



California Department of Fish and Wildlife
Inland Deserts Region
3602 INLAND EMPIRE BLVD., C-220
ONTARIO, CA 91764

California Endangered Species Act
Incidental Take Permit No. 2081-2025-064-06

**CHERRY AVENUE AND VICTORIA STREET COMPLETE STREETS INFRASTRUCTURE
PROJECT**

I. Authority:

This California Endangered Species Act (CESA) incidental take permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq). CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² However, CDFW may authorize the take of any such species by permit pursuant to the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c). (See Cal. Code Regs., tit. 14, § 783.4.)

Permittee:	City of Fontana
Principal Officer:	Jeffrey Kim, Engineering Manager
Contact Person:	Jeffrey Kim, (909) 350-6724, JKim@fontanaca.gov
Mailing Address:	8353 Sierra Avenue, Fontana, CA 92335

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 **April 1, 2031**.

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.

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

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

III. Project Location:

The Cherry Avenue and Victoria Street Complete Streets Infrastructure Project (Project) is located within the Cherry Avenue and Victoria Street right-of-way (ROW), southeast of the Interstate 15 and State Route 210 interchange, in the City of Fontana, County of San Bernardino (See Figure 1: Project Location). Along Cherry Avenue, Project activities will occur between N. Frontage Road and Baseline Avenue, extending in a north-south direction. On Victoria Street, improvements will occur west of Cherry Avenue, continuing to the Etiwanda Creek. The Project area falls within the U.S Geological Survey (USGS) 7.5- Devore, Fontana, and Cucamonga Peak quadrangle, in Township 1 North, Range 6 West, Section 6 and 7 of the San Bernardino Base and Meridian (SBBM), at approximately Latitude: 34.129772, Longitude: -117.488562.

IV. Project Description:

The Project encompasses 40.7 acres and will consist of the following:

Cherry Avenue (from Baseline Avenue to south of S 210)

Project activities within this segment include: widening ROW to six through lanes with multiple left and right pocket lanes; adding 10- to 20- foot raised median; construction of landscape easement, sidewalk, curb, gutter, driveways, and ADA ramps; addition of traffic signals at two four-way intersections; addition of Class I/II bike lanes, or multi-purpose trails; new lighting; utility improvements; and installing eight stormwater catch basins.

Cherry Avenue (Caltrans ROW from Highland Channel south of SR-210 to North of SR-210)

Project activities include: grinding and overlaying pavement; construction of sidewalk, curb, gutter, and one driveway; Class I bike lanes and ADA access curb ramp construction; installation of storm drain; installation of signals and signage at SR-210 on-ramps/off-ramps; and adjustment of existing manholes and utilities to grade.

Cherry Avenue (from Caltrans ROW north of SR-210 to N. Frontage Rd.)

Project activities include: grinding and overlaying pavement; constructing sidewalk, curb, and gutter; installation of a storm drain; and adjustment of existing manholes and utilities to grade.

Victoria Street

Project activities in this segment include: widening ROW to two through lanes, with one 15-ft wide travel lane and one 5-ft wide Class II bike lane in each direction; addition of a 10-ft wide raised median; construction of sidewalk, curb, gutter, and storm drainage; realignment of roadway to create four-way intersection; addition of a shared-sidewalk/Class I bike lane on south side of ROW; construction of a pedestrian crossing/signal at trail intersection; addition of new lighting and

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roundabout; construction of temporary stormwater infiltration basins at roundabout; and utility improvements.

Storm Drainage and Temporary Infiltration Basins

Stormwater drainage facilities will be installed along Cherry Avenue. These include installing reinforced pipes (RCP) ranging from 18 inches in diameter to 84 inches in diameter, eight new catch basins with “filterra” systems, and new manholes. Two temporary basins will be constructed adjacent to the roundabout of the proposed diverted section of Victoria Street. The basin north of the roundabout will be approximately 1.0 acres. The infiltration basin south of the roundabout will be approximately 0.6 acres. A pipe will be installed under Victoria Street connecting the basins to convey flows from the north basin to the south basin if needed.

Construction Staging Areas

Construction staging for the Project will be located on two vacant plots of lands with Staging Area 1 located at the southeast intersection of Victoria Street and Banana Avenue (5.8 acres), and Staging Area 2 located at the northwest intersection of Cherry Avenue and Baseline Avenue (4.6 acres). Both staging areas consists of ruderal vegetation subject to regular mowing and discing, with Staging Area 2 having previously used as staging area for prior road improvements.

Construction Phasing and Schedule

Construction of the proposed Project would be conducted in four phases (Figure 2: Project Segment):

Segment A: Cherry Avenue between Baseline Avenue and Walnut Avenue

Segment B: Cherry Avenue Between Walnut Street and South Highland Avenue

Segment C: Cherry Avenue between Highland Avenue and North Frontage Road

Segment D: Victoria Street between the Etiwanda Flood Control Channel and Cherry Avenue

The Project is expected to occur between October 2026 and December 2027 and to be completed within 14 months.

Construction equipment to be utilized will include: cranes, air compressors, backhoes, forklifts, bore rigs, mechanical pushers/pullers, pavers, rollers, concrete mixers, concrete saws, jackhammers, augers, generator sets, welders, and other power tools.

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

This ITP covers the following species:

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<u>Name</u>	<u>CESA Status</u> ³
1. Western burrowing owl (<i>Athene cunicularia</i>)	Candidate ⁴

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

VI. Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species (refer to Figure 3: Burrowing Owl Mapping). The activities described above expected to result in incidental take of individuals of the Covered Species include: site preparation (vegetation clearing and grubbing, mow-and-roll vegetation clearance), earthwork (grading, cut/fill activities, scraping, ground-leveling, backfilling, hauling, soil compaction, trenching, drilling, pile driving), placement of concrete and/or asphalt, access road construction (aggregate or decomposed granite crushing, preparation and installation), fence maintenance, lighting installation and maintenance, dust control, erosion control, vehicle traffic, heavy equipment traffic, moving materials, on-going vegetation management (grubbing, mowing, weed-eating), installation and maintenance of Project facilities and equipment, trash and debris removal, maintenance of staging and storage areas for equipment and materials, maintenance of parking lots for heavy machinery and personnel vehicles, and other Project-related activities described in the Project Description section of this ITP (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality (i.e., killing) may occur as a result of Covered Activities, including by entombment from burrow collapse during ground disturbing activities and deposition of stockpiled material or spoils, vehicle and equipment strikes, crushing by equipment and materials, increased predation influenced by Project activities removing refuge, exposure to predation and subsequent loss of eggs, young, or fledglings due to nest abandonment, and an increased possibility of mortality during and after relocation activities. Impacts to foraging and nesting Covered Species habitat could affect the fitness of young raised in close proximity to the Project due to reduced or disrupted foraging opportunities that reduce the ability of the parent to acquire food for their dependent young. Ground disturbing activities could result in a permanent reduction of prey species for the Covered Species and impacts on nesting success in burrows near the Project. Loss of stopover habitat for migrating individuals may also cause or contribute to lack of refuge, forage, and connectivity.

Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursuit, catch, capture, or attempt to do so by entrapment in equipment and materials, increased human presence or Covered Activity-related noise/vibrations, flushing, relocation of

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

⁴The status of the Covered Species under CESA will change upon the Fish and Game Commission’s determination whether or not to designate the species as threatened or endangered. However, even if the Fish and Game Commission determines that listing the Covered Species as threatened or endangered is not warranted, the species will remain a covered species under this permit and all permit conditions will remain in full force and effect.

individuals during translocation efforts required by this ITP, installation of one-way doors, and excavation of burrows used for nesting and refuge. The described Covered Activities may all result in displacement of Covered Species individuals and the possibility of nest abandonment. The areas where incidental take of the Covered Species is expected to occur include Cherry Boulevard (Segment A, B, and C) and Victoria Street (Segment D) rights-of-way, storm drainage and temporary infiltration basin areas, and construction staging areas (collectively, the Project Area).

The Project is expected to impact approximately 26.02 acres of suitable burrowing owl habitat (11.1 acres along Victoria Street, 4.6 acres along Cherry Avenue, and 10.32 acres within the staging areas; see Figure 4: Project Impacts). 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: loss of migratory stopover sites; stress resulting from noise and vibrations from ground disturbance, equipment operation, and traffic; temporary displacement; stress resulting from capture and relocation/translocation; increased exposure or stress from disorientation; fugitive dust; visual disturbance; displacement into less preferred habitat; loss of foraging habitat; increased competition for food and space; loss of burrows used for shelter, reproduction, and escape cover; increased human activity which could result in a reduction in prey abundance and/or availability; and increased vulnerability to disease and predation. Noise and vibration could cause physiological and/or behavioral disruptions that may interfere with breeding, result in nest abandonment, and a loss of fitness in dependent young resulting from interruptions to brooding and/or feeding schedules, due to impaired or interrupted foraging and nesting behavior and because forage acquired further away from the nest is more energetically expensive for parents acquiring food for their dependent young, and long-term effects due to increased pollution.

VII. Incidental Take Authorization of Covered Species:

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

VIII. Conditions of Approval:

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

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- 1. Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
- 2. CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures in the Biological Resources section of the Environmental Impact Report (SCH No.: 1995052002) certified by the City of Fontana as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
- 3. LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No. EPIMS-SBR-58314-R6 for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
- 4. ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
- 5. General Provisions:**
 - 5.1. Designated Representative.** Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
 - 5.2. Designated Biologist(s), Biological Monitor(s), and/or Veterinarian(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 3) 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.
 - 5.3. 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.

- 5.4. 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. 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.
- 5.5. 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.
- 5.6. Rodenticides and Insecticides.** The Permittee shall prohibit use of rodenticides or other poisons used to control burrowing animals in the Project Area during the term of this ITP. The Permittee shall prohibit management of ground squirrel populations or any rodents by any means, including, but not limited to, rodenticide, gas, or live-trapping within the Project Area for the duration of Covered Activities. The Permittee may only use pesticides registered with the California Department of Pesticide Regulation (CDPR). Any dyes

included in the pesticides must be EPA-registered dyes approved for use in California. All pesticides shall be applied in accordance with labeled instructions and regulations set by CDPR. Labeled instructions for the pesticide(s) used shall be made available to CDFW upon request. No pesticides shall be applied when wind speeds exceed 5 miles per hour.

- 5.7. Domestic and Working Animals.** The Permittee shall prohibit domestic and working animals from the Project Area and site access routes during Covered Activities, except for those that are possessed by authorized security personnel or federal, state, or local law enforcement officials, dogs used in official and CDFW-approved monitoring procedures/protocols, or service dogs under Title II and Title III of the American with Disabilities Act. The Permittee shall prohibit all domestic dogs from entering the no-disturbance buffer described in Condition of Approval 7.6.

The Permittee shall prohibit any form of domestic bird from the Project site to reduce the risk of transferring avian influenza, sticktight fleas, or other diseases or pests to the Covered Species.

- 5.8. 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.
- 5.9. Dust Control.** Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 5.10. Erosion Control Materials.** Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 5.11. 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.
- 5.12. 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.

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- 5.13. Project Access.** Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description, and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. 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.
- 5.14. 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 5.13 of this ITP.
- 5.15. 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.
- 5.16. CDFW Access.** Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 5.17. 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.

6. Monitoring, Notification and Reporting Provisions:

- 6.1. Notification Before Commencement.** The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 6.2. Notification of Non-compliance.** The Designated Representative shall immediately notify CDFW if the Permittee is not in compliance with any Condition of Approval of this ITP,

including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.

6.3. Compliance Monitoring. The Designated Biologist shall be on-site daily, unless otherwise approved by CDFW in writing, when Covered Activities occur. The Designated Biologist shall conduct compliance inspections at a minimum of every 14 days during periods of inactivity and after clearing, grubbing, and grading are completed. The Designated Biologist shall conduct compliance inspections to:

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

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

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

6.5. 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.

- 6.6. CNDDDB Observations.** The Designated Biologist shall submit all observations of Covered Species to CDFW’s California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 6.7. Final Mitigation Report.** No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP’s Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 6.8. Notification of Take or Injury.** If a Covered Species carcass is found, Permittee shall notify the CDFW Regional Representative and Krysta Rogers (Krysta.Rogers@wildlife.ca.gov) at the CDFW Wildlife Health Laboratory via email within 24 hours of the carcass discovery. The Designated Biologist or Designated Representative shall collect the carcass and place it in a clean, sealed, plastic bag with a specimen label, and temporarily store in a freezer. The Designated Biologist or Designated Representative shall obtain packing and transportation or shipping instructions from the Wildlife Health Laboratory and deliver the specimen within 60 days of discovery to the address below: CDFW Wildlife Health Laboratory Avian Investigations Attention: Krysta Rogers 1701 Nimbus Road, Suite D Rancho Cordova, CA 95670. If a Covered Species individual is found injured, the Designated Biologist shall immediately notify the CDFW Regional Representative at Lisa.Cardoso@Wildlife.ca.gov or R6CESA@wildlife.ca.gov and by phone at (909) 484-0167 and shall transport the injured individual to a CDFW-approved wildlife rehabilitation center or veterinary facility. The initial notification to CDFW shall include information regarding the location, species, number of

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animals taken or injured, and if injured, the facility to which the individual was transported. Following initial notification, Permittee shall send the CDFW Regional Representative a written report within two calendar days. The report shall include the common and scientific name, date and time of the finding or incident, geo-referenced location of the animal or carcass (Project name, County, GPS location, and GPS datum), sex (if known), life stage/age class (if known), observer name and contact information, ITP number (2081-2025-064-06), a photograph (if possible), explanation as to cause of take or injury, and any other pertinent information. The Designated Biologist or Designated Representative shall provide weekly updates on the status of the rehabilitation facility's treatment of the individual. If nestling(s) or egg(s) are abandoned, the Designated Biologist shall recover the nestling(s) and or egg(s) and immediately take it/them to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall bear any cost associated with care and recovery of any injured Covered Species adults, nestling(s), or egg(s) and with hacking (controlled release of captive reared young), and shall follow the notification and reporting requirements described above.

