



**California Department of Fish and Wildlife
Central Region (R4)
1234 EAST SHAW AVENUE
FRESNO, CALIFORNIA 93710**

California Endangered Species Act
Incidental Take Permit No. 2081-2021-096-04
(Amendment No. 1)

BLACK RASCAL CREEK FLOOD CONTROL PROTECTION 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:	Merced County Department of Public Works
Principal Officer:	Nathan Bray, P.E., Director of Public Works/Road Commissioner
Contact Person:	Oscar Ortiz, Merced County oscar.ortiz@countyofmerced.com
Mailing Address:	345 West 7th Street Merced, California 95341

Amended ITP³ Background:

On February 8, 2024, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2021-096-04 (ITP) to Merced County Department of Public Works (Permittee) authorizing take of California tiger salamander (*Ambystoma californiense*) and Swainson's hawk (*Buteo swainsoni*) (collectively, the Covered Species) associated with and incidental to the Black Rascal Creek Flood Control Protection Project (Project) in Merced County, California. The Project as described in the ITP originally issued by CDFW includes the construction and modification of stormwater infrastructure to provide flood attenuation and protection within the Black Rascal Creek watershed to minimize flood risk within the City of Merced and Merced County.

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.

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

On May 12, 2026, CDFW received an official request from the Permittee and the corresponding fee payment on June 16, 2026, for a Minor Amendment to the ITP to extend the expiration date of the ITP from January 31, 2027, to January 31, 2032. The Project is delayed pending the approval of the following permits associated with the Project:

- (1) U.S. Army Corps of Engineering (USACE) Section 404 permit No. SPK-2021-00278;
- (2) USACE Section 408 permit No. 19653; and (3) Central Valley Flood Protection Board Encroachment Permit No. 19643.

CDFW now reissues this ITP. The original ITP includes all the operative provisions as of the effective date of this Amended ITP. Attachment 6 to this Amended ITP shows the specific red-line changes made to the original ITP as a result of Amendment No. 1.

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

The original ITP was executed in duplicate original form and became effective when a duplicate original was acknowledged by signature of the Permittee on the last page of the original ITP and returned to CDFW's Habitat Conservation Planning Branch. The original ITP's effective date was February 8, 2024. This remains the effective date for the original take authorization. This amended ITP shall become effective as of the date signed by CDFW below. Unless renewed by CDFW, this Amended ITP and its authorization to take the Covered Species shall expire on January 31, 2032. 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 the Final Mitigation Report Condition of Approval of this ITP.

III. Project Location:

The Black Rascal Creek Flood Control Project (Project) is located in Merced County within the Black Rascal Creek watershed, approximately 2 miles northeast of the City of Merced and approximately 1.3 miles north of the confluence of Black Rascal Creek with Bear Creek; southwest ¼ of Section 12, Township 7 South, Range 14 East, United States Geological Survey 7.5–Minute quadrangle map Merced, Mount Diablo Base and Meridian; Latitude 37.332297, Longitude -120.39429; and APNs: 060-060-004; 060-060-006; 060-060-007; and 053-070-010. The Project is generally bounded by the Fairfield Canal to the west, North Arboleda Drive to the east, East Yosemite Avenue to the south, and undeveloped land consisting of non-native annual grassland, riverine, and vernal pools/swales to the north (Figure 1). The Project's North Basin is located in the western portion of the Project footprint and borders the Merced Irrigation District's Fairfield Canal. The Project's South Basin is located in the eastern portion of the Project footprint and borders North Arboleda Drive to the east and East Yosemite Avenue to the south.

IV. Project Description:

The purpose of the Project is to provide flood attenuation and protection for up to a 200-year storm event within the Black Rascal Creek watershed. The Project is needed to reduce downstream peak flows entering Bear Creek, reducing the frequency, severity, and risk of flooding, property damage, and loss of life within the City of Merced and Merced County. To

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

accomplish these objectives the Project will establish a flood detention basin within lands currently used for agriculture. The detention basin will temporarily detain a 200-year storm event and limit peak flow in the existing Black Rascal Creek to 3,000 cubic feet per second, thereby reducing peak flows in Bear Creek and the flooding along the Black Rascal Creek channel that flows through the City of Merced. Habitat restoration and enhancement will also occur in the footprint of the detention basin as a component of the Project.

The Project includes the construction of a flood detention basin, principal and auxiliary spillways; channel modifications to Black Rascal Creek; habitat restoration and enhancements; the construction and removal of drainage facilities; and the operation and maintenance (O&M) of the 300 acres of detention basins. Project activities include site clearing and grubbing; modification of an existing streambed; topsoil stripping; excavation of the basin, embankment, culverts, and stream channels; placement of borrow material; foundation preparation; concrete work; use of heavy equipment; mowing, and vegetation removal and management. Grading and blading on unpaved existing access roads, new overland access roads, and work staging areas will be required to facilitate vehicle and equipment access and staging locations.

Earthwork

Excavation activities, including grading, topsoil stripping, and clearing and grubbing will occur during mobilization and site preparation work and will include construction of the borrow area, detention basins, and habitat channels; relocation of Black Rascal Creek; spillways and drainage facilities; and during the removal of the existing levee and berm. Grading and blading will also occur on unpaved existing access roads, new overland access roads, and work staging areas. The borrow material obtained from these excavation activities will be stockpiled in an approximately 6-acre borrow area between the habitat channels to provide earthwork balance and then replaced on embankment slopes and graded areas outside of drainage channels. Table 1 below shows the approximate earthwork quantities.

Table 1. Approximate Earthwork Quantities

Description	Quantity (cubic yards)
Stripping	79,300
Borrow Area (6 acres) Cut	25,600
Habitat Channel Excavation	103,800
Relocated Black Rascal Creek Excavation	38,500

Detention Basins

A new perimeter levee and internal levee will be constructed to create two flood control detention basins within agricultural land, currently comprised of a 230-acre almond orchard and a 70-acre agricultural pasture (Figure 2 and 3) totaling a 300-acre area which includes two inundation basins, North Basin and South Basin. The North and South Basins are separated by Black Rascal Creek and a State Plan of Flood Control levee. This levee will be removed to allow floodwaters to enter the South Basin. Berms adjacent to an existing

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

irrigation ditch in the South Basin will also be removed to allow floodwaters to spread more uniformly across the basin. An approximately 1,700-foot section of Black Rascal Creek will be realigned upstream of the basin outlet structure so that flood flows are conveyed to the outlet structure at a perpendicular orientation. Aquatic, riparian, and upland habitat enhancements will occur within the footprint of the detention basins. A new tributary channel will also be graded through the North Basin to reactivate an abandoned tributary of Black Rascal Creek that will connect with the realigned segment of Black Rascal Creek.

The detention basins will be constructed by placing approximately 174,000 cubic yards of native fill material along an approximately 7,000 linear-foot (12.54-acre) embankment along the southern and western perimeter of the detention basins. The native fill material will be excavated from the North Basin and removal of the State Plan of Flood Control levee to construct the embankment. Topsoil will be stripped from these areas, stockpiled, and then placed on the embankment slopes. The height of the embankment will range from zero where it ties into the existing ground at the northwestern corner of the basin to a maximum of approximately 21 feet above the Black Rascal Creek bed at the principal and auxiliary spillway at the basin outlet (detailed below). The majority of the embankment will measure approximately 14 feet tall and have an approximately 12-foot-wide gravel-surfaced top with side slopes set at 3H:1V (horizontal to vertical). The embankment slopes will be seeded with native species to establish herbaceous cover of grasses and forbs after they have been constructed. The average width at the base of the embankment will measure approximately 96 feet, based on an average embankment height of 14 feet. An approximately 6,980-foot long key trench, approximately 12 feet wide and 6 feet deep with maximum excavation slopes of 1H:1V (horizontal to vertical), will be excavated and backfilled with approximately 30,500 cubic yards of clay fill material beneath the center of the embankment. The exposed soil in the borrow area described above will be moisture conditioned and compacted to prepare for fill placement. Moisture will be added by spraying soil with a water truck. Moisture will be removed by ripping, discing, and turning the soil to allow it to dry.

