



**California Department of Fish and Wildlife  
Bay-Delta Region 3  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534**

California Endangered Species Act  
Incidental Take Permit No. 2081-2023-044-03

**INTERSTATE 580 EMERGENCY ALTAMONT PASS REPAIR PROJECT  
(04-3Y550)**

**I. Authority:**

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

<b>Permittee:</b>	<b>California Department of Transportation</b>
<b>Principal Officer:</b>	<b>Sanny Khow, Project Manager, (510) 407-1068</b>
<b>Contact Person:</b>	<b>Sheryl Sablan, Office Chief (Acting), (510) 715-8492</b>
<b>Mailing Address:</b>	<b>111 Grand Avenue, Oakland, CA 94612</b>

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

This ITP is effective as of the date signed by CDFW below. Unless renewed by CDFW, this ITP and its authorization to take the Covered Species shall expire on **December 31, 2029**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 6.7 of this ITP.

**III. Project Location:**

The Interstate 580 Emergency Altamont Pass Repair Project (Project) has three locations associated with this Project. The first, Location 1, is located adjacent to the eastbound side of I-580 at post mile (PM) 4.76 through PM 4.83 near the city of Livermore in Alameda County. (Appendix B: Figure 1). Location 2 is also along eastbound I-580 at PM 4.62. Location 3 is

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

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

along the westbound side of I-580 between PM 4.24 and 4.67. The Project area is within the Altamont United States Geological Survey (USGS) 7.5-minute quadrangle (See Figure 1).

#### **IV. Project Description:**

The purpose of this Project is to restore the function of the slopes, retaining wall, and three storm drain systems, and to preserve the structural integrity of the embankment and highway. After the initial application was submitted, atmospheric river precipitation events in the winter of 2022–2023 caused additional damage and required emergency repairs. Due to the emergency status of this Project, work repairing the retaining wall and slope at Location 1 began in April 2023 and is ongoing.

This ITP includes mitigation for impacts that have occurred since emergency work began in April 2023.

##### *Location 1-Retaining Wall and Slope Reinforcement*

During repairs, additional soil displacement and slipping occurred during several precipitation events between January and March 2024. In addition to repairing the retaining wall, Caltrans will address the new soil displacement and protect the retaining wall and slope from further erosion. Additional work includes constructing an access road, building a soldier pile (SP) wall, and installing a new drainage outlet with rock slope protection (RSP). Vegetation removal and installation of the access route are complete, and next steps will be excavating and grading the route, as well as re- grading the 1:2 slope to improve drainage. The SP wall is 350 feet long and set 12 feet back from the retaining wall. The failed slope will be excavated from the SP wall to toe of slope at a grade of no more than 1:2. Layers of geosynthetic material at a tensile strength of 4,800 pounds per square foot, measuring 42 to 44 feet long, will be placed and covered with 2 feet of native material from toe of slope to an elevation of 684 feet. From 684 feet to 694 feet, layers of 35-foot-long geosynthetic material will be placed between 4-foot-deep layers of native material fill. From 698 feet to 706 feet in elevation, 28-foot-long geosynthetic fabric at a tensile strength of 3,200 pounds per square foot will be placed between 4-foot-deep layers of native material. From 710 feet in elevation to the top of slope, the same strength of 15-foot-long geosynthetic fabric will be layered between four-foot-deep layers of native material. A secondary layer of 12-foot-long geosynthetic fabric of a tensile strength of 800 pounds per square foot will also be placed every two feet from an elevation of 687 feet to top of slope. The new drainage system will consist of a concrete gutter along the length of the SP wall. This gutter will connect to an existing corrugated metal pipe (CMP) down drain.

##### *Location 2-Storm Drainage Erosion*

During precipitation events, water from the existing drainage system was diverted outside a clogged inlet along westbound (WB) Interstate 580 (I-580) at PM 4.62 and down the slope just east of the inlet, causing the slope to erode. The damage 106 feet from the headwall on the top of the 24-inch CMP underneath I-580 will be repaired to prevent further deterioration. The 24-inch CMP will be replaced between the covered junction box and outfall with proper

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Tee section and a 10-foot by 10-foot RSP pad at the outfall location. The 12-inch CMP will be replaced in its entirety with proper Tee section and a RSP pad at the outfall location and the drain will be regraded toward the existing drainage inlet. The reconstructed drainage system is a combination of asphalt concrete (AC) dikes along the edge of the shoulder and a down drain along the embankment slope, with an energy dissipator placed at the end of the down drain.

In addition to the drainage system erosion, 2023 atmospheric rivers eroded a slope adjacent to I-580 and east of the staging area. The slope will be reconstructed using RSP and native material.

*Location 3-Drainage Ditch Erosion*

The atmospheric rivers of 2023 also caused heavy outflow and runoff from a clogged, Portland cement concrete (PCC) lined ditch to erode down the slope, creating a gully from PM 4.24 to 4.67. The gully has a gap ranging from three to six feet in width between the edge of pavement and the toe of slope. There are also two minor gullies perpendicular to the road, connecting to the main gully at PM 4.30 and PM 4.28.

Caltrans will repair the damage of the existing narrow and wide PCC-lined ditches and replace one open metal pipe and two 12-inch CMP cross culverts. Caltrans will repair the eroded shoulder and gully with native fill. The existing PCC-lined ditch along the major gully will also be restored and extended to connect to the new ditch system along the WB shoulder.

To address drainage system and erosion damage, Caltrans will clean out all vegetative and other materials within existing PCC-lined ditches, restoring their functionality, and backfilling all gullies with borrow. Anticipated work includes vegetation removal, recontouring the gully within 10 feet of the edge of pavement, cleaning out the PCC-lined ditch, and backfilling the eroded gullies with borrow. Impacts at this location will be temporary.

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

This ITP covers the following species:

<u>Name</u>	<u>CESA Status</u> <sup>3</sup>
1. California tiger salamander ( <i>Ambystoma californiense</i> )	Threatened <sup>4</sup>

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

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

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

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

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include initial site preparation; heavy equipment operation; handling of stockpiles and stored materials; foot traffic; excavation; grading; trenching; permanent placement of geosynthetic material; installation of retaining wall; culverts and drainage; excavation associated with installation of signage; fencing; vegetation removal; fill placement; staging area use; and/or relocation activities prescribed by this ITP (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as destruction of burrows and dens that the Covered Species inhabit; being crushed under moving vehicles and equipment; disturbance in the vicinity of dens or burrows; desiccation or predation along fence lines and other barriers to movement; and decreased survivorship from the installation of additional light sources, resulting in increased light pollution to Covered Species habitat. 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 from capture and relocation attempts as required by this ITP. Relocation could result in mortality, injury, and/or disease transmission to Covered Species. The areas where authorized take of the Covered Species is expected to occur includes the section of I-580 between PM 4.06 to PM 5.92 near the City of Livermore in Alameda County (Figure 1) (collectively, the Project Area).

The Project is expected to cause the temporary loss (that will restore within one year) of 1.368 acres, a prolonged temporary loss (that will not restore within one year) of 0.632 acres, and a permanent loss of 1.610 acres of habitat for the Covered Species, bringing total impacts to 3.610 acres (Figure 2). Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include stress resulting from construction noise and vibrations and from capture and relocation; temporary and permanent habitat loss; and long-term effects due to increased pollution, increased competition for food and space, and increased vulnerability to predation.

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

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

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## VIII. Conditions of Approval:

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

1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Interstate 580 Emergency Altamont Pass Repair Project Biological Opinion (BO# 2024-0057025-S7-001) once finalized for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
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).
4. **General Provisions:**
  - 4.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
  - 4.2. Designated Biologist(s), Biological Monitor(s). Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) and Biological Monitor(s) using the Biologist Resume Form (Attachment 1) or another format containing the same information at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist(s) and Biological Monitor(s) are knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist(s) and Biological Monitor(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist(s) and Biological Monitor(s) in writing before starting Covered Activities and shall also obtain approval

in advance, in writing, if the Designated Biologist(s) or Biological Monitor(s) must be changed.

- 4.3. Designated Biologist Authority.** To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Site and otherwise facilitate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.
- 4.4. 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. Emphasis will be placed on the importance of the habitat and life-stage requirements within the context of Project avoidance and minimization measures. Handouts, illustrations, photographs, and/or Project mapping that show the areas where minimization and avoidance measures are being implemented will be included as part of this education program. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.
- 4.5. Construction Monitoring Documentation.** The Designated Biologist(s) and Biological Monitor(s) shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the

construction-monitoring documentation is available for review at the Project site upon request by CDFW.

- 4.6. Trash Abatement.** Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed, ideally at daily intervals but at least once a week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 4.7. Erosion Control.** Erosion and sediment control measures shall be installed prior to earth-moving Covered Activities. Permittee shall utilize erosion control measures throughout all phases of the Project where sediment runoff from exposed slopes could leave the Project Area and/or enter a drainage, stream, or ponded area. No phase of the Project that may cause the introduction of sediments into a drainage, stream or ponded area may be started if that phase and its associated erosion control measures cannot be completed prior to the onset of a storm. Permittee shall consult 72-hour weather forecasts from the National Weather Service prior to the startup of any phase of the Project that may result in sediment runoff to a drainage, stream, or ponded area. The Designated Biologist shall monitor erosion control measures before, during, and after each storm event and Permittee shall repair and/or replace ineffective measures immediately. Following completion of the Project, Permittee shall implement erosion control measures for all disturbed areas, which may include reseeding using a noxious weed-free locally native seed mix, hydroseeding, jute matting, or tackifying agents to stabilize soils and dust control.
- 4.8. Erosion Control Materials.** Permittee shall prohibit the use of erosion control materials potentially harmful to Covered Species, such as plastic or mono-filament netting (erosion control matting, geo-textile material and rock slope protection filter fabric) or similar material, in potential Covered Species' habitat unless authorized by CDFW. Tightly woven silt fencing material or woven organic materials such as coir logs (without mono-filament netting) shall be permitted.
- 4.9. Delineation of Property Boundaries.** Before starting Covered Activities along each part of the route in active construction, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 4.10. Delineation of Habitat.** Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 4.11. Project Access.** Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross

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Covered Species' habitat outside of or enroute 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 10 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.