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

7.1. Burrowing Owl Mortality Reduction Plan and Exclusion. Prior to beginning the Covered Activities or as otherwise approved by CDFW, and prior to commencing Covered Species burrow exclusion, burrow excavation, artificial burrow construction, and other relocation activities (collectively termed Burrowing Owl Exclusion Activities), the Permittee shall submit to CDFW a Burrowing Owl Mortality Reduction Plan prepared by an approved Designated Biologist. Burrowing Owl Exclusion Activities shall not proceed until this plan has been approved in writing by CDFW. The Burrowing Owl Mortality Reduction Plan shall include, but not be limited to: a detailed description of survey methodology; preliminary burrow mapping results based on the non-breeding and breeding surveys suggested by the 2012 Staff Report; detailed burrow exclusion and excavation methods; proposed Covered Activities that may be performed within Covered Species avoidance buffers; identification of a wildlife rehabilitation center or veterinary facility capable of and willing to treat injured Covered Species individuals or care for at-risk Covered Species individuals, Covered Species eggs, and/or Covered Species chicks; and procedure for collection and storage of Covered Species carcasses. Only CDFW-approved Designated Biologists or personnel following directions from, and under the supervision of, a CDFW-approved Designated Biologist, are authorized to handle and transport injured Covered Species individuals for treatment or impacted Covered Species eggs for salvage.

Once the Burrowing Owl Mortality Reduction Plan is approved in writing by CDFW, it shall be used for the duration of this ITP unless updated by CDFW to reflect best available

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science and/or to update mitigation and conservation strategies, in which case CDFW will contact the Permittee to discuss needed updates. Any Permittee-proposed changes to the Burrowing Owl Mortality Reduction Plan shall be submitted, in writing, to CDFW and approved by CDFW in writing prior to the implementation of any proposed modifications.

- 7.2. Burrow Complex Map.** Prior to the beginning of Covered Activities, or as otherwise approved by CDFW, the Designated Biologist(s) shall provide to CDFW a KMZ map of the Covered Species burrow complex(es) and atypical burrows (e.g., culverts, buckled concrete, etc.). The map shall be at a scale of 1:24,000 or finer to show details. The map shall show locations of all Covered Species sightings and potential burrows, occupied burrows, satellite burrows, areas of concentrated burrows, and Covered Species sign. Locations documented by use of GPS coordinates must be collected in NAD83 datum. The map shall include an outline of the Project Area. The map shall include a title, north arrow, scale bar, and legend. If a lapse in Project-related work of 14 calendar days or longer occurs, the Permittee shall contact the CDFW Regional Representative by phone or email and may be required to provide an updated Burrow Complex Map before work may be reinitiated.
- 7.3. Pre-Construction Surveys.** Prior to the initiation of pre-construction surveys, or as otherwise approved by CDFW, the Designated Biologist(s) shall submit to CDFW for review and approval the survey methods and map of survey area including any transects (linear or meandering) that can be reproduced. No more than 14 days prior to beginning Covered Activities, or as otherwise approved by CDFW, the Designated Biologist(s) shall conduct at least two pre-construction surveys at least seven days apart, with the final survey conducted no more than 48 hours prior to beginning Covered Activities. Surveys shall be conducted using the methods described in the CDFW Staff Report on Burrowing Owl Mitigation, Appendix D (2012) or other appropriate method if agreed upon in writing by CDFW. The Designated Biologist(s) shall submit the results of the pre-construction surveys, pre-construction survey methods, and include an updated Burrow Complex Map showing any new or atypical potential Covered Species burrows or any burrows/refugia that may be utilized by the Covered Species to CDFW for approval prior to beginning Covered Activities. If changes in Covered Species presence are detected (e.g., Covered Species have moved onsite or changed burrow use), the Designated Biologist(s) shall contact the CDFW Regional Representative by phone or email within 24 hours of the observation to consult on appropriate measures to avoid or minimize impacts of the Project to the Covered Species and the Designated Biologist shall establish buffers as required in this Permit. If a lapse in Project-related work of 14 calendar days or longer occurs, the Permittee shall contact the CDFW Regional Representative by phone or email and may be required to conduct additional surveys before work may be reinitiated using the same survey methods utilized for the initial pre-construction survey.

- 7.4. Predator Attractions.** The Permittee shall avoid attracting predators of the Covered Species within 150 meters of any occupied burrow complex. Predator attractions can include, but are not limited to, tall structures that could be used as perches for hawks and eagles (e.g., camera traps, fencing, stakes, etc.). Any necessary materials potentially attracting predators shall be modified to discourage perching.
- 7.5. Covered Species Daily Monitoring.** The Designated Biologist(s) shall be present each day during Covered Activities to monitor the behavior of the Covered Species, or as otherwise approved by CDFW in writing. If a burrow is assumed to be occupied (based on pre-construction surveys), a trail camera shall be used to monitor the burrow. Cameras should be checked weekly and the Designated Biologist(s) shall share a summary of findings each month with CDFW. If two Covered Species individuals begin to share a burrow, the Designated Biologist(s) shall immediately notify CDFW. If changes in Covered Species presence are detected (e.g., Covered Species have moved onsite or changed burrow use), the Designated Biologist(s) shall contact the CDFW Regional Representative by phone or email within 24 hours of the observation to consult on appropriate measures to avoid or minimize impacts of the Project to the Covered Species and the Designated Biologist shall establish buffers as required in this Permit. The Designated Biologist(s) shall notify CDFW immediately and shall have the authority to stop work if Covered Species individuals exhibit distress and/or abnormal behavior (e.g., excessive vocalizations, defensive flights at intruders, flushing frequently, or other agitated behavior). The Permittee shall not resume Covered Activities until the Designated Biologist(s) has consulted with CDFW and both the Designated Biologist(s) and CDFW confirm that the Covered Species' behavior has normalized. CDFW, in consultation with the Designated Biologist(s), shall determine whether to increase the size of the no-disturbance buffer zones described below.
- 7.6. No Disturbance Buffer Zones.** The Permittee shall limit the materials necessary to mark the no-disturbance buffer to that which is necessary for identification of the site. The Permittee shall delineate the no-disturbance buffer with different materials than those used to delineate the Project Area. The Permittee shall remove and properly dispose of all materials used for delineation immediately upon completion of the Project. For any potential Covered Species burrows that remain onsite after the implementation of the Burrowing Owl Mortality and Reduction Plan, the Permittee shall establish no-disturbance buffer zones around potential, known (including roosting and satellite burrows), and nesting Covered Species burrows according to the following guidelines:
- 7.6.1. Potential Unoccupied Burrow.** If a potential Covered Species burrow (any subterranean hole three inches or larger for which no evidence is present to conclude that the burrow is being used or was used in the past by a Covered Species individual) is discovered, the Permittee shall establish a minimum 50-foot no disturbance buffer around the burrow. The Permittee shall use their best