Spillways

The detention basin will include both a principal and auxiliary spillway.

Principal Spillway

An approximately 20-foot-long by 21-foot-tall by 93-foot-wide cast-in-place, reinforced-concrete spillway crest, and 16-foot-wide open outlet channel principal spillway will be constructed at the outlet of the detention basins. It will be constructed at-grade, ungated, and include a cast-in-place reinforced concrete cantilever retaining wall that will retain the embankment fill and live load surcharge. The structure will consist of a reinforced concrete slab/footing with two cast-in-place reinforced concrete cantilever retaining walls spaced 16 feet apart. Each of the retaining walls will have two 33-foot-long wing walls that gradually flare outward for a more efficient flow section on the northern side of the constriction. Between the two walls will be a cast-in-place concrete slab directing the downstream flow into the existing Black Rascal Creek diversion channel along with cutoff walls at each end to protect against local scour and channel degradation. Approximately 910 cubic yards of Class II riprap,

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

260 cubic yards of Class VI riprap, and 830 cubic yards of riprap bedding will be placed to extend approximately 100-feet downstream and 40-feet upstream of the spillway.

Auxiliary Spillway

An approximately 350-foot-long by 12-foot-tall by 84-foot wide cast-in-place concrete ogee auxiliary spillway structure with concrete stilling basin and concrete sidewalls will be constructed adjacent to the proposed principal spillway, with sufficient space between to separate their discharge channels. The auxiliary structure will be constructed at grade and be ungated. Cutoff walls will be placed at the upstream and downstream concrete extents of the spillway to protect against local scour and channel degradation. Approximately 389 cubic yards of Class III riprap and 292 cubic yards of riprap bedding will be placed at the downstream end of the spillway approximately 15 feet to prevent scour and reduce the water velocity. In addition, the volume of riprap at the toe of embankment will include 92 cubic yards of Class III riprap and 69 cubic yards of riprap bedding. The riprap section consists of a 24-inch-thick layer of Class III rock (median rock weight of 250 to 440 pounds) over an 18-inch-thick layer of rock bedding (all pieces pass a 4-inch opening).

Channel Modifications

An approximately 1,845-foot section of Black Rascal Creek will be realigned upstream of the principal spillway so that flood flows are conveyed to the structure at a perpendicular orientation with minimal skew. The channel realignment will consist of excavating an approximately 50-foot-wide channel at the upstream end and taper to 16 feet wide at the transition to the principal spillway structure. The existing Black Rascal Creek channel will be backfilled to match the elevation of adjacent agricultural lands. Downstream of the principal spillway, an approximately 375-foot-long section of the Black Rascal Creek channel will be re-graded to a uniform cross-section, and riprap will be placed on the channel's bed and banks for scour protection.

Habitat Restoration and Enhancements

Aquatic, riparian, and upland habitat restoration and enhancement activities will occur in the Project footprint of the detention basin (Figure 2). These restoration and enhancement activities will be located in areas currently used for agricultural pasture and orchard. A new approximately 1,750-foot-long and 60- to 200-foot-wide tributary channel will be graded through the North Basin to reactivate an tributary of Black Rascal Creek that was blocked by previous levee construction. The channel will convey flow through the basin and connect with the realigned segment of Black Rascal Creek. The channel will be bounded by an inset floodplain that will be planted with riparian vegetation. It is anticipated that approximately 2 acres of intermittent stream channel, 4 acres of valley foothill riparian forest, and 56 acres of oak savanna will be established along the realigned section of Black Rascal Creek. An approximately 2,230-foot-long and 60- to 275-foot-wide, shallow secondary channel will also be graded in the detention basin to provide topographic diversity and habitat heterogeneity. It is expected that the secondary channel will be activated at flows more than an approximate 2-year storm event in Black Rascal Creek. The secondary channel and the remainder of the North Basin will be seeded with native grasses and planted with valley oak (*Quercus lobata*),

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

interior live oak (*Quercus wislizeni*), and California black walnut (*Juglans hindsii*) trees. A temporary irrigation system will be installed to aid in the establishment of trees and shrubs planted in the North Basin (Figure 4).

Drainage Facilities

Drainage facilities, including culverts, headwalls, and end treatments, will be installed, and removed within the Project site. Culverts will be installed at three locations: the northwestern corner of the Project, the western bank of Black Rascal Creek south of the principal spillway, and the eastern bank of Black Rascal Creek south of the principal spillway. Culverts will also be removed at four locations within the Project site.

Culverts

Three 64-foot-long by 36-inch-diameter cement mortar-lined and coated steel pipe culverts with flap gates will be installed at the northwestern corner of the Project to alleviate ponding on the northwestern side of the Project beyond the embankment. Headwalls will be constructed at the inlet and outlet. The invert elevations of the culverts will be at grade to allow flow into the basin by gravity once the basin water level attenuates. Excavation will be minor and within the footprint of the proposed embankment.

One 197-foot long by 24-inch-diameter reinforced concrete pipe culvert with flap gate will be installed on the western bank of Black Rascal Creek south of the principal spillway to allow for drainage from a swale located between the western embankment and Fairfield Canal to Black Rascal Creek. Excavation will be minor and within the footprint of the proposed embankment.

One 83-foot-long by 24-inch-diameter reinforced concrete pipe culvert with flap gate will be installed on the eastern bank of Black Rascal Creek south of the principal spillway to allow for drainage from the area located between East Yosemite Avenue and the spillway to Black Rascal Creek. Approximately 40 cubic yards of soil will be excavated, and 30 cubic yards of fill be used for trench back fill. Excavation and fill materials will be placed adjacent to excavation area. Excess material will be used to fill the abandoned section of Black Rascal Creek and other uses on site.

Four Culverts will be removed; two culverts from the existing section of the State Plan of Flood Control Levee; a third at the northwestern end of the embankment, and a fourth at the southern end of the Applegate lateral.

Operation and Maintenance

Operation and maintenance activities will include vegetation management, embankment and structure maintenance, inspection activities, and management of sediment and debris deposited in the basins, as needed. If needed, sediment will be removed from the basins during the dry season (April 1 through October 31) with the use of rubber or tracked earthmoving equipment. Sediment will be disposed of in a designated location within the

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

Project’s disturbance area and will not increase overall disturbance for the Project. The location will be consistent with all acquired permits.

Construction and O&M Schedule

Construction of the detention basins will take approximately 18 months to complete and will occur over a 2-year period during the dry season (April 1 through October 31). Construction activities are anticipated to be completed by December 31, 2026. O&M activities are anticipated to be completed during the dry season (April 1 through October 31) and anticipated to be completed by January 31, 2027. All work will be conducted during the day within a normal 8-hour shift between 7:00 a.m. and 6:00 p.m.

Equipment Used

Equipment to be used during construction and/or O&M activities will include hand tools, scrapers, bulldozers, tracked excavators, graders, compactors, dump trucks, roller, rubber-tired backhoes, rubber or tracked earthmoving equipment, water trucks, hydrovac trucks, and work trucks.