- 4.12. Staging Areas.** Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 5.11 of this ITP.
- 4.13. Equipment Washing Station and Sanitization.** All equipment shall be washed or sanitized prior to entering the Project Area. Staging areas shall be equipped with wash stations to prevent the spread of invasive species and disease from areas outside the Project boundaries.
- 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 access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 4.16. Refuse Removal.** Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.
- 4.17. Temporary Impact Criteria.** To be considered a temporary impact, all temporary impacts must meet the following criteria: (1) recontouring, replanting and seeding of each temporary impact area shall occur by October 31 of the year of the impact, and no additional ground disturbing activities shall occur; (2) if the impact area is within 1,000 feet of an aquatic feature, all work shall be completed within this area and exclusion fencing shall be removed by October 15 of the same calendar year, allowing the Covered Species unrestricted access between upland and aquatic

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habitat; and (3) temporary impact sites have achieved vegetation success as noted in Condition of Approval 8.6. Impacts that do not meet these criteria will require additional mitigation and an amendment to this ITP shall be required.

## 5. Monitoring, Notification and Reporting Provisions:

**5.1. Notification of Non-Compliance.** The Designated Representative shall immediately notify CDFW if the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.

**5.2. Compliance Monitoring.** The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections a minimum of once per week during periods of inactivity and/or in areas adjacent to known Covered Species breeding locations. The Designated Biologist shall conduct compliance inspections to:

- (1) minimize incidental take of the Covered Species;
- (2) prevent unlawful take of species;
- (3) check for compliance with all measures of this ITP;
- (4) check all exclusion zones; and
- (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area.

The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing the following: a) oversight activities and compliance inspections, b) observations of Covered Species and their sign, c) survey results, and d) monitoring activities required by this ITP. The Designated Biologist shall conduct compliance inspections a minimum of twice per week during periods of inactivity and after clearing, grubbing, and grading are completed.

**5.3. Monthly Compliance Report.** The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 6.3 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Karen Taylor, Senior Environmental Scientist (Specialist) ([Karen.Taylor@wildlife.ca.gov](mailto:Karen.Taylor@wildlife.ca.gov)), Regional CESA email,

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[R3CESA@wildlife.ca.gov](mailto:R3CESA@wildlife.ca.gov), and Headquarters CESA Program email, [CESA@wildlife.ca.gov](mailto:CESA@wildlife.ca.gov). CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

- 5.4. Annual Status Report.** Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 6.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.
- 5.5. CNDDDB Observations.** The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 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.
- 5.6. Final Mitigation Report.** No later than 60 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (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.
- 5.7. Notification of Take or Injury/Damage.** Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured/damaged by a Project-related activity, or if a Covered Species is otherwise found dead or injured/damaged within the vicinity of the Project. The Designated Biologist or Designated

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Representative shall provide initial notification to CDFW by calling the Regional Office at (707) 428-2002. Initial notification shall also be provided to the CDFW Regional Representative is Karen Taylor, Senior Environmental Scientist (Specialist) ([Karen.Taylor@wildlife.ca.gov](mailto:Karen.Taylor@wildlife.ca.gov)) and Regional CESA email, [R3CESA@wildlife.ca.gov](mailto:R3CESA@wildlife.ca.gov). The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured/damaged and the ITP Number (2081-2023-044-03). Following initial notification, Permittee shall send CDFW a written report within two (2) 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/damage, and 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 and Weather.** Permittee shall limit Covered Activities to the period between June 1 and October 31, until the expiration of this ITP. Permittee shall monitor the National Weather Service 72-hour forecast for the Project Area. No Covered Activities shall occur during a rain event. No Project activities will be started if the associated erosion control measures cannot be completed prior to the onset of precipitation. No Covered Activities shall occur if there is a 40 percent chance of precipitation or greater in the National Weather Service 72-hour forecast for the Project Area. Covered Activities may continue 24 hours after the rain ceases if there is less than a 40 percent chance of precipitation in the 24-hour forecast for the Project Area.
- 6.2. Time of Day Work Restriction.** For any activity that will clear, grub, remove existing unpaved features, excavate embankments, remove existing drainage features, construct new drainage features or excavate soil that is not covered by a paved area, the Permittee shall terminate all Covered Activities 30 minutes before sunset and shall not resume Covered Activities until 30 minutes after sunrise unless approved by the CDFW Representative in writing. The Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for determining when Covered Activities shall terminate and resume. Nightwork exceptions may be authorized upon written request and written approval with CDFW (via E-Mail). Nightwork requests beyond 30 nights may require an amendment to this ITP.
- 6.3. Pre-Construction Surveys.** The Designated Biologist shall complete walking surveys of the Project Area prior to any ground-disturbing activity (such as excavation, grading, road widening, and operation of heavy equipment), and shall follow earthmoving equipment to look for Covered Species during initial site grading. Areas to be surveyed shall include suitable habitat features for the Covered Species such as aquatic and upland areas as well as under woody debris. Pre-construction

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surveys shall be done in conjunction with the installation of the temporary Covered Species temporary exclusion fencing and cover board install as described in Condition of Approval 7.5. If a Covered Species is discovered by the Designated Biologist or anyone else, the Designated Biologist shall move the animal to a safe nearby location (e.g. mouth of a ground-squirrel burrow outside of the construction area) and monitor it until it is determined that it is not imperiled by predators or other dangers.

- 6.4. Environmentally Sensitive Areas (ESA).** Prior to the start of construction, for each season, ESA fencing consisting of fencing approved in advance by CDFW and the ESA fencing plan shall be submitted to CDFW for review and CDFW approval 30 days prior to the initiation of construction. The ESA plan shall be clearly delineated using high-visibility orange fencing as the primary option to protect sensitive habitats, other options approved in advance by CDFW may be authorized. The ESA signification system will remain in place throughout the duration of the Project. It may be removed during the wet season (and subsequently re-installed) if needed to prevent materials from being washed away. The final Project plans will depict all locations where ESA signification will be installed and how it will be installed. The bid solicitation package special provisions will clearly describe acceptable signification material and prohibited construction-related activities, vehicle operation, material and equipment storage, and other surface-disturbing activities within ESAs. ESA materials shall be installed as directed by a Designated Biologist and maintained in good repair throughout the Project as needed.
- 6.5. Wildlife Exclusion Fencing Refuge Areas/Cover Boards.** The Permittee shall provide refuge opportunities in the form of cover boards (at least 2-foot x 2-foot plywood minimum size), along the Covered Species temporary exclusion fence on both sides of the fence. Permittee shall submit a design of the barrier and refuge opportunities no less than 30 days prior to the initiation of construction each season to CDFW for approval. The Designated Biologist shall inspect refuge areas each morning, as well as, during and after rain events. Covered Species within the interior fence should be given the ability to leave on their own accord before active relocation is attempted. All Species found shall be identified, recorded and submitted to CDFW in the Final Construction Report and reported to CNDDDB as specified in this ITP. All wildlife shall be relocated to a safe location outside the Project Area.
- 6.6. Small Mammal Burrow Survey and Inspections.** Prior to the initiation of construction the Project area shall be surveyed for small mammal and other wildlife burrows. If burrows are detected they shall be avoided to the most feasible extent practicable. Avoidance shall include excluding from the Project Area as an environmental sensitive area (ESA) using the protocol outlined in Condition of Approval 7.4. If impacts to burrows cannot be avoided by Covered Activities alternative methods of avoidance shall be developed in coordination with CDFW.
- 6.7. Trench Escape and Inspection.** The Designated Biologists and trained construction foreman/manager, supervised by the Designated Biologist, shall inspect all open

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holes, sumps, and trenches within the Project Area at the beginning of each day for any open hole greater than one foot. To prevent inadvertent entrapment of Covered Species, the Designated Biologist(s) shall oversee the covering of all trenches, holes, sumps, or other excavations with a depth greater than one foot. Covering methods can include steel plates, wood planks and earthen overlay. The coverings shall be constructed to make sure wildlife cannot burrow into the area being covered. If the area cannot be covered an escape ramp (earthen fill or wood plank material) shall be installed at an angle of no more than 30 degrees and inspected each day by the Designated Biologist. Each morning prior to beginning Covered Activities and immediately before trenches, holes, sumps, or other excavations are backfilled, the Designated Biologist(s) and/or construction foreman/manager shall thoroughly inspect them for Covered Species. Permittee shall cease all Covered Activities in the vicinity and notify the Designated Biologist(s) immediately if any worker discovers that Covered Species have become trapped. If at any time a trapped Covered Species is discovered by the Designated Biologist or anyone else, the Designated Biologist shall capture and relocate the animal to a safe nearby location per the Relocation Plan described in Conditions of this permit.

**6.7.1.** If open holes, sumps, trenches, or excavations cannot be covered then a temporary barrier shall be installed around any trenches, holes, sumps, or other excavations to prevent Covered Species from becoming trapped.

**6.8.** Inspection of Pipes and Culverts. All construction pipes, culverts, or similar structures that are stored at the Project site for one or more overnight periods shall be securely capped prior to storage or inspected by the Designated Biologist before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a Covered Species is discovered inside a pipe by the Designated Biologist or anyone else, the Covered Species shall be allowed to leave its own accord, or if it can be safely captured, it shall be relocated by the Designated Biologist to a suitable location outside of the Project Area.

**6.9.** Vehicle and Equipment Inspection. Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall wait for the Covered Species to move unimpeded to a safe location. Alternatively, the Permittee shall contact the Designated Biologist to determine if the Designated Biologist can safely move the Covered Species in Accordance with Conditions of this permit.

**6.10.** Notification of Non-Native Tiger Salamanders or Hybrids. The Designated Biologist shall immediately notify CDFW if a suspected non-native barred tiger salamander (*Ambystoma tigrinum mavortium*) or California tiger salamander/non-native hybrid is found within the Project Area within 24 hours by calling CDFW's regional representative. The Designated Biologist shall not release any suspected non-native or hybrid salamanders back to the wild until directed to do so by CDFW. The Designated Biologist shall follow the Covered Species Handling and Injury Condition of Approval outlined in this ITP (Condition of Approval 7.11).

