Covered Activities such as heavy equipment use, excavation, grading, etc., (i.e. ground disturbing activities), the Designated Biologist shall conduct preconstruction surveys weekly, beginning more than 30 days and ending no earlier than three days before Covered Activities begin, with the final survey conducted 24 hours prior to beginning Covered Activities. The Designated Biologist shall use the survey methods described in the CDFW Staff Report on Burrowing Owl Mitigation, Appendix D (2012). The Designated Biologist shall submit the results of the surveys prior to the commencement of each phase and to CDFW prior to beginning Covered Activities. If changes in burrowing owl presence are detected (e.g., burrowing owl have moved onsite or changed burrow use), the Designated Biologist shall establish buffers as required in this Permit. If a lapse in Project-related work of 14 calendar days or longer occurs, Permittee shall conduct

additional surveys before work may be reinitiated. Preconstruction surveys as described in this Condition of Approval are required prior to commencement of Covered Activities in each development phase of the Project.

6.27. Burrow Complex Map: After preconstruction surveys and prior to the commencement of each phase, and prior to beginning Covered Activities for each development phase of the Project, Permittee shall provide to CDFW a map (e.g., KMZ, digital shape file) of the burrowing owl burrow complex(es) and atypical burrows (e.g., culverts, buckled concrete, etc.) of the current Project phase. The map shall include an outline of the Project Area and the current development phase footprint to be construction within the Project Area. The map shall include a title, north arrow, scale bar, and legend.

6.28. Burrowing Owl Covered Activity Seasonal Restriction: Permittee shall not conduct Covered Activities during the breeding season February 15 to August 31 within 500 feet of any burrow occupied by burrowing owl until young are fledged and capable of independent survival, and the adults are no longer nesting, unless otherwise approved in writing by CDFW. See Conditions of Approval 6.31 (Burrowing Owl Eviction) and 6.32.4 (Burrow Excavation and Monitoring) for work during the breeding season.

If Covered Activities cannot be avoided while burrowing owls are present on site at any time of year, the Permittee shall implement the No-Disturbance Buffers and Monitoring as required in Conditions of Approval 6.29 (Burrowing Owl No-Disturbance Buffers) and 6.30 (Burrowing Owl Daily Monitoring) below.

6.29. Burrowing Owl No-Disturbance Buffers: Permittee shall clearly delineate a no-disturbance buffer of 500 feet during the nesting season for high-disturbance activities (all construction activities) around all active burrowing owl nest/burrow within and adjacent to an active construction area with posted markers demarcating the area to avoid, using stakes, flags, and/or rope or cord to minimize the disturbance of burrowing owl and their habitat. The nesting season for burrowing owl is February 15 to August 31. During the non-nesting season from September 1 to February 14, Permittee shall delineate a no-disturbance buffer of 150feetaround all active BUOW burrows. The width of the buffers may be changed for low to moderate impact activities with written concurrence from CDFW. Permittee shall delineate the no-disturbance buffer with different materials than those used to delineate the active construction area/Project Area. Permittee shall remove and properly dispose of all materials used for delineation immediately upon completion of the Project.

6.30. Burrowing Owl Daily Monitoring: The Designated Biologist(s) shall be present during clearing, grubbing, grading, excavation, movement of heavy equipment (i.e., ground disturbing activities) to monitor the behavior of any burrowing owl at or within 150 feet, or 500 feet for nesting owls, of the Covered Activities and at least once daily during breeding and non-breeding season. The Designated Biologist(s) and Biological Monitors shall have the authority to stop work if burrowing owls exhibit distress and/or abnormal behavior (e.g., excessive vocalizations, defensive flights at

intruders, flushing frequently, or otherwise displaying agitated behavior) from construction activities. Permittee shall not resume Covered Activities until the Designated Biologist has consulted CDFW and both the Designated Biologist and CDFW confirm that the burrowing owl's behavior has normalized. CDFW, in consultation with the Designated Biologist(s), shall determine whether to increase the size of the no-disturbance buffer. Daily monitoring may cease when the area is graded or habitat has been removed, exclusion fencing is in place consistent with Condition of Approval 6.1 (Seasonal Work Restriction) , and no more than seven days have elapsed between the pause in construction activities; the burrow is empty because the nest was abandoned (not as a result of Covered Activities); young are fledged and capable of independent survival; and/or the adults are no longer nesting as determined by the Designated Biologist.