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

This ITP covers the following species:

<u>Name</u>	<u>CESA Status</u>
1. California tiger salamander (<i>Ambystoma californiense</i>)	Threatened ⁴
2. Swainson’s hawk (<i>Buteo swainsoni</i>)	Threatened ⁵

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

VI. Impacts of the Taking on Covered Species:

Project implementation is 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 all activities included in the construction of embankments, detention basins, outlet structures, spillways, habitat enhancement and drainage (culverts) facilities. These activities include preparing the construction work areas; grading and contouring; excavating; trenching; installation of subsurface improvements, stockpiling of soil and materials; spoils disposal; constructing temporary access routes; preparing staging areas; operating heavy equipment; removing vegetation; constructing parking lots and structures; vehicular movement; installing and maintaining Covered Species barrier fencing; operations and maintenance activities described above; surveying, capturing, handling, and relocating the Covered Species (Covered Activities). The areas where authorized take of the Covered Species is expected to occur include the entire 300-acre

⁴See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(3)(G).
⁵See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(5)(A).

Project site, including access areas, staging areas, embankment construction areas, and detention basins (collectively, the Project Area).

Incidental take of individual California tiger salamander (CTS) in the form of mortality ("kill") may also occur as a result of: vehicle or equipment strikes during ingress and egress and hauling of materials, collapse or excavation of occupied burrows that results in crushing or suffocation of underground individuals during grading and compaction, entombment of individuals from deposition of stockpiled material or spoils over occupied burrows and during top soil, or soil compaction, grading activities, the capture or entrapment in holes or trenches, and excavation of burrow systems. Incidental take of CTS may also occur from the Covered Activities in the form of pursuit, catch, capture, or attempt to do so through entrapment within barrier fencing constructed around the Project Area or during capture and relocation of CTS out of harm's way as required by this ITP.

The Project is expected to cause the permanent loss of 0.194 acre of breeding habitat and the temporary loss of 1.60 acres of upland habitat for CTS. Potential indirect impacts to CTS and their habitat include effects of ground-disturbing activities associated with implementation of Covered Activities. These impacts include stress resulting from noise and vibrations from earthwork, equipment operation, and traffic; temporary displacement; increased vulnerability to predation, exposure, or stress through disorientation; and loss of burrowing habitat used for shelter and escape cover. Individuals displaced due to habitat loss and degradation may be unable to survive in adjacent areas if these areas are at carrying capacity or are unsuitable for colonization.

A Swainson's hawk (SWHA) nest occurrence has been documented approximately 0.24 mile from the Project site. Incidental take of individual SWHA in the form of mortality may occur as a result of: vehicle strikes due to increased Project-related traffic and as a result of the loss of eggs, young, or fledglings due to destruction of nests or abandonment of nests during grubbing, grading, and other construction activities occurring in close proximity to nests during the SWHA nesting season. Incidental take of SWHA individuals may also occur from Covered Activities in the form of pursue, catch, and capture when eggs or individuals are salvaged after parental nest abandonment has occurred. The chance of viability of eggs and/or survival for SWHA in this circumstance is greatly reduced. Direct impacts to foraging habitat could also affect migrating individuals, and the fitness of SWHA young raised in close proximity to the Project due to reduced or disrupted foraging opportunities that reduce the ability of parents to acquire food for their dependent young. Ground-disturbing activities could result in a temporary reduction of prey species for SWHA and temporary impacts on nesting success in the tree line west of the Fairfield Canal.

The Project is expected to cause the temporary loss of 40.69 acres of habitat for SWHA. Potential indirect impacts to SWHA and their habitat include impacts from ground-disturbing activities associated with implementation of Covered Activities. These include construction-related noise, ground vibration, fugitive dust, visual disturbance, introduction or spread of invasive species, and increased human activity which could result in a reduction in prey

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

**MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT**

abundance and/or availability. 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 opportunities and because forage acquired further away from the nest is more energetically expensive for parents acquiring food for their dependent young. Operations and maintenance of the Project could indirectly affect nesting SWHA through noise and increased human activity.

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:

1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Environmental Impact Report (SCH No.: 2017021015) dated December 12, 2017, and certified and approved by Merced County on January 16, 2018, as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (EPIMS-MER-26316-R4) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 *et seq.*
4. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Biological Opinion No. SPK-2021-00278 for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.

- 5. ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.

- 6. General Provisions:**

- 6.1. Designated Representative.** Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
- 6.2. Designated Biologist(s) and Designated Monitor(s).** Permittee shall submit to CDFW in writing the name, qualifications, business address, contact information, and references with contact information of Designated Biologist(s) and Designated Monitor(s) using the Biologist Resume Example (Attachment 2) or another format containing the same information. This information shall be submitted for CDFW review and approval at least 30 days before starting Covered Activities. The Designated Biologist(s) and Designated Monitor(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of the Covered Species and to minimize disturbance of Covered Species' habitat. The Designated Monitor(s) shall assist the Designated Biologist(s) in compliance monitoring under direction/supervision of the Designated Biologist(s). Designated Monitor responsibilities will be restricted to a specific set of Conditions of Approval, specified by the Permittee or Designated Representative at the time their qualifications are submitted for review. Permittee shall ensure that the Designated Biologist(s) and Designated Monitor(s) are knowledgeable and experienced in the Covered Species' biology, natural history, as well as monitoring construction activities following Conditions of Approval of an ITP. Permittee shall obtain CDFW approval of the Designated Biologist(s) and Designated Monitor(s) in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist(s) or Designated Monitor(s) must be changed.
- 6.3. Designated Biologist Authority.** To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist(s) shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

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(s) in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist(s) 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(s) that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.

- 6.4. Education Program.** 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.
- 6.5. Construction Monitoring Documentation.** The Designated Biologist(s) and Biological Monitor(s) shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project site upon request by CDFW.
- 6.6. Trash Abatement.** 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,

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

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

- 6.7. 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.
- 6.8. 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. Permittee shall deploy erosion control fabric/mats, blankets, and/or fiber rolls consisting of only natural-fiber, biodegradable materials.
- 6.9. Delineation of Work Area Boundaries.** Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Work Area with fencing, stakes, or flags. The Work Area is defined as a discrete zone along any part of the active phase of the Project Area where Covered Activities will occur. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged Work Area. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in the Work Area.
- 6.10. Delineation of Habitat.** Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat. Permittee shall maintain all signs, stakes, flags, rope, cord, and fencing until the completion of Covered Activities in that area, at which time they should be removed.
- 6.11. Project Access.** Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or in 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 identified routes in the Project Area. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.
- 6.12. Staging Areas.** Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas.

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in the Project Access Condition of Approval.

- 6.13. Hazardous Waste.** Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 6.14. CDFW Access.** Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.15. Refuse Removal.** Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse from the Project Area, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

7. Monitoring, Notification and Reporting Provisions:

- 7.1. Notification Before Commencement.** The Designated Representative shall notify CDFW and provide documentation of compliance with all pre-Project Conditions of Approval at least 14 calendar days before starting Covered Activities within the Project Area.
- 7.2. Notification of Non-compliance.** The Designated Representative or Designated Biologist shall immediately notify CDFW via email 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 or Designated Biologist shall follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.
- 7.3. Final Design Plans.** At least 30 days prior to the start of Covered Activities, the Permittee shall submit the Final Design Plans to CDFW for review and approval. The Plans shall include, but not be limited to, the methods to be used; dimensions, areas, and volumes of all materials to be used, and locations of all Covered Activities. Please include the methods for removing, filling, and/or relocating of the detention basins, drainage system features, and all Covered Activities. If changes to the Projects described in this ITP are included, Permittee

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

**MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT**

is advised that an amendment to this ITP may be required prior to implementing the plans.