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**6.11. Covered Species Handling and Injury.** If an injured Covered Species is found during the Project term, the Designated Biologist shall evaluate the individual and 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 Designated Biologist shall place the injured individual in a safe and shaded location. Any injured Covered Species shall be placed in a shaded container and kept moist, and shall be handled and assessed according to the *Restraint and Handling of Live Amphibians*, USGS, National Wildlife Health Center (D. Earl Greene, ARMI SOP NO. 100; 16 February 2001); 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:

**6.11.1.** If the injury to the Covered Species is minor or healing and the individual is likely to survive, the individual shall be released immediately;

**6.11.2.** If it is determined that the Covered Species has major or serious injuries as result of Project-related activities, then the Designated Biologist shall immediately take it to the Lindsay Wildlife Museum or another CDFW-approved 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 the U.S. Fish and Wildlife Service. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The circumstances of the injury, the procedure followed and the final disposition of the injured animal shall be documented in a written incident report.

**6.12. Covered Species Relocation Plan.** The Designated Biologist(s) shall prepare a Covered Species Relocation Plan (Relocation Plan) and submit for CDFW review within 60 days of signature of this ITP. The Relocation Plan shall include, but not be limited to, pre-activity survey methodology appropriate for the season, capture, handling, and relocation methods; and identification of where the individuals will be relocated to. The relocation areas shall be identified by the Designated Biologist(s) based upon best suitable habitat available and time of year and approved by CDFW prior to the start of Covered Activities. The Relocation Plan shall be submitted to CDFW for review and approval prior to the beginning of Covered Activities. Covered Activities anywhere within the Project Area may not proceed until the Relocation Plan is approved in writing by CDFW. Only the approved Designated Biologist(s) are authorized to capture and handle the Covered Species.

**6.13. Remove Temporary Flagging, Fencing, and Barriers.** Permittee shall remove all temporary flagging, fencing, erosion control, temporary work platforms, temporary access road materials, and/or barriers from the Project Area and vicinity of the stream upon completion of Project activities.

**6.14. Prohibit Introduction of Invasive Species and Disease.** Permittee shall conduct Project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi,

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parasites, bacteria, etc.), from one Project site and/or waterbody to another. Prevention best management practices (BMP) and guidelines for invasive plants can be found on the Cal-IPC's website at: <http://www.cal-ipc.org/ip/prevention/index.php> and for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: <http://www.protectyourwaters.net/>.

**6.15. Permanent Lighting Prohibition.** No new or replacement of existing permanent light sources are otherwise authorized under the terms of this ITP.

**6.16. Temporary Lighting Avoidance and Minimization.** All temporary Project lighting associated with construction staging areas, access routes and construction sites shall be shut down upon the completion of work each day and not used as security lighting overnight. Temporary Project lighting on the surface of the road shall be directed towards the road surface and shall not be directed into areas outside of the road surface to prevent additional light pollution and disruption of nocturnal wildlife activity. Baffles and various shading devices may be employed.

**6.17. Rock Slope Protection Filter Fabric Prohibition.** No rock slope protection (RSP) filter fabric or similar plastic-derived materials are authorized for permanent use within the Project Area unless authorized by CDFW.

**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 from implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the protected acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall either purchase 7.146 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 7.1 below, OR shall provide for both the permanent protection and management of 7.146 acres of Habitat Management (HM) lands pursuant to Condition of Approval 7.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.4 below.

Compensatory habitat shall include upland foraging and dispersal habitat for Covered Species through preservation, restoration, enhancement, and/or creation of habitat that is the same or better quality as upland habitat and the riparian habitat that will be impacted. Purchase of Covered Species credits OR permanent protection and funding for perpetual management of HM lands must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 8 below for all uncompleted obligations. The Permittee shall also restore on-site 2.00 acres of temporarily (including prolonged impacts) impacted Covered Species habitat pursuant to Condition of Approval 7.4 below.

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**7.1. Cost Estimates.** For the purposes of determining the Security amount, CDFW has estimated the cost sufficient for CDFW or its contractors to complete acquisition, protection, and perpetual management of the HM lands and restoration of temporarily disturbed habitat as follows:

**7.1.1. Covered Species Credits.** Purchase 7.146 acres of Covered Species upland habitat credits from a CDFW-approved mitigation or conservation bank: **\$428,760.00**

**7.1.2. Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 7.6, calculated at \$2,175.00/acre for 2.00 acres: \$4,350.00.**

**7.1.3. All costs associated with CDFW engaging an outside contractor to complete the mitigation tasks, including but not limited to acquisition, protection, and perpetual funding and management of the HM lands and restoration of temporarily disturbed habitat. These costs include but are not limited to the cost of issuing a request for proposals, transaction costs, contract administration costs, and costs associated with monitoring the contractor's work \$40,000.00.**

**7.2. Covered Species Credits.** If the Permittee elects to purchase Covered Species credits to complete compensatory mitigation obligations, then Permittee shall purchase 7.146 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 8 below. Prior to purchase of Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project.

**7.2.1. Bill of Sale and Payment Receipt.** Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to Project activities or within 18 months from issuance of this ITP if Security is provided.

OR

**7.3. Habitat Management Lands Acquisition and Protection.** If the Permittee elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the Permittee shall:

**7.3.1. Fee Title.** Transfer fee title of the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended.

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- 7.3.2. Conservation Easement.** If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW elects not to be named as the grantee for the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Civil Code sections 815-816, as amended, and Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e). Because the “doctrine of merger” could invalidate the conservation interest, under no circumstances can the fee title owner of the HM lands serve as grantee for the conservation easement.
- 7.3.3. HM Lands Approval.** Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, documentation identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project’s impacts on Covered Species;
- 7.3.4. HM Lands Documentation.** Provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents (please contact CDFW for document list). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;
- 7.3.5. Land Manager.** Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified. The grantee for the conservation easement cannot serve as the interim or long-term manager without the express written authorization of CDFW in its sole discretion.
- 7.3.6. Start-Up Activities.** Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=137386&inline>) (2)

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conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;

- 7.3.7. Interim Management (Initial and Capital).** Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, vegetation and invasive species management, and implementing adaptive management, as needed.

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

- 7.4. Endowment Fund.** If the Permittee elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that is permanently restricted to paying the costs of long-term management and stewardship of the mitigation property for which the funds were set aside, which costs include the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with this ITP, the conservation easement, and the management plan required by Condition of Approval 7.3.2. 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

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lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.

- 7.4.1. Identify an Endowment Manager.** The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended.

Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e).

Within 30 days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(3) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(3).

- 7.4.2. Calculate the Endowment Funds Deposit.** After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare an endowment assessment (equivalent to a Property Analysis Record (PAR)) to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). Note that the endowment for the easement holder should not be included in this calculation. The Permittee shall submit to CDFW for review and approval the results of the endowment assessment before transferring funds to the Endowment Manager.

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

- 7.4.2.2. Endowment Buffers/Assumptions.** Permittee shall include in the endowment assessment assumptions the following buffers for

endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:

**7.4.2.3. 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.

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

**7.4.2.5. 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.

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

**7.4.4. Management of the Endowment.** The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

Notwithstanding Probate Code sections 18501-18510, the Endowment Manager shall not make any disbursement from the Endowment that will result in expenditure of any portion of the principal of the endowment without the prior written approval of CDFW in its sole discretion. Permittee shall ensure that this requirement is included in any agreement of any kind governing the holding, investment, management, and/or disbursement of the Endowment funds.

Notwithstanding Probate Code sections 18501-18510, if CDFW determines in its sole discretion that an expenditure needs to be made from the Endowment to preserve the conservation values of the HM lands, the Endowment Manager shall process that expenditure in accordance with directions from CDFW. The Endowment Manager shall not be liable for any shortfall in the Endowment resulting from CDFW's decision to make such an expenditure.

**7.5. Reimburse CDFW.** Permittee shall reimburse CDFW for all reasonable costs incurred by CDFW related to issuance and monitoring of this ITP, including, but not limited to transaction fees, account set-up fees, administrative fees, title and

documentation review and related title transactions, costs incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.

- 7.6. Habitat Restoration.** Permittee shall restore on-site the 2.00 acres of Covered Species habitat that will be temporarily disturbed (including prolonged temporary) during construction to pre-project or better conditions. Prior to project completion, the Permittee shall prepare for CDFW's review and approval an onsite Mitigation and Monitoring Plan (a.k.a. Vegetation Restoration Plan) to facilitate revegetation of the 2.00 acres of temporary construction disturbance on-site, and shall ensure that the Plan is successfully implemented. The Plan shall include detailed specifications for restoring all temporarily disturbed areas, such as seed mixes and application methods. The plan shall also indicate the best time of year for seeding to occur includes regular watering to ensure adequate growth. Adaptive management alternatives shall be explored in consultation with CDFW to ensure success criteria is met. If site conditions prevent the habitat from meeting the success criteria on-site, other studies, surveys, etc. may be explored with CDFW to benefit the Covered Species in some way.

- 7.6.1. Covered Species Movement Study.** A Covered Species Movement Study utilizing wildlife game-trail cameras, drift fence arrays, road-strike data and other available data sources shall be developed and submitted for approval to CDFW 30 days prior to the initiation of Covered Activities. The study should focus on determining if I-580 presents a barrier to Covered Species movement and influence designs for future segments of I-580 to better accommodate Covered Species movement. As part of the study plan, multiple cameras shall be installed where they will be most effective to capture Covered Species movement. The cameras shall be capable of sensing small herpetofauna. The study shall monitor the selected location at least twice per month for a period of at least 3 months during the Covered Species active lifecycle after construction is complete for one year. The Permittee may develop an environmental-DNA (e-DNA) study component to the proposal in coordination with CDFW.

- 8. Security:** The Permittee shall ensue funding (Security) to ensure completion of activities required by Condition of Approval 7. Permittee shall provide Security as follows:

- 8.1. Master Funding Agreement.** Security for this ITP shall be governed by the Master Funding Agreement between the California Department of Fish and Wildlife and the California Department of Transportation, dated September 3, 2021.
- 8.2. Funding Memorandum.** Permittee has prepared and CDFW has approved, the project-specific Funding Memorandum required by the Master Funding Agreement and attached to this ITP as Attachment 2.
- 8.3. Security Amount.** The Security shall be in the amount of **\$473,110.00**. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 7.1 above and the Funding Memorandum.