- 6.31.** Burrowing Owl Burrow Evictions: If Covered Activities cannot be avoided while burrowing owl are present on site at any time of year, Permittee shall implement exclusion and eviction (i.e., "passive relocation") per the CDFW-approved burrowing owl eviction plan, unless monitored, excavated, and documented, consistent with Condition of Approval 6.32.4 (Burrow Excavation and Monitoring).

Permittee shall avoid disturbing active burrowing owl burrows unless they are in an area of direct ground disturbance (e.g., grading areas, excavation areas) or the burrow location poses a risk of direct harm to burrowing owl individuals (within 500 feet of Covered Activities).

- 6.32.** Burrow Excavation and Monitoring: Permittee shall not excavate active burrowing owl burrows until the nestlings are fully fledged and capable of independent survival. Burrow exclusion, excavation, and monitoring shall adhere to the following process:

- 6.32.1.** The eviction of burrowing owl from an occupied burrow shall occur between October 1 and February 15 (i.e., outside of the breeding season).
- 6.32.2.** Burrow eviction shall occur during morning hours or on cooler days and shall not occur when temperatures exceed 95 degrees Fahrenheit. If eviction must occur during hot weather, the Designated Biologist or Biological Monitor shall be onsite to monitor the excluded owls to ensure that they survive elevated temperatures.
- 6.32.3.** Notice of intent to evict owls from burrows shall be provided to CDFW via e-mail at least 48 hours prior to proceeding with eviction.
- 6.32.4.** If a burrowing owl needs to be evicted from an occupied burrow and this cannot be avoided during the nesting season (between February 15 and August 31), there is no other option for avoidance and minimization and only if the Designated Biologist has determined that the occupants of the burrow consists of a single adult burrowing owl or consistent with the CDFW-approved eviction plan as follows: the Designated Biologist shall observe the burrow(s) for two hours per day for three consecutive days at sunrise or sunset or install a game

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camera for three consecutive days to monitor burrow activity. During burrow observation, the Designated Biologist shall remain at a distance that will allow for clear observation but not disturb the owls. Eviction may proceed only after the Biologist determines that the burrow does not contain an active nest.

- 6.32.5. After observation, if it is determined that the burrow does not contain an active nest, the Designated Biologist will determine via close inspection and scoping whether the burrow is active.
- 6.32.6. Once the burrow is determined to longer be an active nest, a one-way door shall be placed over the burrows for a minimum of seven days. During the seven-day period that the one-way door is installed, the Designated Biologist will check the burrow at least twice daily for signs that owls may be trapped inside. If an owl is found inside the burrow, the exclusion process shall be re-initiated as described above.
- 6.32.7. After the doors have been in place for seven days and the burrow has been observed to be empty, the Designated Biologist shall use a scope to ensure no eggs or animals are present in the burrow. The burrow shall be excavated once it is determined that it is empty.
- 6.32.8. The burrow excavation shall be conducted by or under the direct supervision of a Designated Biologist and shall be accomplished using hand tools for active burrows (but not all burrows). An adequate length, as determined by the Biologist, of the burrow shall be excavated, until it is confirmed by the Biologist that no individuals are inside. The burrow shall be backfilled with soil and compacted to ensure that burrowing owl cannot reenter or use the burrow. If burrow excavation reveals burrowing owl eggs, young, or adults, then burrow excavation shall cease immediately and monitoring as described above shall be conducted/resumed. Designated Biologist shall contact the CDFW Regional Representative by phone or email within 24 hours of the observation and get written guidance prior to proceeding if an individual burrowing owl does not vacate the partially excavated burrow within a reasonable timeframe.
- 6.32.9. Evicted burrowing owls shall be passively monitored for approximately two weeks if they can be visually observed by the Designated Biologist within the Project Area and THHCP conservation easement area or other location that is accessible by the Designated Biologist.
- 6.32.10. If the location of the evicted burrowing owl(s) cannot be determined, the Designated Biologist or Biological Monitor shall survey the habitat within 500 feet of the active construction area.
- 6.32.11. The Designated Biologist shall document the location of any known evicted burrowing owls, and a letter shall be provided to CDFW summarizing the eviction effort after two weeks of passive monitoring following eviction. Photographs shall be taken of the eviction and excavation process, including