7.4. Geographic Information Systems Data Files. At least 30 days prior to the start of Covered Activities, the Permittee shall provide CDFW with separate Geographic Information Systems (GIS) data files for the temporary and permanent habitat impact areas authorized under this ITP for the Covered Species for the Covered Activities. If habitat for a Covered Species will be both temporarily and permanently impacted, the Permittee shall provide one set of GIS data files for each impact type. The Permittee shall provide any additional GIS data files for the Project or related Covered Species features within 30 days of CDFW's request. All GIS data files shall be provided in a format acceptable to CDFW. The Permittee shall also provide GIS data files for the temporary and permanent habitat impacts areas authorized under this ITP for the Covered Species for the completed Covered Activities as part of the Final Mitigation Report Condition of Approval.

7.5. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections a minimum of once-a-month frequency of compliance inspections during periods of inactivity and after clearing, grubbing, and grading are completed. The Designated Biologist shall conduct compliance inspections to:

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

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

7.6. Record of Covered Species Relocation. The Designated Biologist shall maintain a record of Covered Species handled and all documented observations of Covered Species. This information shall include for each animal: (1) date, time, and location (Global Positioning System (GPS) coordinates and maps) and capture and/or observation as well as release, if applicable; (2) the name of the party that identified the Covered Species; (3) circumstances of the incident; (3) the general condition and health, noting all visible conditions including gait and behavior, ectoparasites, injuries, etc.; (4) any diagnostic markings, sex, age (juvenile or

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

adult); (5) actions undertaken; (6) habitat description; and (7) ambient temperature when handled and released or observed. The Designated Biologist shall also submit this information to CDFW's California Natural Diversity Database (CNDDDB) as per the CNDDDB Observations Condition of Approval. The Designated Biologist shall prepare a Relocation Summary and include it in the Monthly Compliance and Annual Status Report Conditions of Approval described below.

- 7.7. Monthly Compliance Report.** The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in the Compliance Monitoring and Record of Covered Species Relocation Conditions of Approval 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 also include an accounting of the number of acres that have been permanently and temporarily disturbed by the Project within each Work Area, both for the prior monthly, and the total since ITP issuance, if applicable; the number of acres of habitat disturbance anticipated to occur in each Work Area during the coming monthly, if applicable; a summary of all pre-activity surveys and compliance monitoring conducted during the previous month; and the activities authorized under the Covered Activities which occurred during the previous month. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via email to CDFW's Regional Representative, Regional CESA Program, and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Shaelyn Latronica (Shaelyn.Latronica@wildlife.ca.gov), Regional CESA Program email is R4CESA@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.
- 7.8. Annual Status Report.** Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in the Monthly Compliance Report Condition of Approval; (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

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

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. ASRs shall be submitted to CDFW following the directions provided in the Monthly Compliance Report Condition of Approval above.

- 7.9. CNDDDB Observations.** The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 30 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 7.10. Final Mitigation Report.** No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) GIS Data Files; (7) 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; (8) 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 (9) any other pertinent information.
- 7.11. Notification of Take or Injury.** Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (559) 243-4005 and by email to the CDFW Regional Representative. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, photograph(s), if possible, explanation as to cause of take or injury, and any other pertinent information.
- 8. Take Minimization Measures:** The following requirements are intended to ensure the minimization of incidental take of Covered Species in the Project Area during Covered Activities. Permittee shall implement and adhere to the following conditions to minimize take of Covered Species:

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

- 8.1. CTS Mortality Reduction and Relocation Plan.** The Designated Biologist shall prepare a CTS Mortality Reduction and Relocation Plan and submit it to CDFW for review and approval a minimum of 30 days prior to the beginning of Covered Activities. The CTS Mortality Reduction and Relocation Plan shall include, but not be limited to, a discussion and map of the portion of the Project Area which represents potential upland habitat; identification of the area within 1.3 miles of known or potential breeding habitat for Covered Species; detailed survey, capture, handling, and relocation methods; identification of relocation areas; and identification of a wildlife rehabilitation center or veterinary facility capable of treating injured animals. Covered Activities may not proceed until the CTS Mortality Reduction and Relocation Plan is approved in writing by CDFW. Designated Monitors are prohibited from capturing and handling the Covered Species unless specifically approved in writing by CDFW and under the direct supervision of the Designated Biologist(s). Any proposed changes to the CDFW-approved CTS Mortality Reduction and Relocation Plan shall be submitted in writing to CDFW and approved by CDFW in writing prior to implementation of any proposed CTS Mortality Reduction and Relocation Plan modifications.
- 8.2. SWHA Nest Abandonment Contingency Plan.** The Designated Biologist(s) shall submit a SWHA Nest Abandonment Contingency Plan to CDFW for written approval prior to the start of Covered Activities. The plan shall include, but not be limited to, identification of capture methods, handling methods, methods to return SWHA back into the wild, and the identification of a CDFW-approved wildlife rehabilitation center or veterinary facility. The Permittee shall fund the recovery and hacking (controlled release) of the SWHA nestlings.
- 8.3. Designated Biologist On-site.** The Designated Biologist shall be on-site during all ground-disturbing or vegetation-disturbing activities that may result in the take of Covered Species. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) check for compliance with all measures of the ITP; (3) check all exclusion zones; and (4) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by the ITP. The Designated Biologist shall conduct compliance inspections a minimum of once a week during periods of inactivity and after clearing, grubbing, and grading are completed.
- 8.4. Delineation of Ingress and Egress Routes.** Permittee/Designated Biologist shall flag all access roads in the field from the paved road and vehicle operation shall be limited to these designated ingress and egress routes.

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

- 8.5. CTS Pre-Activity Clearance Surveys.** No more than 14 days prior to starting Covered Activities, the Designated Biologist(s) shall survey the Project Area for individuals of CTS. These surveys shall provide 100 percent visual coverage (including burrow and crevice openings) of the Project Area and a 50-foot buffer zone around the Project Area. If any life stages (adults, eggs, or larvae) of CTS are found, the Designated Biologist(s) shall capture and relocate the CTS as per the CDFW-approved CTS Mortality Reduction and Relocation Plan Condition of Approval. The Permittee shall provide the survey results to CDFW in a written report prior to the beginning of Covered Activities.
- 8.6. Flag Burrows/Crevice.** During CTS Pre-Activity Clearance Surveys Condition of Approval, the Designated Biologist shall flag all animal burrows and crevices suitable for CTS occupancy within the Project Area including a 50-foot buffer outside those areas to alert work crews to their presence. An avoidance buffer of 50 feet or greater around animal burrows/crevices shall be maintained regardless of if the burrow/crevice is in the Project Area or solely within the Project Area's 50-foot buffer zone. Flagged burrows/crevices which cannot be avoided by at least 50 feet shall be fully excavated in accordance with the Burrow/Crevice Excavation Condition of Approval.
- 8.7. Burrow/Crevice Excavation.** Prior to initiating Covered Activities within the Project Area and 50-foot buffer zone, animal burrows and crevices identified during the CTS Pre-Activity Clearance Surveys and Flag Burrows/Crevices Conditions of Approval, that cannot be avoided shall be fully excavated by the Designated Biologist(s) based on the CDFW-approved CTS Mortality Reduction and Relocation Plan required in the CTS Mortality Reduction and Relocation Plan Condition of Approval. The Designated Biologist(s) shall relocate any live CTS discovered during burrow excavation in accordance with the CDFW-approved CTS Mortality Reduction and Relocation Plan required in the CTS Mortality Reduction and Relocation Plan Condition of Approval. Excavation shall occur no more than 14 days after the completion of the CTS Pre-Activity Clearance Surveys.
- 8.8. CTS Exclusion Fencing.** Prior to initiation of Covered Activities and following surveying, flagging, and excavating burrows/crevices in accordance with CTS Pre-Activity Clearance Surveys, Flag Burrow/Crevices, and Burrow/Crevice Excavation Conditions of Approval, Permittee shall install temporary exclusion fencing around the perimeter of the Project Area to prevent Covered Species from migrating into the Project Area. The Permittee shall submit a CTS Exclusion Fencing Plan to CDFW for review and written approval a minimum of 30 days prior to commencing Covered Activities. The CTS Exclusion Fencing Plan shall include the type of fencing material and detailed design (including maps) and installation methods, gate design and location, and inspection, maintenance, repair, and replacement methods and intervals. The CTS exclusion fence shall be