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- 8.4. Funding of the Child Expenditure Authorization (EA).** Permittee shall create and fund the Child EA with funds equivalent to the Security Amount.
- 8.5. Compliance with the Master Funding Agreement.** Permittee shall complete all requirements set forth in the Master Funding Agreement and shall at all times comply with the terms and conditions of that Agreement.

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.

#### **IX. Amendment:**

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

#### **X. Stop-Work Order:**

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

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

## **XI. Liability:**

All terms and conditions of this ITP shall be binding upon each Permittee. Notwithstanding California Civil Code section 1431 or any other provision of law, each Permittee shall be jointly and severally liable for performance of all terms, conditions, and obligations of this ITP and shall be jointly and severally liable for any unauthorized take or other violations of this ITP, whether committed by Permittees or any person acting on behalf of one or more Permittees, including their officers, employees, representatives, agents or contractors and subcontractors. Any failure by one or more Permittees to comply with any term, condition, or obligation herein shall be deemed a failure to comply by all Permittees.

## **XII. Compliance with Other Laws:**

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

## **XIII. Notices:**

The Permittee shall sign and return this ITP to CDFW. A manual or digital signature is acceptable, provided a digital signature complies with Government Code section 16.5. Digital signatures facilitated by CDFW will be automatically returned. Manual (wet) signatures on duplicate original paper copies shall be returned by the Permittee via 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

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email or registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2023-044-03) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Erin Chappell, Regional Manager  
California Department of Fish and Wildlife – Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
[R3CESA@wildlife.ca.gov](mailto:R3CESA@wildlife.ca.gov)

and a copy to:

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

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

Karen Taylor, Senior Environmental Scientist (Specialist)  
California Department of Fish and Wildlife – Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 337-1187  
[Karen.Taylor@wildlife.ca.gov](mailto:Karen.Taylor@wildlife.ca.gov)

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

On January 11, 2023, August 9, 2023, and then on January 9, 2026, the California Department of Transportation, the CEQA Lead Agency, determined that the Project is exempt from CEQA. In making its determinations, CalTrans cited to Public Resources Code section 21080(b)(4), and California Code of Regulations, Title 14, sections 15269(b) & (c), and 15301(d). The Lead Agency determined that the Project meets certain qualifying criteria for the exemption. Pursuant to Public Resources Code section 21080.1(a), the Lead Agency is responsible for determining whether the Project is exempt from CEQA and that determination shall be final and conclusive on all persons, including Responsible Agencies. As a result, CDFW, acting as a Responsible Agency, is bound by the Lead Agency's determination that the Project is exempt from CEQA.

#### **XV. 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, the Interstate 580 Emergency Altamont Pass Repair Project and the Emergency Notice of Exemption, 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

Incidental Take Permit  
No. 2081-2023-044-03  
**California Department of Transportation**  
INTERSTATE 580 EMERGENCY ALTAMONT PASS REPAIR PROJECT



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 7.146 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

#### **XVI. Attachments:**

Figure 1	Map of Project Location
Figure 2	Project Impacts Map
Attachment 1	Biologist Resume Form
Attachment 2	Master Funding Agreement Funding Memorandum

Incidental Take Permit  
No. 2081-2023-044-03

**California Department of Transportation**

INTERSTATE 580 EMERGENCY ALTAMONT PASS REPAIR PROJECT

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

**ON** 1/22/2026.

DocuSigned by:

*Erin Chappell*

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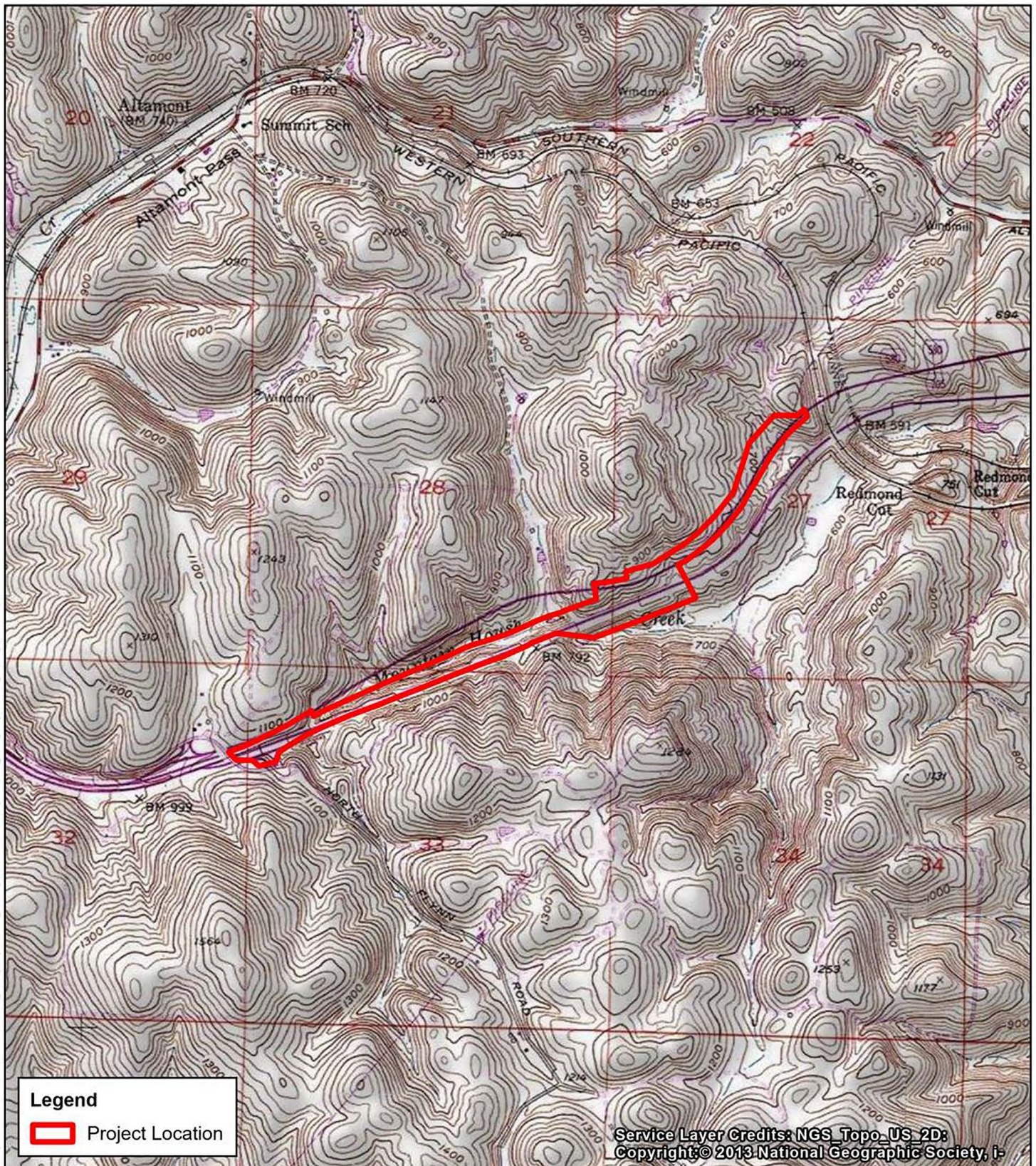
Erin Chappell, Regional Manager  
Bay Delta Region

Incidental Take Permit  
No. 2081-2023-044-03

**California Department of Transportation**

INTERSTATE 580 EMERGENCY ALTAMONT PASS REPAIR PROJECT



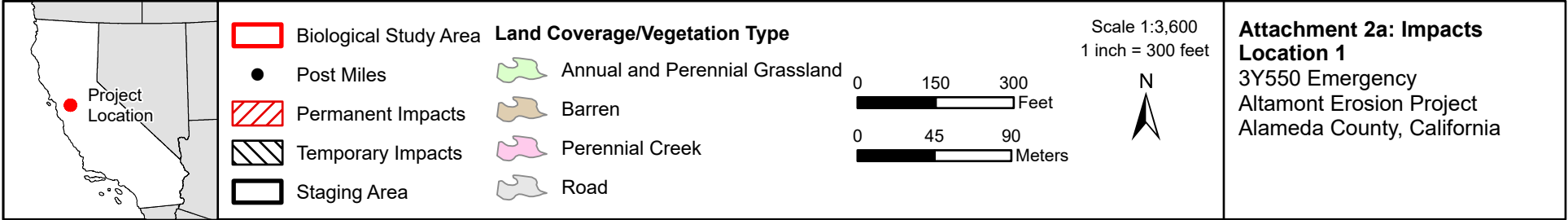
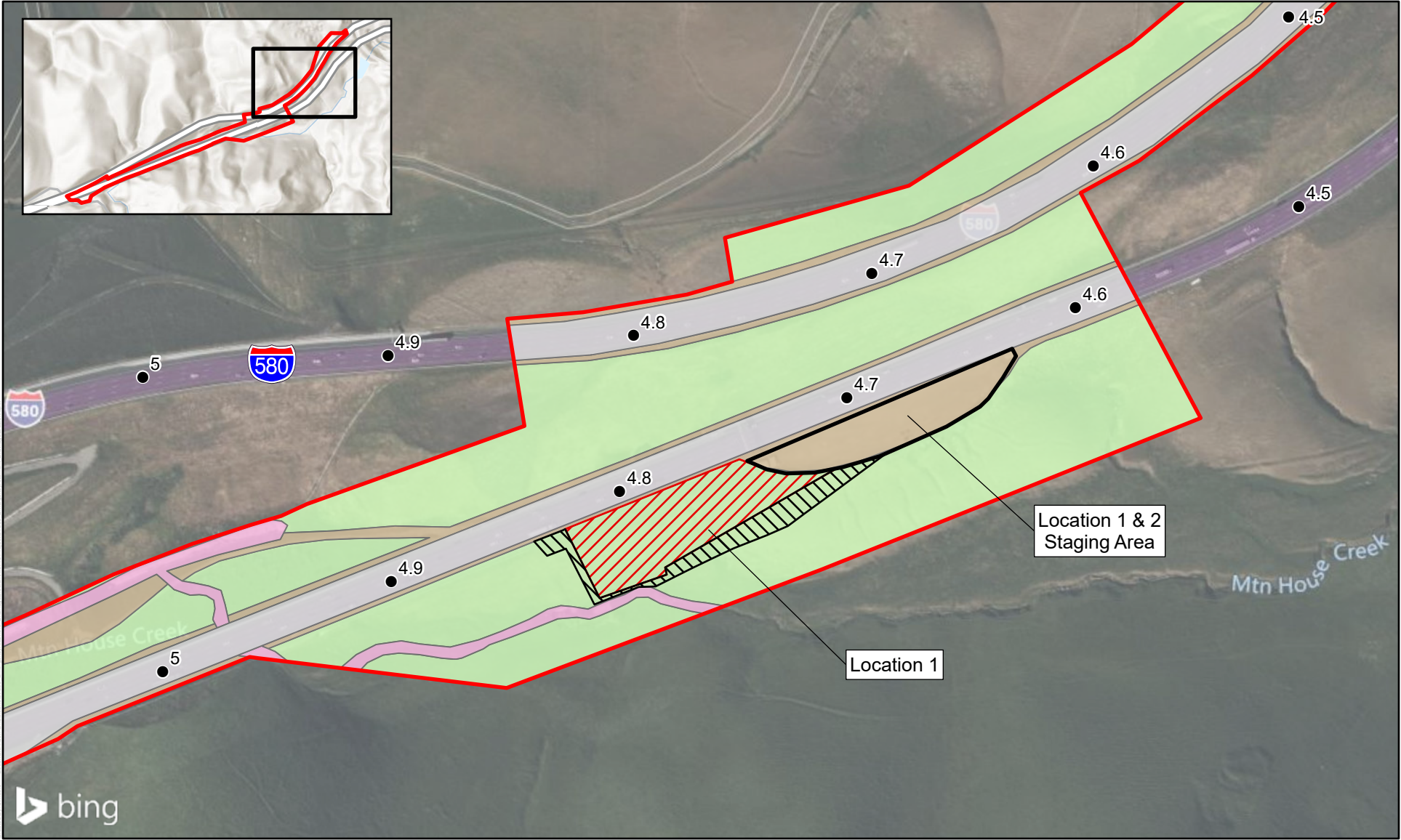