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the location of the initial burrow, one-way door installation and monitoring, excavation and closure process, removal of owl habitat, and the area the individual relocated to (if possible). Any evicted owls whose location can be determined and are located on the conservation easement area or another location accessible to the Designated Biologist or Biological Monitor shall be monitored periodically for the duration of construction, focusing on the location of the owls and documenting potential breeding.

- 6.32.12.** If the methodology must be modified due to site conditions, Permittee shall submit proposed revisions to the CDFW approved plan, and justification, via email for CDFW review and written approval prior to initiating any of the modifications.
- 6.33.** Burrowing Owl Observations: Permittee shall ensure all workers inform the Designated Biologist if they encounter a burrowing owl within or near (within 150 feet) of the current Project phase. All Covered Activities with potential to take burrowing owl as determined by the Designated Biologist shall cease until the animal moves away from activities on its own. The Designated Biologist shall make reasonable effort to locate the active burrow(s) and set up and maintain a no-disturbance buffer as specified in this ITP Amendment.
- 6.34.** Deterring Predator Attraction: Permittee shall avoid attracting burrowing owl predators to the Project Area during construction to the extent feasible. Equipment conducting Covered Activities not in use for more than seven days will be moved to greater than 500 feet from the remaining burrow complexes.
- 6.35.** Burrowing Owl Injury and Nest Abandonment: If a burrowing owl is injured or found dead as a result of Covered Activities within the vicinity of the Project Area, the Designated Biologist shall immediately notify the CDFW Regional Representative. If an individual burrowing owl is found injured, the Designated Biologist shall immediately transport the injured individual to a CDFW-approved wildlife rehabilitation center or veterinary facility identified and approved by CDFW prior to Covered Activities.

The initial notification to CDFW shall include information regarding the location, species, number of animals taken or injured and, if injured, the facility to which the individual was transported. Following initial notification, Permittee shall send the CDFW Regional Representative a written report within two calendar days. The report shall include the common and scientific name, date and time of the finding or incident, geo-referenced location of the animal or carcass (Project name, County, GPS location, and GPS datum), sex (if known), life stage/age class (if known), observer name and contact information, ITP number, a photograph (if possible), explanation as to cause of take or injury, and any other pertinent information.

If adult(s), nestling(s), or egg(s) are abandoned, the Designated Biologist shall recover the nestling(s) or egg(s) and immediately take it to a CDFW-approved

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wildlife rehabilitation or veterinary facility. Permittee shall bear any cost associated with care and recovery of any injured burrowing owl adults, nestling(s) or egg(s) and hacking (controlled release of captive reared young).

9. Habitat Management Land Acquisition and Restoration has been amended as follows:

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.

To meet this requirement, ~~the~~ Permittee shall provide for the permanent protection, enhancement and management of the lands known as the "Conservation Easement Area" (see Figure 1) dependent upon CDFW acceptance pursuant to Condition of Approval 7.2 (Habitat Acquisition and Protection) below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.3 (Endowment Fund) below. The Conservation Easement Area is approximately 2,730 acres. The Conservation Easement Area contains approximately 2,687 acres of potential habitat for San Joaquin kit fox ~~and~~, 2,008 acres of potential upland and 8 acres of potential aquatic habitat for California tiger salamander, and 2,710 acres of potential habitat for burrowing owl. If CDFW finds these lands are unacceptable, then Permittee shall provide a minimum of 2,700 acres of occupied suitable habitats for Covered Species pursuant to Condition of Approval 7.2 (Habitat Acquisition and Protection) below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.3 (Endowment Fund) below. These lands are hereafter are referred to as Habitat Management (HM) lands. 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 8 below for all uncompleted obligations.