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

buried a minimum of four inches below ground surface and shall be equipped with one-way exits to avoid entrapment of CTS and other amphibians or reptiles. The Permittee shall also avoid small mammal burrows by a minimum of 50 feet during the installation of the exclusion fencing or as approved in the CDFW-approved CTS Mortality Reduction and Relocation Plan required in the CTS Mortality Reduction and Relocation Plan Condition of Approval. Installation of exclusion fencing and initiation of Covered Activities shall not proceed until the CTS Exclusion Fencing Plan has been approved in writing by CDFW.

- 8.9. Exclusion Fencing Installation.** The Designated Biologist(s) shall accompany the exclusion fence construction crew to ensure that CTS are not killed or injured during fence installation. The CTS exclusion fencing shall be supported sufficiently to maintain its integrity under all conditions such as wind and heavy rain for the duration of the Covered Activities. The Designated Biologist(s) shall check the exclusion fence at least once weekly and inform Permittee of necessary maintenance or repairs. Exclusion fence shall be removed immediately upon completion of Covered Activities.
- 8.10. Fieldwork Code of Practice.** To ensure that the Designated Biologist(s) does not convey disease between the Project Area and areas outside the Project Area, the fieldwork code of practice developed by the Declining Amphibian Populations Task Force Fieldwork Code of Practice (see Attachment 3) shall be always followed. The Designated Biologist(s) may substitute a bleach solution (0.5 to 1.0 cup of bleach to 1.0 gallon of water) for the ethanol solution. The Designated Biologist(s) shall ensure that all traces of the disinfectant are removed before entering the next aquatic habitat.
- 8.11. Covering, Ramping, and Inspecting Excavations.** Permittee shall minimize the potential for Covered Species to become entrapped in excavations to the maximum extent practicable. To prevent inadvertent entrapment of Covered Species or any other animals during the construction phase of the Project, Permittee shall ensure that all excavated, steep-walled holes or trenches are covered, ramped, and inspected as described below. This measure does not apply to burrows excavated for salvaging Covered Species until such excavation is complete and no Covered Species remain in the burrow.
- 8.12. Covered Species Observations.** During all Covered Activities within the Project Area, all workers shall inform the Designated Biologist(s) if a Covered Species is observed within or near the Project Area. All work in the vicinity of the Covered Species, which could injure or kill the animal, shall cease immediately until the Covered Species moves from the Project Area of its own accord or is relocated by the Designated Biologist(s) in accordance with the CDFW-approved CTS Mortality Reduction and Relocation Plan specified in the CTS Mortality Reduction and Relocation Plan Condition of Approval.

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

- 8.13. Open Excavation Inspection.** The Designated Biologist(s) shall inspect all open holes, sumps, and trenches within the Project Area at the beginning, middle, and end of each day for trapped Covered Species. To prevent inadvertent entrapment of Covered Species, all open trenches, holes, sumps, and other excavations with sidewalls steeper than a 1:1 (45 degree) slope shall have an escape ramp of earth or a non-slip material with a less than 1:1 (45 degree) slope. The Designated Biologist(s) shall thoroughly inspect all trenches, holes, sumps, and other excavations for Covered Species (or other wildlife) before they are backfilled. If any worker discovers that Covered Species have become trapped, Permittee shall cease all Project-related activities in the vicinity and notify the Designated Biologist(s) immediately. Project workers and the Designated Biologist(s) shall provide the opportunity for the Covered Species to escape unimpeded out of the Work Area before allowing work to continue. Alternatively, if the Covered Species will not leave the Project Area unimpeded, the Designated Biologist(s) shall capture and relocate the Covered Species as per the CDFW-approved CTS Mortality Reduction and Relocation Plan required in the CTS Mortality Reduction and Relocation Plan Condition of Approval, after receiving approval from the CDFW Regional Representative. If, at any time, a Covered Species is found incidentally trapped in the Project Area, the Permittee shall contact CDFW's Regional Representative within one (1) working day of the incident.
- 8.14. Dry Season Work.** Permittee shall confine ground-disturbing activities to the dry season (generally April 1 to October 31) and shall complete activities prior to the onset of winter rains. Ground-disturbing activities conducted during the dry season shall not occur until on-site ponds are dry, unless surveys are conducted to demonstrate the absence of Covered Species eggs or larvae.
- 8.15. Rain Forecast.** The Designated Biologist and Permittee shall monitor the National Weather Service 72-hour forecast for the Project Area. If a 50 percent or greater chance of rainfall is predicted within 72 hours, Permittee shall cease all Covered Activities in all Work Areas within the Project Area where initial ground or vegetation disturbance has yet to occur until the rainfall ceases and a zero percent chance of rain is forecast. Covered Activities may continue 24 hours after the rain ceases and there is no precipitation in the 72-hour forecast. Covered Activities may continue in the Project Area under these conditions if the exclusion fence has been installed as required by the CTS Exclusion Fencing and Exclusion Fencing Installation Conditions of Approval.
- 8.16. Vehicle and Equipment Inspection.** Within the Project Area, workers shall inspect under vehicles and equipment for Covered Species before the vehicles and equipment are moved. If a Covered Species is present, the worker shall notify the Designated Biologist(s) and wait for the Covered Species to move unimpeded out of the Project Area. Alternatively, if the Covered Species will not leave the Project

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

Area unimpeded, the Designated Biologist(s) shall capture and relocate the Covered Species as per the CDFW-approved CTS Mortality Reduction and Relocation Plan described required in the CTS Mortality Reduction and Relocation Plan Condition of Approval. If, at any time, a Covered Species is found in the Project Area, the Permittee shall contact CDFW's Regional Representative within one (1) working day of discovery.

- 8.17. Pipes and other Structures Entrapment Prevention.** Permittee shall ensure that all pipes, hoses, conduit, culverts, or similar materials stockpiled or installed in the Project Area are capped or otherwise enclosed at the ends to prevent entry by Covered Species. Workers shall thoroughly inspect all construction pipe, culverts, or other similar structures with a diameter of one inch or greater that are stored for one or more overnight periods for the Covered Species before the object is subsequently moved, buried, or capped. If an individual of the Covered Species is discovered inside a pipe, culvert, or similar structure during inspection, the worker shall notify the Designated Biologist(s) and wait for the Covered Species to move unimpeded to a safe location. Alternatively, the Designated Biologist(s) may move Covered Species out of harm's way outside of the Project Area in compliance with the CDFW-approved CTS Mortality Reduction and Relocation Plan required in the CTS Mortality Reduction and Relocation Plan Condition of Approval.
- 8.18. Covered Species Observations.** During all Covered Activities within the Project Area, all workers shall inform the Designated Biologist(s) if a Covered Species is observed within or near the Project Area. All work in the vicinity of the observed Covered Species, which could injure or kill the animal, shall cease immediately until it moves from the Project Area of its own accord or the Designated Biologist(s) relocates the Covered Species following the CDFW-approved CTS Mortality Reduction and Relocation Plan required in the CTS Mortality Reduction and Relocation Plan Condition of Approval.
- 8.19. Night Work.** All Covered Activities shall terminate 30 minutes before sunset and shall not resume until 30 minutes after sunrise except when night work is associated with an emergency response (defined by an imminent threat to life or significant property). Permittee shall ensure that all vehicle traffic necessary during nighttime hours associated with an emergency response shall be conducted with extra caution to minimize impacts to the Covered Species. Permittee shall use sunrise and sunset times established by the United States Naval Observatory Astronomical Applications Department for the geographic area where the Project is located.
- 8.20. Stockpiles.** Permittee shall ensure that soil stockpiles are placed where soil shall not pass into potential Covered Species breeding habitat, or into any "Waters of the State," in accordance with Fish and Game Code section 5650. Permittee shall