professional judgement to confirm vacancy and proceed with the guidelines in the Burrowing Owl Mortality and Reduction Plan.

7.6.2. Occupied Burrow. If a known Covered Species burrow (a burrow that is known to have been used or shows evidence of current or past use) or an "atypical" burrow (e.g., a pipe, culvert, buckled concrete, etc.) showing signs of occupancy (e.g. Covered Species presence, whitewash, pellets, prey remains, etc.) is discovered, the Permittee shall establish a minimum no-disturbance buffer of at least 250 feet around the burrow.

7.6.2.1. Notwithstanding the above requirement, a no disturbance buffer of at least 500 feet shall be established around known Covered Species burrows currently occupied by the Covered Species during the nesting season (typically the beginning of the year to late summer in Southern California).

7.6.2.2. Notwithstanding the above requirements, if an active Covered Species nest burrow (e.g. known Covered Species burrow with indications of paired Covered Species during the breeding season, the presence of eggs, chicks, dependent young, and/or brooding or egg incubation) is discovered within or immediately adjacent to the Project Area, the Permittee shall notify CDFW's Regional Representative immediately through email. A no disturbance buffer of at least 650 feet shall be established around the nest burrow.

If Covered Species individuals are visibly stressed by the Covered Activities or workers in the vicinity after these no-disturbance buffers are established, all work in the vicinity shall immediately cease and increased no-disturbance buffers will be determined by the Designated Biologist(s) based on their behavioral observations of the affected Covered Species.

If direct impacts to Covered Species individuals cannot be avoided, the Designated Biologist(s) shall contact the CDFW representative to discuss potential relocation/translocation methods (Condition of Approval 7.8).

The buffers prescribed above shall not be reduced or otherwise modified without the prior written approval of CDFW. If the Designated Biologist(s) determine(s) that specific Covered Activities are not likely to affect Covered Species individuals using known or nesting Covered Species burrows due to the nature of the specific Covered Activities and/or due to objects or topography that might reduce potential noise disturbance or obstruct view of the Covered Activities from the nest, then the Designated Biologist(s) may email a written request to CDFW to reduce the buffer distance, along with documented observational data (Buffer Reduction Request).

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CDFW will review each Buffer Reduction Request on a case-by-case basis and provide a determination in response to each Buffer Reduction Request in writing. CDFW may request additional and/or ongoing biological monitoring prior to approving a Buffer Reduction Request. Written approval from CDFW is required before a buffer distance may be reduced to allow for Covered Activities to occur.

- 7.7. Entrapment Inspections.** Any pipes, culverts, burrow exclusion installations, or similar structures with a diameter greater than 11 centimeters shall be inspected for Covered Species individuals and eggs by the Authorized Biologist(s) and/or Biological Monitor(s) before the material is moved, buried, or capped. The Authorized Biologist(s) and/or Biological Monitor(s) shall inspect all open holes and trenches within Covered Species habitat at a minimum of twice a day and just prior to backfilling. At the end of each workday, the Permittee shall place an escape ramp at each end of trenches to allow any animals that may have become trapped in the trench to climb out overnight. The ramp may be constructed of dirt fill, wood planking, or other suitable material that is placed at an angle no greater than 30 degrees. If any worker discovers that a Covered Species individual has become trapped, they shall halt Covered Activities and notify the Biological Monitor(s) and/or Authorized Biologist(s) immediately. Project workers and the Biological Monitor(s) and/or Authorized Biologist(s) shall allow the Covered Species to escape unimpeded if possible, or an Authorized Biologist(s) approved under Condition of Approval 5.2 of this ITP shall move the Covered Species out of harm's way before allowing work to continue.
- 7.8. Covered Species Active Translocation Plan.** If direct impacts to Covered Species individuals cannot be avoided and adjacent suitable habitat is unavailable, the Permittee shall develop a Translocation Plan. The Translocation Plan shall be developed based on Conditions of Approval 7.9, 7.10, 7.11, and 7.12 and shall at a minimum include: (1) spatial maps of Covered Species burrows within the Project Area and adjacent 100 foot buffer (KMZ format); (2) map and habitat quality of proposed receiver site(s), including any existing features that are beneficial to the Covered Species (KMZ format); (3) methods for capturing and handling Covered Species individuals; (4) a summary of the behavior of the Covered Species individuals onsite that are proposed for translocation, including a pellet analysis to inform a suitable relocation area; (5) installing and implementing artificial conspecific signs/cues at the receiver site such as play back calls and artificial whitewash; (6) a map of proposed locations of artificial burrows and satellite burrows upon the receiver site (KMZ format); (7) method in which the Covered Species individuals will be released; (8) the design, maintenance and monitoring of artificial burrows; (9) design, maintenance, and monitoring of hacking cages; (10) translocation supplemental feeding; (11) translocation monitoring; (12) and any other details related to translocation. A Property Analysis Record (PAR) or PAR-like analysis shall be included to cover long-term management and procurement of materials. The PAR shall be developed by the Permittee and receiver site land manager. The Designated Biologist(s) shall submit to CDFW for

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review and approval a Translocation Plan no more than 30 days prior to beginning any Covered Activity (including exclusionary fence installation), or as otherwise approved by CDFW. Translocation of Covered Species individuals shall not occur except in accordance with a Translocation Plan approved in advance, in writing, by CDFW.

7.9. Pre-Translocation Monitoring. If translocation is deemed necessary by CDFW, the Designated Biologist(s) shall monitor the Covered Species daily prior to translocation. Cellular trail cameras shall be placed at the entrance of the occupied burrow to assist with monitoring efforts. SD trail cameras shall be replaced by cellular trail cameras at occupied burrow sites to minimize disturbance to the Covered Species and to provide behavioral data in real time. If translocation is to occur near or during the breeding season, bi-weekly updates shall be sent to CDFW until Covered Species individuals show signs of courting behavior or begin to pair. At this point, the Designated Biologist(s) shall send CDFW daily updates including, at a minimum: (1) a summary of changes in Covered Species' behavior (agitated, shy, normal, etc.); (2) the appearance of Covered Species individuals (changes in feather color, signs of brood patches, etc.); and (3) any signs of courtship displays (delivery of prey and nest adornments, preening, back standing-mounting, territory defense, copulations). The Designated Biologist(s) shall also immediately notify CDFW if any new individuals appear at the Project site during pre-translocation monitoring.