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

7.2.1. 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, amendment, 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);

- 7.2.5. 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 <https://www.wildlife.ca.gov/Conservation/Planning/Bankinghttps://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=227736>); (2) conducting a baseline biological assessment and land survey report by June 30, 2022 ; (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;

7.2.5.1. Activities Associated with Burrowing Owl HM Land Enhancements: Provide for the implementation of HM Lands enhancement activities on HM Lands. HM Land enhancement activities include revision of the final management plan for CDFW approval.

- 7.2.6. 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 revised final management plan and re-recorded 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 revised final management plan shall include fence repair, 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.

7.3. Endowment Fund: ~~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 7.2.5 (Start-up Activities). Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

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

7.3.2. Calculate the Endowment Funds Deposit: After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare 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.

10. Performance Security has been amended as follows:

~~The~~ Permittee may proceed with Covered Activities only after ~~the~~ Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 7 (Habitat Management Land Acquisition and Restoration) that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

8.6. 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.

8.7. 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:

11. The Amendment section has been amended as follows:

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.

12. The Compliance with Other Laws section has been amended as follows:

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.

13. The Notices section has been amended as follows:

~~The~~ Permittee shall deliver a fully executed duplicate original ITP by 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

Alternatively, ~~the~~ Permittee shall email the digitally signed ITP to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5.

14. The Compliance with CEQA section has been amended as follows:

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, City of Tracy. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Tracy Hills Specific Plan Final Subsequent EIR (SCH No.: 2013102053) dated January 2016 that the City of Tracy certified for the Tracy Hills Specific Plan Project on April 26, 2016. 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.

Furthermore, CDFW finds that adding western burrowing owl to the Covered Species in this Amended ITP does not result in 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. While burrowing owl was not considered a candidate for listing under CESA at the time of the EIR's certification, the EIR does analyze the Project's impacts and includes measures to avoid, minimize, and mitigate impacts on the species.

15. The Findings Pursuant to CESA section has been amended as follows:

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 (SCH No: 2013102053), 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 2,730 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.~~6. 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.~~7. 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.~~8. CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).
- ~~10.~~9. Issuance of this Amendment may increase the amount of take of the Covered Species compared to the Project as originally approved; however, due to thousands of hand excavated burrows showing absence of the Covered Species, and by implementing erosion control in the subdrain outfall conservation easement area per the current LTMP in perpetuity, [\(Amendment No. 1\) preconstruction surveys, seasonal restrictions, no-disturbance buffers, monitoring, and mitigation providing nesting, and foraging habitat adjacent to the Project site \(Amendment No. 2\)](#), it is not expected that this Amendment will increase Project impacts on these species (i.e., "impacts of taking" as used in Fish and Game Code section 2081, subd. (b)(2)).
- ~~11.~~10. Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

Amendment No. 2 Findings

1. CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

2. Issuance of this Amendment will increase the amount of permitted take of Covered Species compared to the Project as originally approved by adding burrowing owl to the list of Covered Species; however, by implementing avoidance and minimization measures specific to burrowing owl in Amendment No. 2 and requiring compensatory mitigation in the form of conserving burrowing owl habitat, it is not expected that this Amendment will increase Project impacts on this species (i.e., “impacts of taking” as used in Fish and Game Code Section 2081, subdivision (b)(2)).

3. Issuance of this Amendment does not affect CDFW’s previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

16. The Attachments section has been amended as follows:

- FIGURE 1 Tracy Hills Development Area (Area C) and Conservation Easement Area
- FIGURE 2 Tracy Hills Land Use Zones Schematic
- FIGURE 3 Table of Allowed Uses within Each Zone
- FIGURE 4 Firebreak Configuration Options
- FIGURE 5 California Tiger Salamander Specially Designated Storm Drain Design Modification Area(s)
- FIGURE 6 California Tiger Salamander Aquatic Habitat with Upland Habitat Buffers

FIGURE 7 Burrow Inventory Mapping for Project

- ATTACHMENT 1 Amended 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
- ATTACHMENT 5 Appendix 5B: Tracy Hills HCP – California Red-Legged Frog & California Tiger Salamander Relocation Plan
- ATTACHMENT 6 Major Amendment No. 1 with Track Changes

ATTACHMENT 7 Major Amendment No. 2 with Track Changes