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

appropriately protect stockpiles to prevent soil erosion. Permittee shall stockpile and stage all materials and equipment in a manner that discourages Covered Species' use. In all locations, Permittee shall not place bundled or loose materials directly on the ground. These materials shall be elevated to discourage use by Covered Species. Permittee shall not place materials outside of exclusion fencing.

- 8.21. Record of Handling and Covered Species Reporting.** All Covered Species captures, relocations, and observations by the Designated Biologist(s) shall include the following documented information: the date, time, and location of each occurrence using Global Positioning System technology; the name of the party that identified the animal; circumstances of the incident; the general condition and health of each individual; any diagnostic markings, sex, and age (juvenile or adult); actions undertaken; and habitat description. Permittee shall also submit this information to the CNDDDB as required in the CNDDDB Observations Condition of Approval. This information should also be included in the Monthly Compliance Reports.
- 8.22. Best Management Practices.** Permittee shall implement Best Management Practices (BMPs), including a Storm Water Pollution Plan and Water Pollution Control Program, to minimize effects to Covered Species during Covered Activities. Permittee shall implement BMPs to prevent sedimentation from entering Environmentally Sensitive Areas and to reduce erosion, dust, noise, and other deleterious aspects of construction-related Covered Activities. These BMPs may include, but not be limited to, silt fencing, temporary berms, restrictions on cleaning equipment in or near Environmentally Sensitive Areas, and temporary sediment disposal.
- 8.23. SWHA Surveys.** The Designated Biologist shall conduct pre-construction surveys during the nesting season (February 15 through September 15) at and within 0.5 mile of the Project Area. The Designated Biologist or Designated Representative shall provide the survey results to CDFW in a written report at least five (5) days prior to beginning Covered Activities.
- 8.24. SWHA Nest(s).** If a SWHA nest is found at or within 0.5 mile of the Project Area, the Designated Biologist shall be present daily for the entire duration of any Covered Activities occurring during the nesting season (February 15 through September 15) and within 0.5 mile of the active nest, to monitor the behavior of the potentially affected SWHA. The Designated Biologist shall order the cessation of all Covered Activities if the bird(s) exhibits any distress and/or abnormal nesting behavior (swooping/stooping, excessive vocalization, distress calls, agitation, failure to remain on nest, failure to deliver prey items for an extended time period, failure to maintain nest, etc.) which may cause reproductive failure (nest abandonment and loss of eggs and/or young). Permittee shall not resume

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

Covered Activities until CDFW has been consulted by the Designated Biologist, and both the Designated Biologist and CDFW confirm that the bird's behavior has returned to normal.

- 8.25. SWHA Nest Buffers.** The Permittee and Designated Biologist shall ensure that no Covered Activities occur within 100 feet of a SWHA nest during the nesting season (February 15 through September 15). The 100-foot no disturbance buffer shall not be reduced or otherwise modified without prior written CDFW approval. Worker foot traffic, water and restroom facilities, employee break areas (permanent or temporary), and worker vehicle parking is prohibited within 1,000 feet of any SWHA nest without prior written CDFW approval.
- 8.26. SWHA Nest Abandonment.** If a SWHA nest is abandoned, the Permittee shall notify CDFW immediately and initiate actions to salvage any abandoned eggs or hatchlings in accordance with the CDFW-approved SWHA Nest Abandonment Contingency Plan required in the SWHA Nest Abandonment Contingency Plan Condition of Approval.
- 8.27. 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 name of 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 required in the Notification of Take or Injury Condition of Approval. Notification shall include the date, time, location, and circumstances of the incident and the name of the facility where the animal was taken.
- 8.28. Pesticide Use.** Permittee shall ensure that all pesticide use (mixing, application, and clean-up) is done by a licensed or certified applicator in accordance with all applicable State, federal, and local regulations. Permittee shall only apply pesticide sprays via ground application when wind speed measures less than 3 miles per hour. Permittee shall ensure that great care is taken to avoid pesticide drift outside the boundaries of the Project Overburden Site and/or Mitigation Site Work Areas. Permittee shall ensure that any pesticide used where there is the possibility that the pesticide could come into direct contact with water is approved for use in an aquatic environment.

- 9. Habitat Management Land Acquisition and Restoration:** CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result from implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

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 the compensatory mitigation requirements of this ITP, the Permittee shall purchase 0.594 CTS breeding habitat credit, 1.6 CTS upland habitat credits, and 20 SWHA credits from a CDFW approved mitigation or conservation bank(s) pursuant to the Covered Species Credits Condition of Approval below. Purchase of Covered Species credits must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to the Performance Security Condition of Approval below for all uncompleted obligations.

9.1. Covered Species Credits. Permittee shall purchase 0.594 CTS breeding habitat credit, 1.6 CTS upland habitat credits, and 20 SWHA credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities. 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. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities.

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

10.1. Security Amount. The Security shall be in the amount of **\$1,027,000.00**. This amount is based on the cost estimates identified by CDFW for purchase of bank credits from a CDFW-approved mitigation or conservation bank authorized for the Project.

10.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 4) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.

10.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.

10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.

10.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 5)

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.

- 10.6. Security Drawing.** The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.
- 10.7. Security Release.** The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by all required reports and restoration success standards are met.

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

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT

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. Permittee is responsible for complying with all other applicable federal, state, and local law.

XIII. 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 (2081-2021-096-04) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Julie Vance, Regional Manager
California Department of Fish and Wildlife
1234 East Shaw Avenue
Fresno, California 93710
R4CESA@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, California 94244-2090
CESA@wildlife.ca.gov

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

**MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT**

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

Shaelyn Latronica
 California Department of Fish and Wildlife
 1234 East Shaw Avenue
 Fresno, California 93710
 Telephone (559) 246-2584
Shaelyn.Latronica@wildlife.ca.gov

XIV. 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, Merced County. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Final Environmental Impact Report, Black Rascal Creek Flood Control Project, (SCH No.: 2017021015) dated December 2017 that the Merced County certified the Black Rascal Creek Flood Control Project on January 16, 2018. At the time the lead agency certified the Environmental Impact Report 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 Environmental Impact Report (EIR) for the Project and the environmental effects related to issuance of this ITP (CEQA Guidelines, § 15096, subd. (f)). CDFW finds that issuance of this ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, and that adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. CDFW consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

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, Final Environmental Impact Report for the Black Rascal Creek Flood Control Project, list of any other relevant documents in the administrative record, 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:

Incidental Take Permit
 No. 2081-2021-096-04
 (Amendment No. 1)

**MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
 BLACK RASCAL CREEK FLOOD CONTROL PROJECT**

- (1) Take of Covered Species as defined in this ITP shall 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 purchase of Covered Species credits, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;
- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.
- (9) CDFW finds that this Amendment is a Minor Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