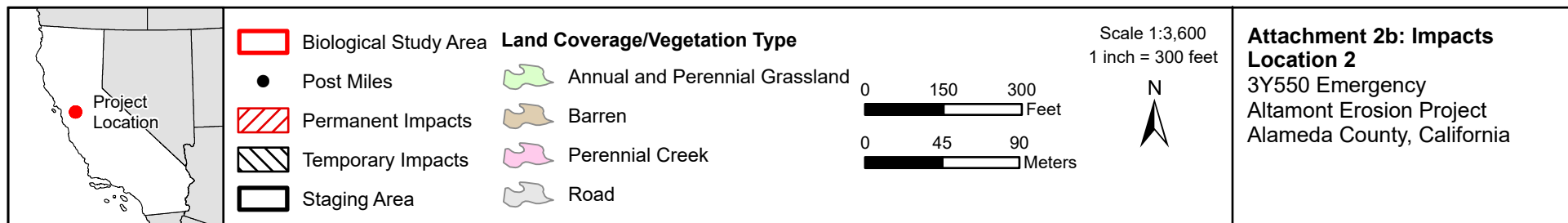
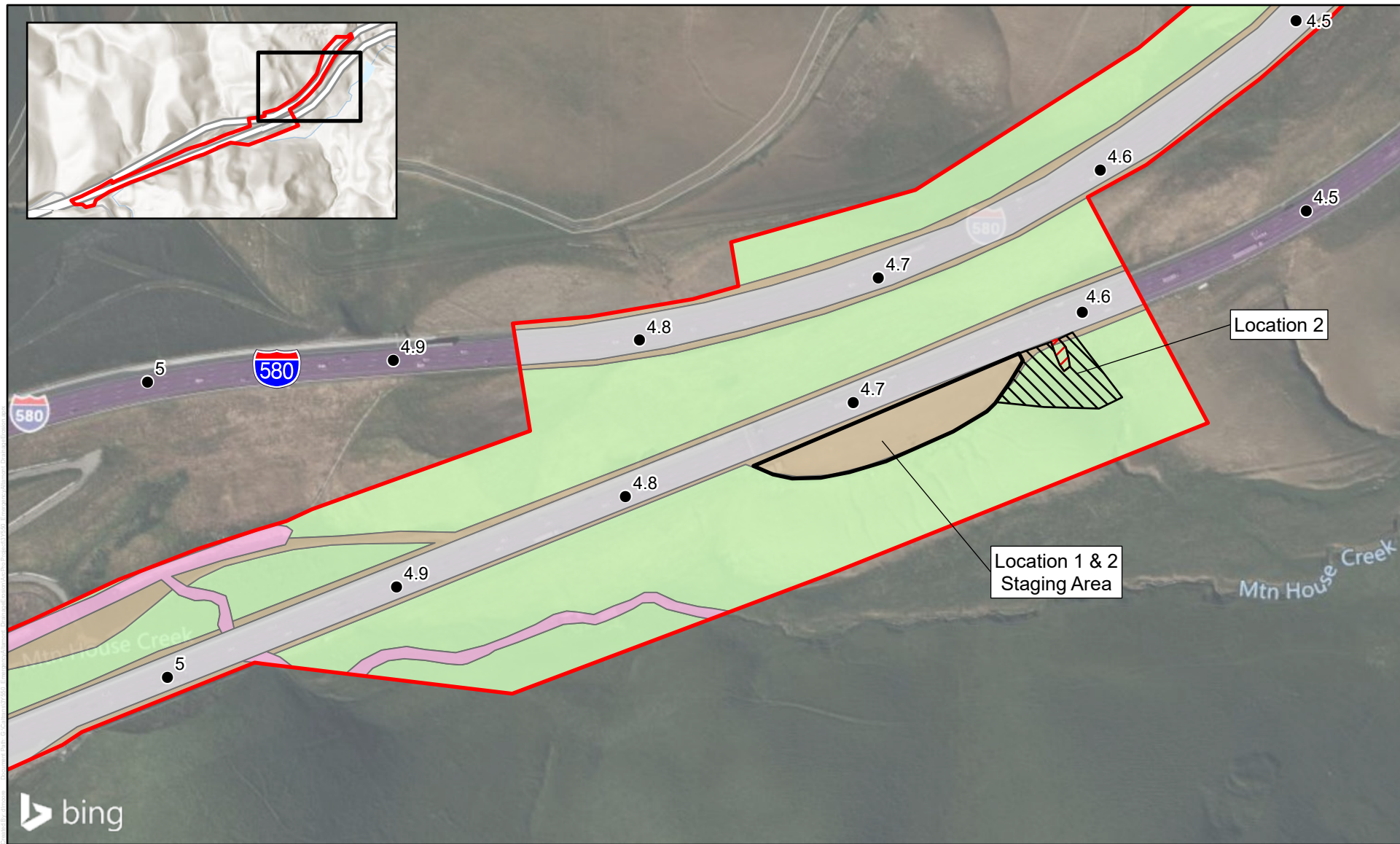
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Scale: 1:24,000  
1 inch = 2,000 feet

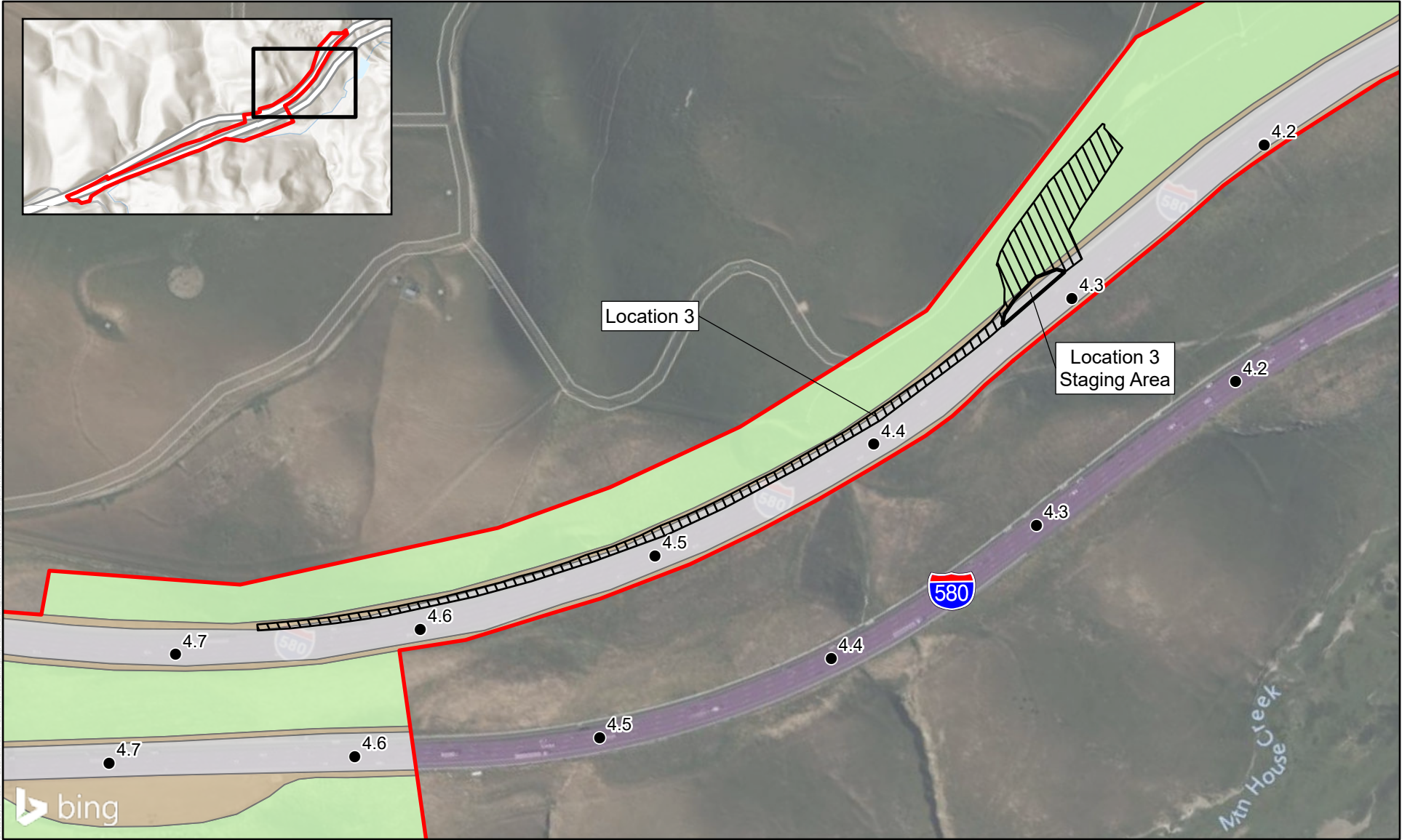
**Attachment 1: Project Location**  
3Y550 Emergency  
Altamont Erosion Project  
Alameda County, California