7.9.1. Paired Covered Species. Paired Covered Species individuals shall be carefully monitored and observed to estimate the status of nesting activity. Upon observation of the absence of a Covered Species individual for three or more days, the Designated Biologist(s) shall notify CDFW immediately. Any proposed trapping and handling activities (Condition of Approval 7.10) shall not proceed until written guidance is received from CDFW.

7.10. Covered Species Trapping and Handling. If translocation is deemed necessary by CDFW, a permitted Designated Biologist(s) shall use the capture and handling methods described in the CDFW-approved Translocation Plan. Captured Covered Species individuals shall be handled and transported in a manner that minimizes stress. Capture efforts and handling shall at a minimum include the following:

7.10.1. Trapping and Monitoring. The Designated Biologist(s) shall conduct Covered Species trapping within the Project Area in areas which direct impacts to individuals cannot be avoided. Covered Species burrows which were trapped shall be monitored for at least 48 hours post-trapping to ensure there are no remaining individuals.

7.10.2. Banding. Captured Covered Species individuals shall be banded with United States Geological Survey leg bands and a unique Visual Identification band on the opposite leg.

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7.10.3. Data Collection. The Designated Biologist(s) shall record captured Covered Species individuals' approximate age, sex (if possible), reproductive status (any signs of eggs, brood patch, changes in feather color, etc.), weight, trap location, and overall condition.

Summary of collected data and banding shall be provided to CDFW within 24 hours of capture.

7.10.4. Hold and Hacking Period. The Designated Biologist(s) shall implement a hold and hacking period according to the CDFW-approved Translocation Plan unless otherwise approved by CDFW in writing.

7.11. Burrow Excavation and Monitoring. The Permittee shall avoid destroying any known or potential Covered Species burrows unless they are in an area of direct ground disturbance (e.g., grading areas, excavation areas) or their location poses a risk of direct harm to Covered Species individuals.

If an active nest is present or suspected (e.g. an individual has not been seen for three or more days, the presence of eggs, chicks, dependent young, and/or brooding or egg incubation), the Permittee shall not excavate active Covered Species burrows and shall immediately notify and consult with CDFW.

After Covered Species individuals are excluded from burrows according to the Burrowing Owl Mortality Reduction Plan, the Designated Biologist(s) shall monitor said burrows with tracking medium or an infra-red camera(s), or as otherwise approved by CDFW, for a minimum of 48 hours. The Designated Biologist(s) shall excavate potential or known Covered Species burrows that cannot be avoided according to the Burrowing Owl Mortality Reduction Plan, only after the Designated Biologist(s) has/have determined that no Covered Species individuals are present throughout that 48-hour period. Burrow excavation shall be accomplished by careful hand excavation of the entire length of the burrow until it is certain no individuals are inside. Burrows shall then be filled with soil and compacted to ensure that Covered Species individual cannot reenter or use the burrow during Covered Activities. If the excavation process reveals Covered Species eggs, young, or adults, then burrow excavation shall cease immediately. The Permittee shall contact the CDFW Regional Representative by phone or email immediately and obtain written guidance if a Covered Species individual is discovered during excavation.

7.12. Post-Translocation Monitoring. If translocation is implemented, the Designated Biologist shall monitor translocated Covered Species individuals and their offspring, if any, at the receiver site for 36 months following translocation. Monitoring will be conducted through the first three breeding seasons immediately following release. Monitoring will be conducted twice per week until the first nesting season is complete and weekly updates

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shall be sent to CDFW. Monitoring after the first nesting season will be conducted once per month for the first year. Cameras will be used to monitor activity to minimize the number of visits and disturbance at the release site. Monitoring will also vary depending on presence and number of Covered Species individuals onsite. Camera images will be obtained and analyzed monthly, and results shall be shared with CDFW monthly for the first year. Activities that shall be monitored, at a minimum, include foraging composition, artificial burrow use, frequency of burrow emergence, predator presence, human encroachment, and signs of disease, injury, and stress. All adults and nestlings produced in the artificial burrows and starter burrows related to this project will be banded by the Designated Biologist(s) each year throughout the three-year monitoring term. Annual status reports shall be submitted to CDFW for the first three years. Annual status reports shall include at a minimum, monitored activities, raw GPS data if tracking devices are used, injury or mortality events, predator management, trespassing management, and trail camera data. If the translocated Covered Species individuals do not remain at the receiver site, CDFW shall be notified and shall determine whether and what further management efforts are required.

7.13. Receiver Site-Long-Term Management. If translocation is deemed necessary by CDFW, the Permittee shall submit a long-term management plan for the receiver site to CDFW for review and approval. This plan must include at a minimum: (1) long-term management, maintenance and repair of any artificial burrows; (2) vegetation management and maintenance; (3) predator management; (4) adaptive management for care of sick or injured Covered Species individuals; (5) Covered Species surveys; (6) fence maintenance and trespass management; and (7) adaptive management. The Permittee shall establish an endowment based on the PAR or PAR-like analysis as required in Condition of Approval 7.8 (Covered Species Translocation Plan) for the perpetual management of the receiver site. CDFW must approve the long-term management plan for the receiver site in writing prior to the relocation/translocation of any Covered Species individuals to the receiver site.

7.14. Artificial Nighttime Lighting. Throughout construction and the lifetime operations of the Project, the Permittee shall eliminate all nonessential lighting throughout the Project Area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The Permittee shall ensure that all lighting for the Project is fully shielded, cast downward, and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org>). The Permittee shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

7.15. Covered Species Injury. If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately by telephone and e-mail followed by a written incident report as described in Condition 6.8. Notification shall include the name of the facility where the animal was taken.

8. Habitat Management Land Acquisition: 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: provide for both the permanent protection and management of 67.82 acres of Habitat Management (HM) lands pursuant to Condition of Approval 8.2 below and the calculation and deposit of the management funds pursuant to Condition of Approval 8.3 below. 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 9 below for all uncompleted obligations.

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

8.1.1. Land acquisition costs for HM lands identified in Condition of Approval 8.2 below, estimated at \$200,006.00/acre for 67.82 acres: **\$13,564,406.92**. Land acquisitions costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements;

8.1.2. All other costs necessary to review and acquire the land in fee title and record a conservation easement as described in Condition of Approval 8.2.1 and 8.2.2 below: \$17,440.00;

8.1.3. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 8.2.6 below, estimated at **\$411,334.40** including.