Incidental Take Permit
No. 2081-2021-096-04
(Amendment No. 1)

**MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT**

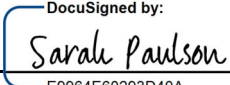
- (10) Issuance of this Amendment will not increase the amount of take of the Covered Species compared to the Project as originally approved, nor will this Amendment increase other Project impacts on the Covered Species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).
- (11) Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

XVI. Attachments:

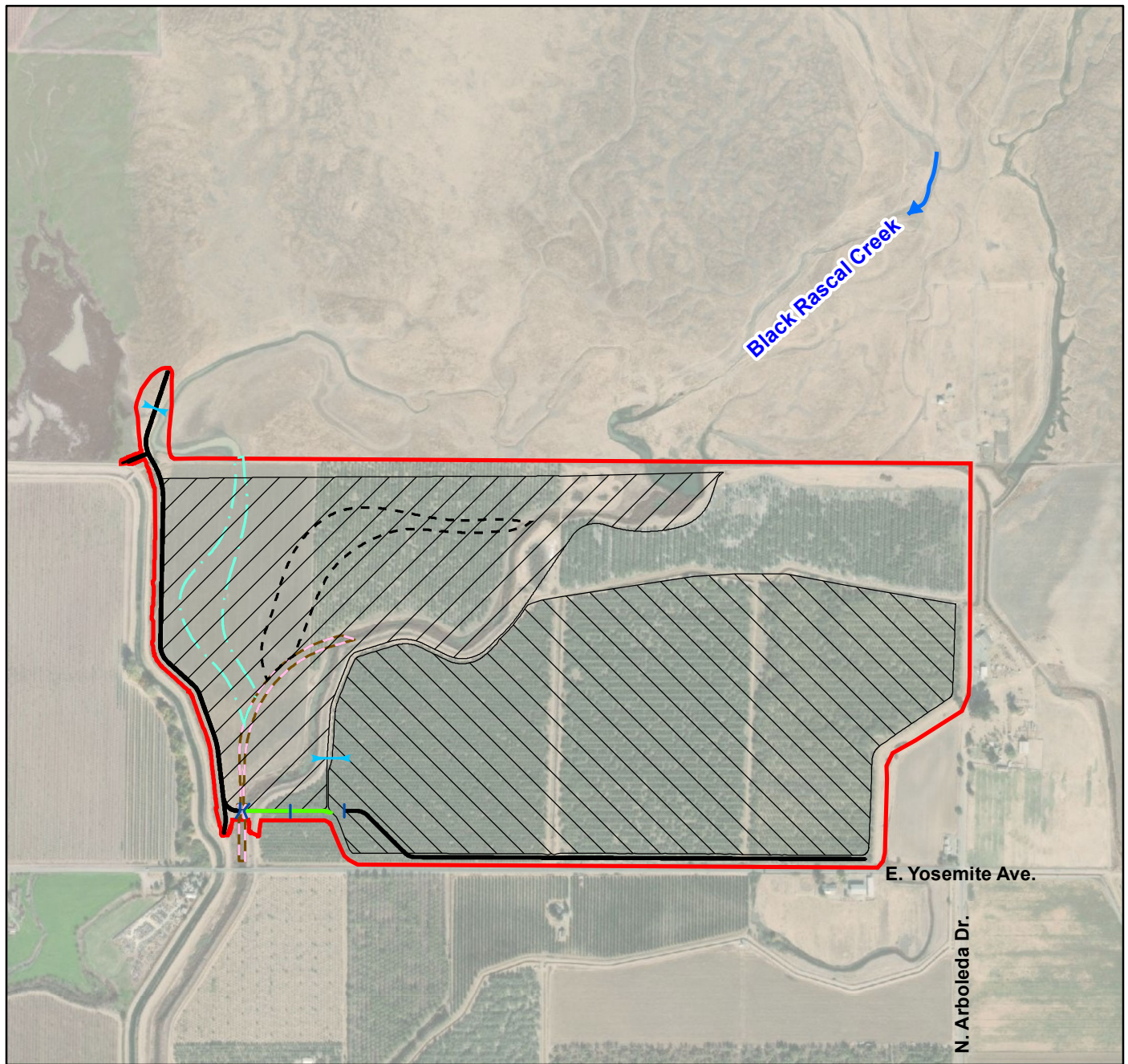
FIGURE 1	Project Area
FIGURE 2	Habitat Types
FIGURE 3	Basin Inundation Areas
ATTACHMENT 1	Mitigation Monitoring and Reporting Program (MMRP)
ATTACHMENT 2	Biologist Resume Form
ATTACHMENT 3	Declining Amphibian Populations Task Force Fieldwork Code of Practice
ATTACHMENT 4	Letter of Credit Form
ATTACHMENT 5	Mitigation Payment Transmittal Form
ATTACHMENT 6	Minor Amendment No. 1 with Track Changes

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 7/30/2026

DocuSigned by:

 E9964E60293D40A...
 for Julie A. Vance, Regional Manager
 Central Region (R4)

Incidental Take Permit
 No. 2081-2021-096-04
 (Amendment No. 1)
MERCED COUNTY DEPARTMENT OF PUBLIC WORKS
BLACK RASCAL CREEK FLOOD CONTROL PROJECT



VICINITY MAP

 Project Area (296 acres)

Project Features

North Basin

South Basin

Secondary Channel

Tributary Channel

Relocated Black Rascal Creek Channel

External Embankment

Outlet Structure

Spillway

Culverts with Flap Gates

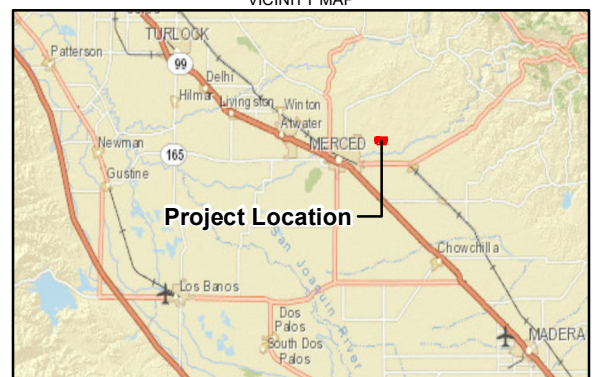
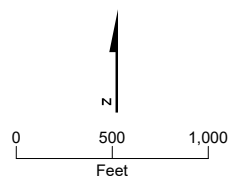