Biological Study Area

Post Miles

Temporary Impacts

Staging Area

**Land Coverage/Vegetation Type**

Annual and Perennial Grassland

Barren

Perennial Creek

Road

0 150 300  
Feet

0 45 90  
Meters

Scale 1:3,600  
1 inch = 300 feet



**Attachment 2c: Impacts**  
**Location 3**  
3Y550 Emergency  
Altamont Erosion Project  
Alameda County, California

**BIOLOGIST RESUME**

Project Name: Click or tap here to enter text.

LSA Agreement/ITP Number(s): Click or tap here to enter text.

**COVER SHEET**

SUBMIT EACH RESUME AS A SEPARATE DOCUMENT

Name	Requested Role(s) <sup>1</sup>	Species/Resource(s)

This form requests information about the qualifications of the Qualified Biologist, Designated Biologist and Biological Monitor specified in California Endangered Species Act Incidental Take Permits (ITP) and Lake or Streambed Alteration (LSA) Agreements issued by California Department of Fish and Wildlife (CDFW).

**Completing this form will ensure the receipt of adequate information and expedite CDFW review of qualifications.**

<sup>1</sup> Requested roles correspond to the biological staffing requirements indicated in the Lake and Streambed Alteration (LSA) Agreement or California Endangered Species Act Incidental Take Permit (ITP). Roles may include a "Qualified Biologist" or "Designated Biologist" with the necessary experience to survey for special status species, or a "Biological Monitor" with the necessary experience to monitor construction activities for special status species. An individual may request more than one role.

**BIOLOGIST RESUME**

Project Name: Click or tap here to enter text.

LSA Agreement/ITP Number(s): Click or tap here to enter text.

**SECTION I. NAME AND CONTACT INFORMATION**

Name:

Title:

Company Name &amp; Address:

Phone:

Email:

**SECTION II. EDUCATION**

College/University &amp; Degree Type Related to Natural Resource Science:

Other Relevant Workshops &amp; Training:

**SECTION III. ROLE(S) AND PERMIT REQUIREMENTS**

Requested Role(s):

Relevant LSA Agreement Measures or ITP Conditions<sup>2</sup>:**SECTION IV. SPECIES AND RESOURCE EXPERIENCE – SUMMARY**

*This section summarizes experience by special status species and other resource. Use one row for each species or other resource where surveys or special protections are required in the CESA ITP or LSA Agreement for which biologist approval is requested.<sup>3</sup> If more space is needed, add rows to this table. Provide details in Section V.*

<b>Species or Resource</b>	<b>Number of Field Seasons &amp; Hours, Life Stages Observed</b> Provide project details in Section 5	<b>Life History Knowledge</b> Describe formal workshops & training with dates, or informal training details	<b>CDFW SCP, MOU, &amp; USFWS 10a1a Authorization Number &amp; Authorized Activities</b> This form does not fulfill SCP, MOU, & USFWS 10a1a reporting requirements
Insert Species or Resource 1	Field seasons: Hours: Life Stages:		Issued to: Expiration: Agency contact:
Insert Species or Resource 2	Field seasons: Hours: Life Stages:		Issued to: Expiration: Agency contact:
Insert Species or Resource 3	Field seasons: Hours: Life Stages:		Issued to: Expiration: Agency contact:

<sup>2</sup> List all measures and conditions from the LSA Agreement or ITP requiring biological staff (i.e., Qualified Biologist, Designated Biologist, or Biological Monitor).

<sup>3</sup> Often LSA Agreements/ITPs require surveys and other protections for multiple species and other resources. Include only those for which the biologist has experience and is requesting approval.



**BIOLOGIST RESUME**

Project Name: Click or tap here to enter text.

LSA Agreement/ITP Number(s): Click or tap here to enter text.

**SECTION V. SPECIES AND RESOURCE EXPERIENCE – DETAILS**

*This section details experience from the three most recent and relevant projects for each species and resource identified in Section IV. If more space is needed, attach additional pages in the same table format (i.e., copy/paste format).*

**SPECIES OR RESOURCE 1:****Project 1 Name & Location:****Project Start Date:****Project End Date:****LSA Agreement, ITP, or Other Agency Permit Number:****Role(s)<sup>4</sup>:****Survey Type(s)<sup>5</sup>:****Construction Monitoring<sup>6</sup>****Days:****Activities:****Species Life Stages Observed & Handled, Number of Each****Company Name, Professional Reference Name, Phone, Email:****Life Stage:****Number Observed:****Number Handled:****Reported to****CNDDB<sup>7</sup> (Y/N):****If not reported to CNDDB, why:****CDFW and Other Agency Email:****Project 2 Name & Location:****Project Start Date:****Project End Date:****LSA Agreement, ITP, or Other Agency Permit Number:****Role(s):****Survey Type(s):****Construction Monitoring:****Days:****Activities:****Species Life Stages Observed & Handled, Number of Each****Company Name, Professional Reference Name, Phone, Email:****Life Stage:****Number Observed:****Number Handled:****Reported to****CNDDB (Y/N):**

<sup>4</sup> Insert the role as described in the associated LSA Agreement, ITP or other agency permit. If these permits were not issued, describe the role based on the duties, e.g., "lead biologist with handling authorization" or "biological monitor."

<sup>5</sup> For example, pre-construction survey or description of the protocol or guideline followed.

<sup>6</sup> Include the number of days and describe the types of activities monitored (e.g., heavy equipment operation).

<sup>7</sup> CNDDB is the abbreviation for California Natural Diversity Database.

**BIOLOGIST RESUME**

Project Name: Click or tap here to enter text.

LSA Agreement/ITP Number(s): Click or tap here to enter text.

If <u>not</u> reported to CNDDDB, why:	
CDFW and Other Agency Email:	
Project 3 Name & Location:	
Project Start Date:	Project End Date:
LSA Agreement, ITP, or Other Agency Permit Number:	
Role(s):	
Survey Type(s):	
Construction Monitoring Days: Activities:	
Species Life Stages Observed & Handled, Number of Each  Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:
If <u>not</u> reported to CNDDDB, why:	
CDFW and Other Agency Email:	
Additional Information:	
SPECIES OR RESOURCE 2:	
Project 1 Name & Location:	
Project Start Date:	Project End Date:
LSA Agreement, ITP, or Other Agency Permit Number:	
Role(s):	
Survey Type(s):	
Construction Monitoring Days: Activities:	
Species Life Stages Observed & Handled, Number of Each  Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:
If <u>not</u> reported to CNDDDB, why:	
CDFW and Other Agency Email:	

**BIOLOGIST RESUME**

Project Name: Click or tap here to enter text.

LSA Agreement/ITP Number(s): Click or tap here to enter text.

<b>Project 2 Name &amp; Location:</b>	
<b>Project Start Date:</b>	<b>Project End Date:</b>
<b>LSA Agreement, ITP, or Other Agency Permit Number:</b>	
<b>Role(s):</b>	
<b>Survey Type(s):</b>	
<b>Construction Monitoring</b> <b>Days:</b> <b>Activities:</b>	
<b>Species Life Stages Observed &amp; Handled, Number of Each</b>  <b>Life Stage:</b> <b>Number Observed:</b> <b>Number Handled:</b> <b>Reported to</b> <b>CNDDB (Y/N):</b>	<b>Company Name, Professional Reference Name, Phone, Email:</b>
<b>If <u>not</u> reported to CNDDB, why:</b>	
<b>CDFW and Other Agency Email:</b>	
<b>Project 3 Name &amp; Location:</b>	
<b>Project Start Date:</b>	<b>Project End Date:</b>
<b>LSA Agreement, ITP, or Other Agency Permit Number:</b>	
<b>Role(s):</b>	
<b>Survey Type(s):</b>	
<b>Construction Monitoring</b> <b>Days:</b> <b>Activities:</b>	
<b>Species Life Stages Observed &amp; Handled, Number of Each</b>  <b>Life Stage:</b> <b>Number Observed:</b> <b>Number Handled:</b> <b>Reported to</b> <b>CNDDB (Y/N):</b>	<b>Company Name, Professional Reference Name, Phone, Email:</b>
<b>If <u>not</u> reported to CNDDB, why:</b>	
<b>CDFW and Other Agency Email:</b>	
<b>SPECIES OR RESOURCE 3:</b>	
<b>Project 1 Name &amp; Location:</b>	
<b>Project Start Date:</b>	<b>Project End Date:</b>
<b>LSA Agreement, ITP, or Other Agency Permit Number:</b>	

**BIOLOGIST RESUME**

Project Name: Click or tap here to enter text.

LSA Agreement/ITP Number(s): Click or tap here to enter text.