8.1.4. Interim management period funding as described in Condition of Approval 8.2.7 below, estimated at **\$710,223.25**;

8.1.5. Long-term management funding as described in Condition of Approval 8.3 below, estimated at \$55,515.64/acre for 67.82 acres: **\$3,765,070.70**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.

8.1.6. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 8.4, estimated at **\$8,800.00**.

8.1.7. All costs associated with CDFW engaging an outside contractor to complete the mitigation tasks, including but not limited to acquisition, protection, and perpetual funding and management of the HM lands and restoration of temporarily disturbed habitat. These costs include but are not limited to the cost of issuing a request for proposals, transaction costs, contract administration costs, and costs associated with monitoring the contractor's work **\$75,000.00**.

8.2. Habitat Management Lands Acquisition and Protection. To provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, the Permittee shall:

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

8.2.2. 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-

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65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e). Because the “doctrine of merger” could invalidate the conservation interest, under no circumstances can the fee title owner of the HM lands serve as grantee for the conservation easement.

- 8.2.3. 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;
- 8.2.4. HM Lands Documentation. Provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents (please contact CDFW for document list). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;
- 8.2.5. Land Manager. Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified. The grantee for the conservation easement cannot serve as the interim or long-term manager without the express written authorization of CDFW in its sole discretion.
- 8.2.6. 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 optional management plan template at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=227736>) (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;
- 8.2.7. 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 (if needed), continuing trash removal, site monitoring, and vegetation and invasive species management, predator management (if needed), Covered Species surveys, and management of artificial burrows (if required).

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.

8.3. Endowment Fund. If the Permittee elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that is permanently restricted to paying the costs of long-term management and stewardship of the mitigation property for which the funds were set aside, which costs include the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with this ITP, the conservation easement, and the management plan required by Condition of Approval 8.2.6 and 8.2.7. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

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

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

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

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

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

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

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

8.3.2.2.1. 10 Percent Contingency. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.

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

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

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

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

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

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

8.4. 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.

9. **Security:** The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 8 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

9.1. Security Amount. The Security shall be in the amount of **\$18,552,275.27** or in the amount

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identified in Condition of Approval 8.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 8.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.

- 9.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW’s Office of the General Counsel.
- 9.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.
- 9.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 9.5. Security Transmittal. Permittee shall transmit security to CDFW by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other.
- 9.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.
- 9.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:
 - Written documentation of the acquisition of the HM lands;
 - Copies of all executed and recorded conservation easements;
 - Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and
 - Timely submission of all required reports.

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

IX. Amendment:

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable law. This ITP may be amended without the concurrence of the

Permittee as required by law, including if CDFW determines that continued implementation of the Project as authorized under this ITP would jeopardize the continued existence of the Covered Species or where Project changes or changed biological conditions necessitate an ITP amendment to ensure that all Project-related impacts of the taking to the Covered Species are minimized and fully mitigated.

X. Stop-Work Order:

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

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

XI. Compliance with Other Laws:

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

XII. Notices:

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email or registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2025-064-06) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Heidi Calvert, Regional Manager
California Department of Fish and Wildlife
Inland Deserts Region
3602 Inland Empire Blvd., C-220

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Telephone: (909) 484-0523
R6CESA@Wildlife.ca.gov

and a copy to:

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

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

Lisa Cardoso
Inland Deserts Region
3602 Inland Empire Blvd., C-220
Ontario, CA 91764
Telephone: (805) 712-0346
Lisa.Cardoso@Wildlife.ca.gov

XIII. Compliance with the California Environmental Quality Act:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, City of Fontana. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the *West Gate Specific Plan EIR*, (SCH No.: 1995052002) dated July 2015, that the City of Fontana certified for West Gate Specific Plan on or prior to March 2, 2017, when the City approved the West Gate Specific Plan. At the time the lead agency certified the EIR and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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

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

XIV. Findings Pursuant to CESA:

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

CDFW finds based on substantial evidence in the ITP application, West Gate Specific Plan EIR, consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW’s estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 67.82 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

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(8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

XV. Attachments:

FIGURE 1	Project Location
FIGURE 2	Project Segments
FIGURE 3	Burrowing Owl Mapping
FIGURE 4	Project Impacts
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Biologist Resume Form
ATTACHMENT 3	Letter of Credit Form

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE ON 4/22/2026

DocuSigned by:

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Heidi Calvert, Regional Manager
 Inland Deserts Region

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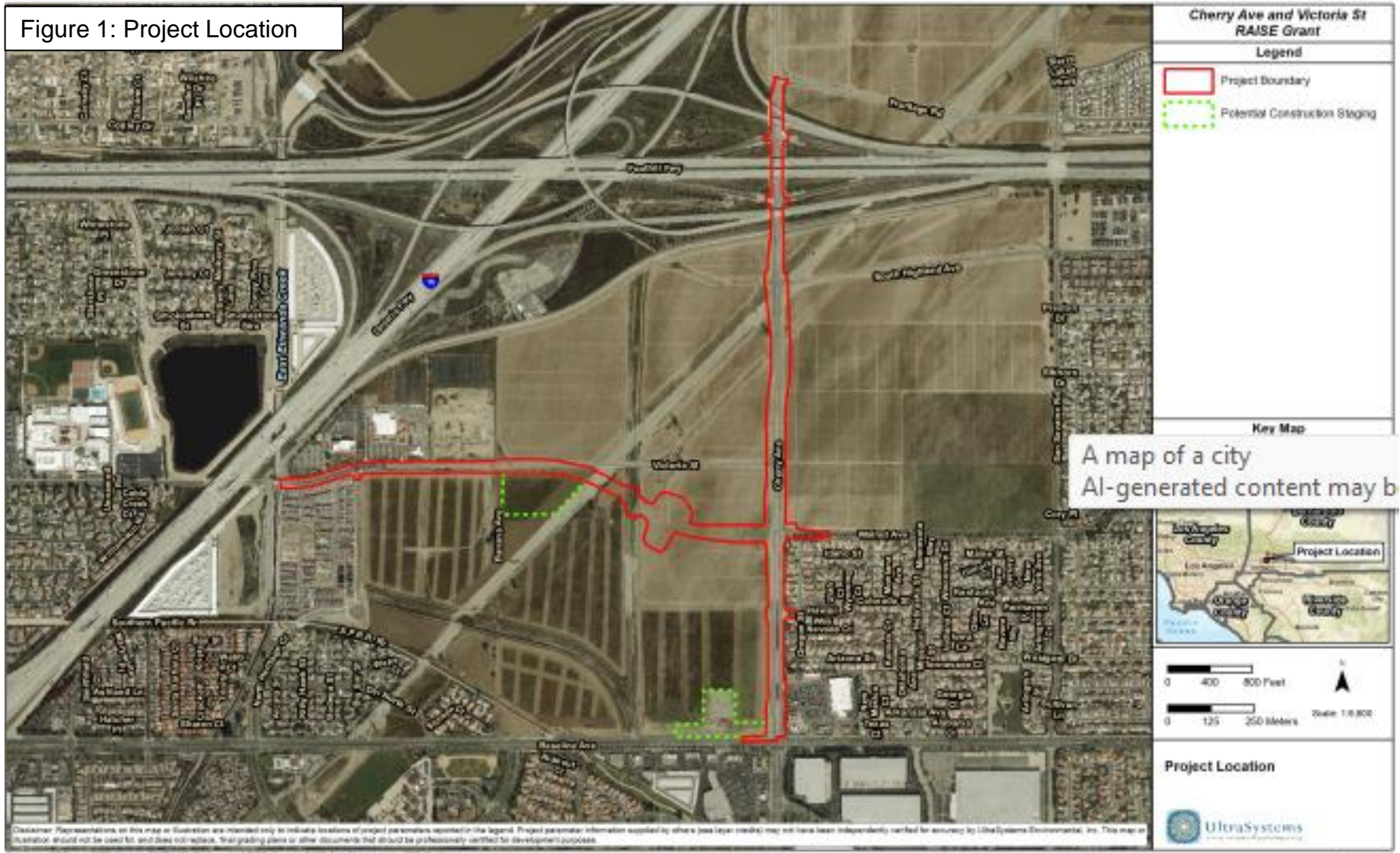
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FIGURES

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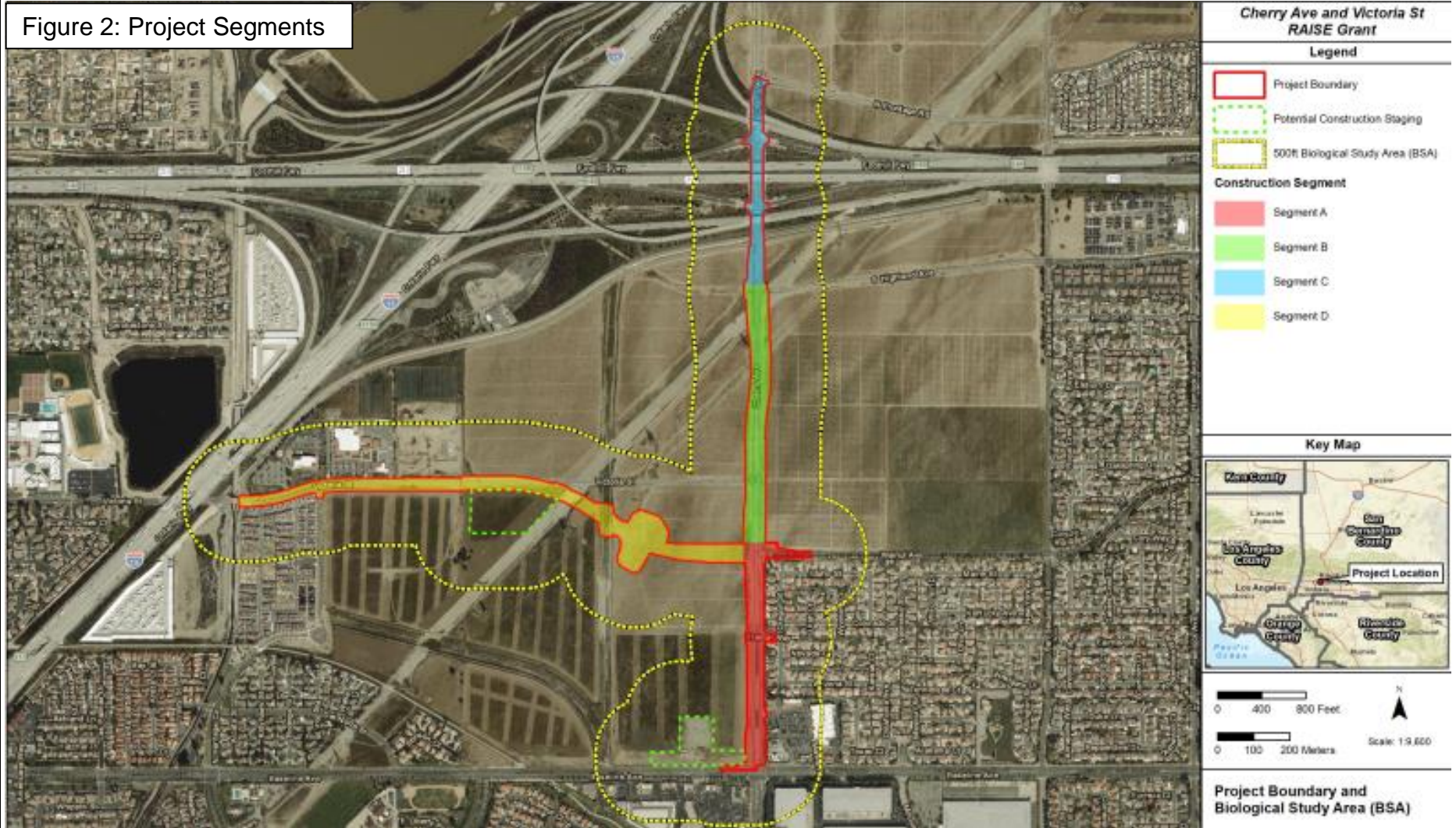
Figure 1: Project Location