<b>Role(s):</b>	
<b>Survey Type(s):</b>	
<b>Construction Monitoring</b> <b>Days:</b> <b>Activities:</b>	
<b>Species Life Stages Observed &amp; Handled, Number of Each</b>  <b>Life Stage:</b> <b>Number Observed:</b> <b>Number Handled:</b> <b>Reported to CNDDDB (Y/N):</b>	<b>Company Name, Professional Reference Name, Phone, Email:</b>
If <u>not</u> reported to CNDDDB, why:	
CDFW and Other Agency Email:	
<b>Project 2 Name &amp; Location:</b>	
<b>Project Start Date:</b>	<b>End Date:</b>
LSA Agreement, ITP, or Other Agency Permit Number:	
<b>Role(s):</b>	
<b>Survey Type(s):</b>	
<b>Construction Monitoring</b>  <b>Days:</b> <b>Activities:</b>	
<b>Species Life Stages Observed &amp; Handled, Number of Each</b>  <b>Life Stage:</b> <b>Number Observed:</b> <b>Number Handled:</b> <b>Reported to CNDDDB (Y/N):</b>	<b>Company Name, Professional Reference Name, Phone, Email:</b>
If <u>not</u> reported to CNDDDB, why:	
CDFW and Other Agency Email:	
<b>Project 3 Name &amp; Location:</b>	
<b>Project Start Date:</b>	<b>Project End Date:</b>
LSA Agreement, ITP, or Other Agency Permit Number:	
<b>Role(s):</b>	
<b>Survey Type(s):</b>	
<b>Construction Monitoring:</b>	



**BIOLOGIST RESUME**

Project Name: [Click or tap here to enter text.](#)

LSA Agreement/ITP Number(s): [Click or tap here to enter text.](#)

<b>Days:</b> <b>Activities:</b>	
<b>Species Life Stages Observed &amp; Handled, Number of Each</b>  <b>Life Stage:</b> <b>Number Observed:</b> <b>Number Handled:</b> <b>Reported to CNDDDB (Y/N):</b>	<b>Company Name, Professional Reference Name, Phone, Email:</b>
<b>If <u>not</u> reported to CNDDDB, why:</b>	
<b>CDFW and Other Agency Email:</b>	

## **MASTER FUNDING AGREEMENT**

This MASTER FUNDING AGREEMENT (AGREEMENT) is made by and between the California Department of Transportation (CALTRANS) and California Department of Fish and Wildlife (CDFW). CALTRANS and CDFW shall be collectively referred to herein as the "PARTIES" and individually as a "PARTY."

### **RECITALS**

1. CALTRANS intends to construct future transportation projects for the State Highway System (individually a "PROJECT" and collectively "PROJECTS"). Pursuant to California Fish and Game Code sections 2080.1 and 2081, CDFW can issue CALTRANS, respectively, a Consistency Determination or an Incidental Take Permit for CALTRANS PROJECTS. The Incidental Take Permit and/or Consistency Determination are hereinafter referred to individually as a "TAKE AUTHORIZATION" and collectively as "TAKE AUTHORIZATIONS."
2. CDFW's issuance of TAKE AUTHORIZATIONS for CALTRANS PROJECTS is conditioned on CALTRANS implementing certain mitigation and monitoring measures and requirements hereinafter referred to collectively as "MITIGATION REQUIREMENTS."
3. Unless CALTRANS satisfies the MITIGATION REQUIREMENTS prior to incurring impacts from a PROJECT, the TAKE AUTHORIZATIONS require that CALTRANS set aside funds to satisfy the cost CDFW has determined will be necessary to satisfy the MITIGATION REQUIREMENTS for the PROJECT, in the event of a default by CALTRANS. These funds shall be referred to herein as "SECURITY FUNDS."
4. As set forth in applicable TAKE AUTHORIZATIONS condition(s), CALTRANS is required to establish and maintain the SECURITY FUNDS in an amount, form, and manner acceptable to CDFW.
5. The PARTIES desire to enter into this AGREEMENT to establish the manner in which CALTRANS will maintain SECURITY FUNDS for the proper implementation and completion of MITIGATION REQUIREMENTS for CALTRANS PROJECTS. The specific purpose of and background for this AGREEMENT are included in the summary of CALTRANS' project programming and funding procedures set forth in Exhibit "A," attached hereto and incorporated herein by reference.

### **OPERATIVE PROVISIONS**

NOW THEREFORE, in consideration of the covenants and conditions set forth herein, the PARTIES agree as follows:

#### **1. Effective Date.**

This AGREEMENT is effective as of the date CALTRANS and CDFW have executed this AGREEMENT.

## **2. Funding Memorandum**

As a condition to CDFW's issuance of a final TAKE AUTHORIZATION, CALTRANS will provide a completed Funding Memorandum to CDFW in the form of Exhibit "B," attached hereto and incorporated herein by reference, to document the manner in which CALTRANS will provide SECURITY FUNDS (the "FUNDING MEMORANDUM"). The FUNDING MEMORANDUM will include the following:

- A. The name of the project;
- B. A brief project description;
- C. The incidental take permit number or consistency determination number;
- D. The CALTRANS parent project expense authorization (EA) number;
- E. The CALTRANS child project EA (Child EA) number;
- F. The estimated costs of the MITIGATION REQUIREMENTS; and
- G. The total amount required for the SECURITY FUNDS
- H. Subject to the Budget Act provisions of this AGREEMENT, a statement that the funds have been budgeted, as well as allocated, and will not be re-allocated to another element of the PROJECTS, or to other PROJECTS, or for any other purpose.

## **3. Process for CALTRANS SECURITY FUNDS.**

- A. In order to meet the SECURITY FUNDS requirement of the TAKE AUTHORIZATIONS, CALTRANS shall create and program a separate and unique project expense authorization identified as a "Child EA" which is more fully described in Exhibit "A." After the Child EA is established, CALTRANS will transfer the SECURITY FUNDS, once allocated for PROJECTS, to the Child EA.
- B. CALTRANS agrees to use the SECURITY FUNDS in the Child EA exclusively to satisfy MITIGATION REQUIREMENTS required by TAKE AUTHORIZATIONS.
- C. In the event CDFW determines that CALTRANS is not satisfying MITIGATION REQUIREMENTS, the PARTIES will resolve any issues through the internal dispute resolution process described in Exhibit "C," attached hereto and incorporated herein by reference.
- D. CDFW acknowledges and agrees that the provisions of this AGREEMENT constitute advance written approval of a security form by CDFW's Office of the General Counsel for all CALTRANS TAKE AUTHORIZATIONS statewide.
- E. If after exhausting the internal resolution process described in Exhibit "C." the PARTIES fail to resolve issues relating to MITIGATION REQUIREMENTS and SECURITY FUNDING, CDFW will notify CALTRANS, in writing, of its intent to obtain the unused remaining

SECURITY FUNDS, and CALTRANS shall take all necessary actions to transfer all remaining, unencumbered SECURITY FUNDS to CDFW within 45 days.

F. CDFW and CALTRANS will work together in good faith until MITIGATION REQUIREMENTS are completed. CALTRANS will follow processes described in Exhibit "A" to program additional funds, if needed, to complete MITIGATION REQUIREMENTS. In the event CDFW obtains the remaining unencumbered SECURITY FUNDS, pursuant to subsection E above, CALTRANS will work in good faith to provide CDFW with access to any mitigation lands within a CALTRANS right of way or otherwise under the control of CALTRANS, and to facilitate the timely completion of the MITIGATION REQUIREMENTS, and CDFW will work in good faith to obtain all necessary approvals from CALTRANS to access the mitigation lands and complete the MITIGATION REQUIREMENTS in accordance with CALTRANS policies and practices for its lands.

G. If CDFW obtains the remaining unencumbered SECURITY FUNDS, pursuant to subsection E above, and those funds are insufficient to complete the MITIGATION REQUIREMENTS, CALTRANS agrees to replenish the Child EA, and CDFW and CALTRANS agree to meet to identify appropriate sources of funding to replenish the Child EA for the timely completion of the MITIGATION REQUIREMENTS.

#### **4. Budget Contingency Clause**

The PARTIES mutually agree that if the Budget Act of the current year and/or any subsequent years covered under this AGREEMENT does not appropriate sufficient funds for the funding required under this AGREEMENT, this AGREEMENT shall be of no further force and effect. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of the FUNDING SECURITY, CALTRANS shall have the option to either terminate this AGREEMENT without liability or offer an AGREEMENT amendment to reflect the reduced amount. In addition, CALTRANS' obligations under this AGREEMENT are subject to Legislative appropriation and allocation by the California Transportation Commission (CTC).

In the event this AGREEMENT is terminated due to the Legislature's failure to appropriate sufficient funds or CALTRANS exercises its option to terminate this AGREEMENT after a reduction or deletion of funds, CALTRANS shall remain responsible for funding and completing the MITIGATION REQUIREMENTS, and CALTRANS and CDFW shall agree to meet and to work in good faith to identify appropriate sources of funding to complete the MITIGATION REQUIREMENTS.

#### **5. Termination**

Either PARTY may terminate this AGREEMENT upon sixty (60) days' prior written notice to the other PARTY. The PARTIES agree that, if this AGREEMENT is terminated for any reason, prior to the effective date of the termination CALTRANS shall provide alternative performance security to CDFW, in a form to be approved in advance in writing by CDFW's Office of General Counsel, for all PROJECTS for which the MITIGATION REQUIREMENTS have not been completed.



**6. Retention of Records/Audits**

The PARTIES shall maintain as public records all books, documents, papers, accounting records and other evidence pertaining to the performance of this AGREEMENT, including but not limited to, the costs of administering this AGREEMENT. The PARTIES shall make such materials available at their respective offices at all reasonable times and for three years from the date CALTRANS has satisfied its MITIGATION REQUIREMENTS and obligations under this AGREEMENT. The PARTIES, State Auditor, Federal Highway Administration, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part), shall have access to any party's books, records, and documents that are pertinent for audits and examinations. Excerpts, transactions, and copies thereof shall be furnished upon request.

**7. Applicable laws.**

All applicable laws and regulations relating to the use of federal or state funds shall apply notwithstanding other provisions of this AGREEMENT.

**8. Amendments**

Except as provided in Section 14 regarding Notices, this AGREEMENT may only be amended by written agreement, executed by all PARTIES.

**9. Severability**

In case any part, term, portion, or provision of this AGREEMENT is or shall be invalid, illegal, or unenforceable, the remaining parts, terms, portions, and provisions shall remain in full force and effect.