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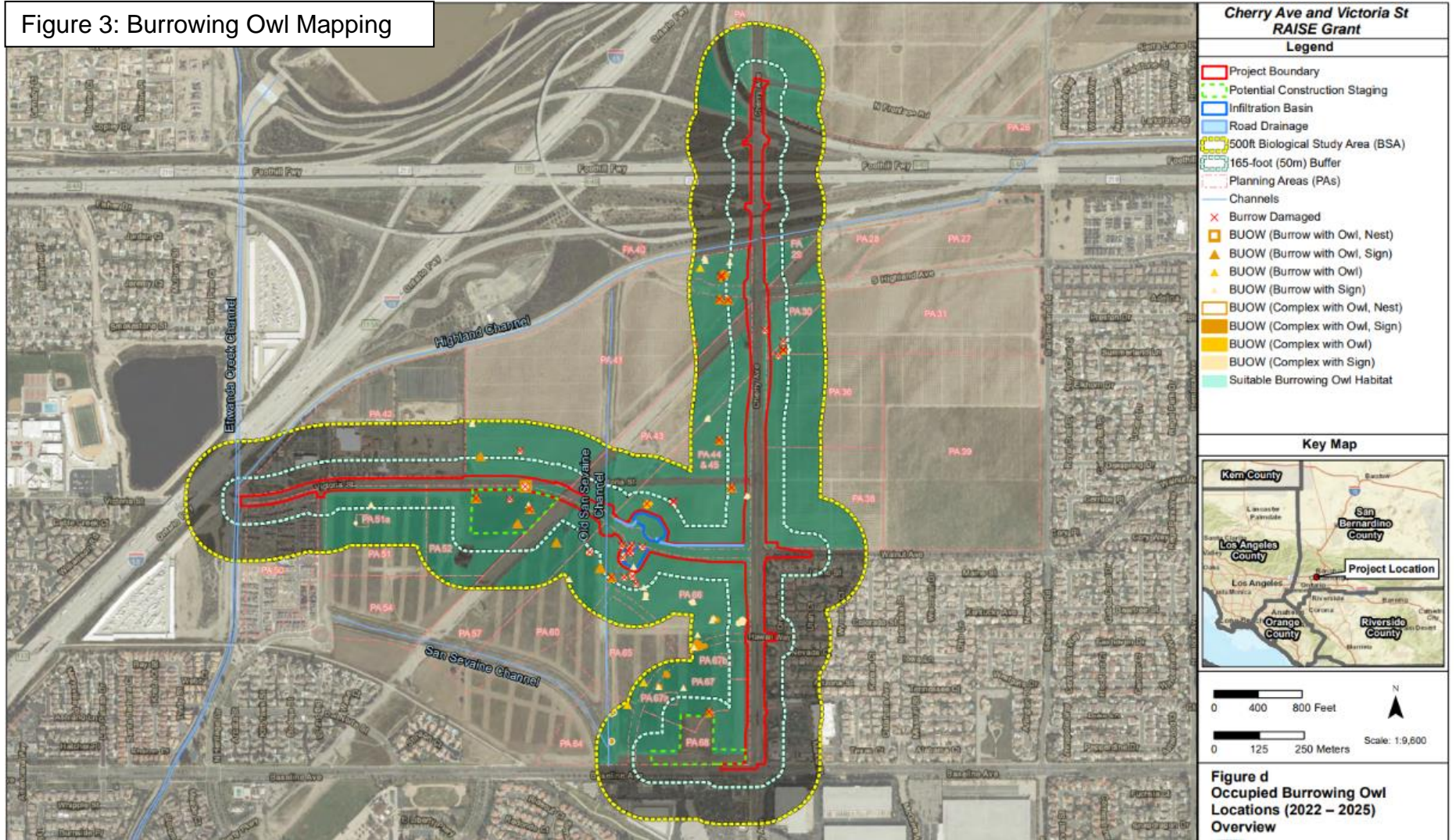
Figure 2: Project Segments



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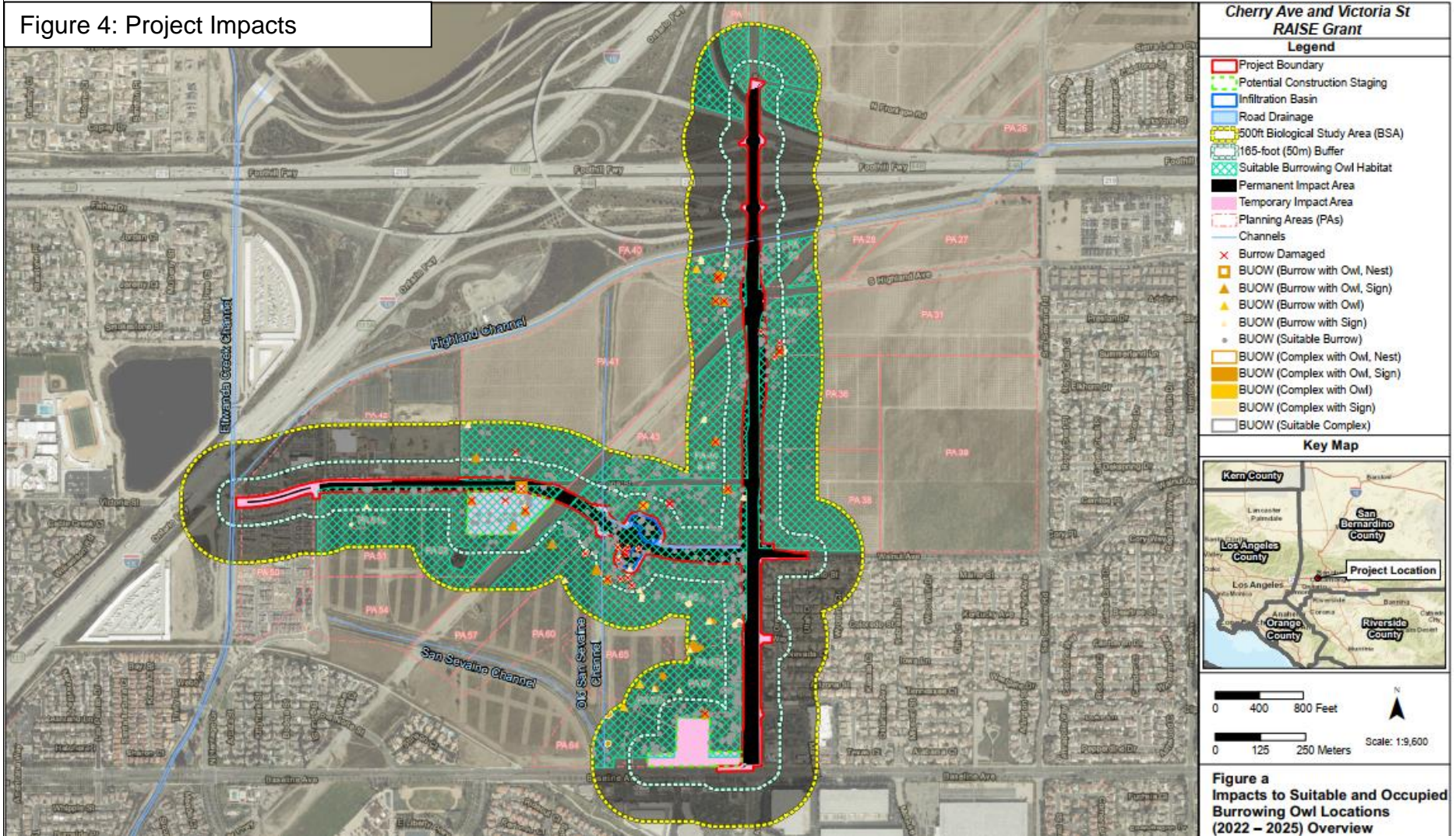
Figure 3: Burrowing Owl Mapping



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Figure 4: Project Impacts



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