**10. Miscellaneous**

Nothing within the provisions of this AGREEMENT is intended to create duties, or obligations to, or rights in third parties not a party to this AGREEMENT, or to affect the legal liability of either party to the AGREEMENT by imposing any standard of care different from the standard of care imposed by law.

**11. Entire Agreement**

This AGREEMENT reflects the entire AGREEMENT of the PARTIES with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings, statements, representations, and promises.

**12. Authority**

Each of the PARTIES represents and warrants that each of the persons executing this AGREEMENT on its behalf has full and complete legal authority to do so and thereby binds the party to this AGREEMENT.

### **13. Counterparts**

This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. CDFW and CALTRANS agree that digital signatures are acceptable for execution of this AGREEMENT.

### **14. Notices**

Notices made or required under this AGREEMENT shall be directed to the CALTRANS and CDFW representative as follows:

**CDFW:**

Chad Dibble, Deputy Director  
Ecosystem Conservation Division  
Department of Fish and Wildlife  
P.O. Box 944209  
Sacramento, CA 94244-2090  
916-653-6956  
chad.dibble@wildlife.ca.gov

**CALTRANS:**

Philip J. Stolarski, Chief  
Division of Environmental Analysis  
Department of Transportation  
1120 N St, MS 27  
Sacramento, CA 95814  
916-206-7254  
phil.stolarski@dot.ca.gov

The CALTRANS and CDFW representatives during the term of this AGREEMENT may be changed by advance written notice without the necessity of an amendment to this AGREEMENT.

### **15. Electronic Signatures.**

Electronic signatures of the PARTIES, whether digital or encrypted, are intended to authenticate this AGREEMENT and shall have the same force and effect as manual signatures for this AGREEMENT.

“CALTRANS”

STATE OF CALIFORNIA

Department of Transportation

By: 

Director

“CDFW”

STATE OF CALIFORNIA

Department of Fish and Wildlife

By: See following page

Director

### **13. Counterparts**

This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. CDFW and CALTRANS agree that digital signatures are acceptable for execution of this AGREEMENT.

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**CDFW:**

Chad Dibble, Deputy Director  
Ecosystem Conservation Division  
Department of Fish and Wildlife  
P.O. Box 944209  
Sacramento, CA 94244-2090  
916-653-6956  
chad.dibble@wildlife.ca.gov

**CALTRANS:**

Philip J. Stolarski, Chief  
Division of Environmental Analysis  
1120 N St, MS 27  
Sacramento, CA 95814  
916-206-7254  
phil.stolarski@dot.ca.gov

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“CALTRANS”

STATE OF CALIFORNIA

Department of Transportation

By: See prior page  
Toks Omishakin, Director

“CDFW”

STATE OF CALIFORNIA

Department of Fish and Wildlife

By:  9/3/21  
Charlton H. Bonham, Director

## **EXHIBIT A TO MASTER FUNDING AGREEMENT**

### **CALTRANS PROJECT PROGRAMMING AND FUNDING PROCEDURES**

All PROJECTS begin by CALTRANS preparing a Project Initiation Document (PID) that contains a purpose and need statement, defined project scope, capital and support cost estimate for each alternative, and project work-schedule. The cost estimate includes the projected costs of environmental studies, mitigation, and monitoring to meet anticipated MITIGATION REQUIREMENTS. The California Transportation Commission (CTC) then allocates project environmental analysis and preliminary project design funds based upon the project scope and cost estimates in the PID, including costs for anticipated MITIGATION REQUIREMENTS. CALTRANS can then allocate the CTC-approved funds into a programmed Expense Authorization (EA). MITIGATION REQUIREMENTS cost estimates in the PID are preliminary and subject to change, as a project's impacts and required mitigation are not definite until completion of subsequent engineered designs, environmental studies, and consultation with CDFW and other state and federal resource agencies.

The next phase of PROJECTS is the Project Approval and Environmental Document (PA&ED) component in which a Final Project Report and Final Environmental Document are completed. During this phase, CALTRANS studies each alternative and develops appropriate mitigation in consultation with both federal and state resource agencies, including CDFW, to maximize avoidance and minimization and identify effective mitigation. This process and its results are documented in the Final Environmental Document and incorporated into the Project Report. By signing the Final Project Report, the CALTRANS District Director establishes the full project description which integrates the mitigation measures as a commitment of the overall project and verifies that the resources necessary to complete the project and MITIGATION REQUIREMENTS are included in the estimated project costs. The CTC then allocates the appropriate funding for the final design and construction of the project based on the Final Environmental Document and the Final Project Report. Before allocating the funds, however, the CTC determines that the project meets its stated purpose and need and that the funds are sufficient to complete the project, including all commitments for avoidance, minimization, mitigation, and monitoring. These funds are then allocated for the anticipated programming/construction year.

The next phase for PROJECTS in the CALTRANS project development process is the preparation of plans, specifications and estimates (PS&E) necessary for the bidding process. The PS&E package is premised on the decisions and commitments in the Final Environmental Document and Final Project Report. At the completion of the PS&E phase, and prior to listing the contract for bid, the CALTRANS District Environmental Division Chief certifies that the PS&E package incorporates all environmental commitments. At that time, an Environmental Commitment Tracking Record is created to verify compliance with the environmental commitments throughout the life of the project.

As PROJECTS develop and are further evaluated during the PA&ED and PS&E phases, a decision is made regarding whether PROJECTS will result in the take of CESA-listed or candidate species. Plans to avoid, minimize, mitigate, and monitor the CESA-listed species impacts are made through early coordination with CDFW. CALTRANS and CDFW staff determine the preferred mitigation and CALTRANS may include this as a proposal to CDFW in its TAKE AUTHORIZATIONS applications or within the federal ESA consultation for take authorization to be used with TAKE AUTHORIZATIONS. The final project avoidance, minimization, and MITIGATION REQUIREMENTS and SECURITY FUNDS requirements are then delivered in the TAKE AUTHORIZATIONS by CDFW or within the federal ESA take authorization to be used for TAKE AUTHORIZATIONS.

CALTRANS is committed to fulfilling environmental commitments for PROJECTS. This includes programming sufficient resources to meet MITIGATION REQUIREMENTS. MITIGATION REQUIREMENTS may be encountered prior to impacts of CESA-listed species, concurrently with, or beyond project construction within the State's right-of-way or located outside the State's right-of-way.

With approval from the CTC, CALTRANS can apportion funding from a parent project EA and program into a new EA, referred to for accounting purposes as a "Child EA." The Child EA is used for mitigation efforts that require work after CALTRANS has accepted the contract and construction work. The Child EA is programmed to maintain adequate funding for all mitigation acquisition, construction, monitoring, maintenance, and adaptive management activities under TAKE AUTHORIZATIONS issued for the parent project. The unique Child EA establishes a dedicated fund to cover the cost of MITIGATION REQUIREMENTS that extend beyond project completion and acceptance and until CDFW has determined CALTRANS has satisfied the MITIGATION REQUIREMENTS.

When programming and/or funding adjustments are necessary during the life of PROJECTS, the project change control process must be followed by CALTRANS. A request for change is reviewed by CALTRANS Headquarters Management, including the Environmental Division Chief, for consistency with environmental commitments. If the proposed change request includes changing environmental commitments, it must be documented with the consultation and concurrence of the applicable resource agencies, and, if necessary, additional environmental studies and documentation. The changes to project budgets created by the project change control process and the creation and programming of a Child EA must be approved by the CTC.

At the construction phase of PROJECTS, the Resident Engineer monitors the progress of the project including compliance with environmental commitments. Prior to the closure of PROJECTS, the Project Manager with assistance from the district Environmental Construction Liaison reviews all aspects of the PROJECTS for compliance with MITIGATION REQUIREMENTS for TAKE AUTHORIZATIONS. After closure of the primary construction phase of PROJECTS, funding within a Child EA

ensures additional work to complete MITIGATION REQUIREMENTS exists beyond the life of the primary construction contract.

If CDFW has determined that CALTRANS has not met its MITIGATION REQUIREMENTS for TAKE AUTHORIZATIONS, the PARTIES shall use the internal resolution process described in Exhibit "C."

## EXHIBIT B TO MASTER FUNDING AGREEMENT

### FUNDING MEMORANDUM

1. Name of Project:
2. Brief Description of the Project:
3. Incidental Take Permit Number or Consistency Determination Number:
4. CALTRANS parent project EA and program funding source:
5. CALTRANS Child EA and program funding source:
6. Estimated costs of Mitigation (including monitoring):
7. Total amount for security (combined total of estimated costs of Mitigation and Monitoring):

The funds for this project have been currently budgeted and allocated, for the project as described above. The funds that have been allocated for mitigation and monitoring will not be re-allocated to another element of the project or expended for any purpose other than completing the mitigation and monitoring requirements.

Signature\_\_\_\_\_

Date \_\_\_\_\_

**Instruction:** This form is to be transmitted by CALTRANS to CDFW with each application for an incidental take permit under Fish and Game Code section 2081, and with each request for a Consistency Determination under Fish and Game Code section 2080.1. CALTRANS personnel who signs permit shall also sign this form.

## EXHIBIT C TO MASTER FUNDING AGREEMENT

### INTERNAL DISPUTE RESOLUTION PROCESS

If at any time CDFW determines that Caltrans is not meeting its MITIGATION REQUIREMENTS for TAKE AUTHORIZATIONS, the PARTIES shall use the following process for resolution.

Stage	Caltrans Staff Title	DFW Staff Title	Duration of stage
1	District Assoc./Environmental Planner (NS)	Senior Environmental Scientist	10 working days
2	District Senior Environmental Planer	Senior ES (Supervisory)	10 working days
3	District Supervisory EP	Environmental Program Manager	10 working days
4	District Principal TP/Deputy Env. Planner	Regional Manager	10 working days
5	District Director/ HQ Environmental Division Chief	HQ Deputy Director for Ecosystem Conservation	10 working days
6	Director	Director	10 working days

At each stage, if the PARTIES reach an impasse and cannot resolve the disputed issue, they will document the issue(s) needing resolution and the reasons for the impasse and notify the group in the next stage of ladder. At each stage of the resolution process, all PARTIES will seek to reach agreement within 10 working days or prepare information for the next stage of resolution until the matter is resolved.