FIGURE 1
Project Area

Merced County, California



NOTE:
ACREAGES OF HABITAT
FOUND ONLY WITH

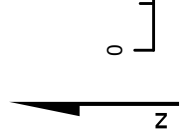
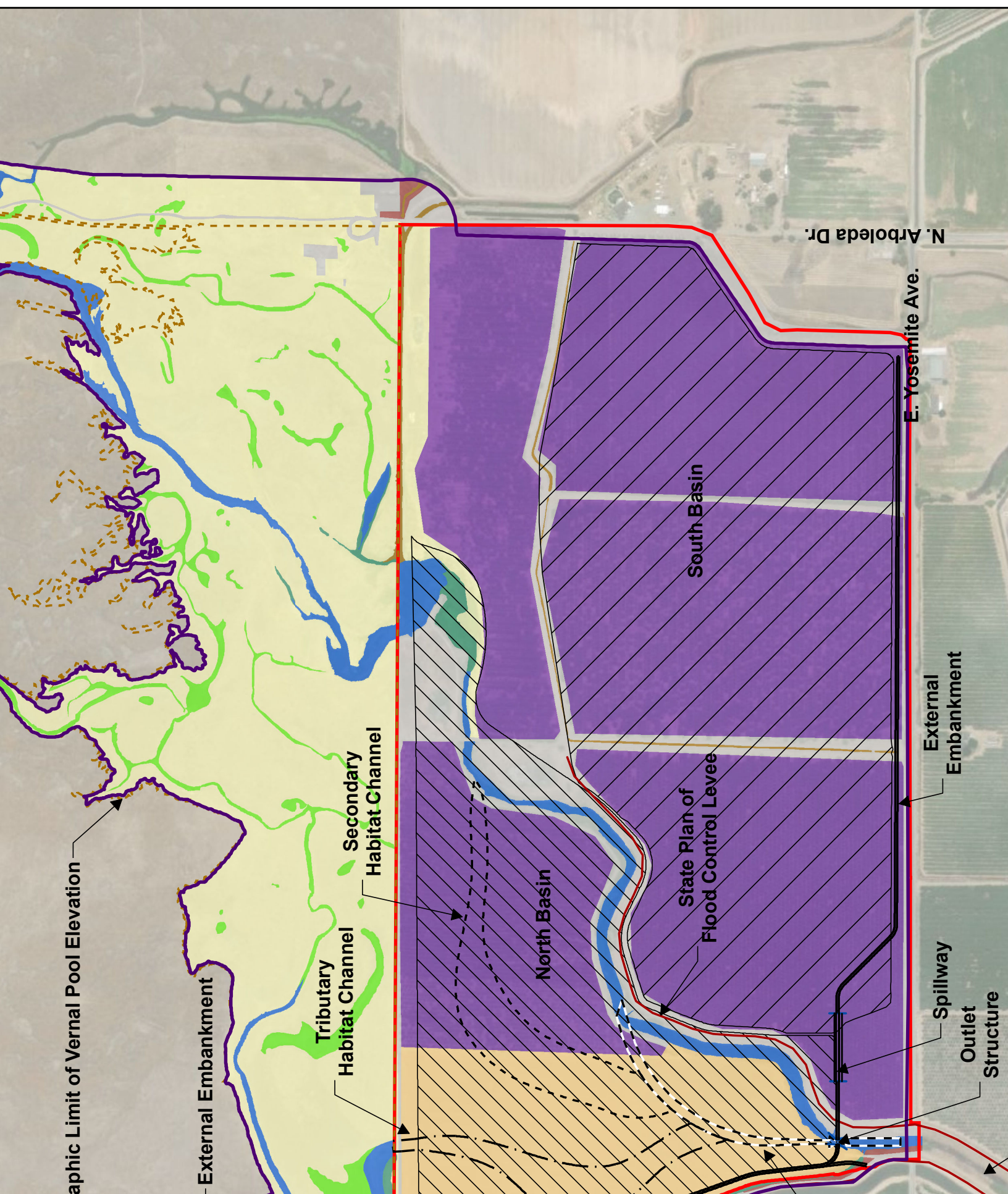
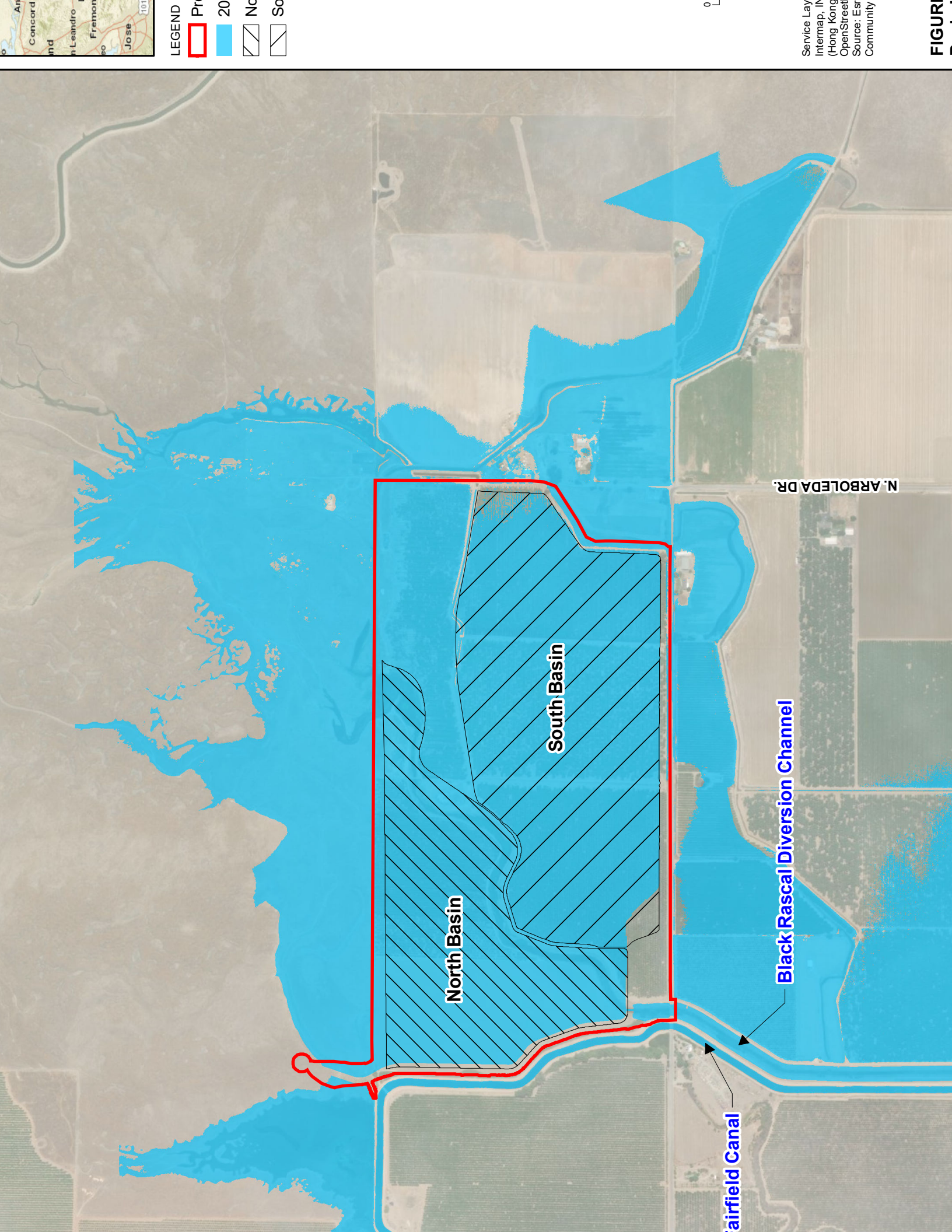


FIGURE 2





Attachment 1

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

INCIDENTAL TAKE PERMIT NO. 2081-2021-096-04-A1

PERMITTEE: Merced County

PROJECT: Black Rascal Creek Flood Plain

PURPOSE OF THE MMRP

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

OBLIGATIONS OF PERMITTEE

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

VERIFICATION OF COMPLIANCE, EFFECTIVENESS

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

TABLE OF MITIGATION MEASURES

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

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
BEFORE DISTURBING SOIL OR VEGETATION					
1	<u>Final Design Plans</u> : At least 30 days prior to the start of Covered Activities, the Permittee shall submit the Final Design Plans to CDFW for review and approval. The Plans shall include, but not be limited to, the methods to be used; dimensions, areas, and volumes of all materials to be used, and locations of all Covered Activities. Please include the methods for removing, filling, and/or relocating of the detention basins, drainage system features, and all Covered Activities. If changes to the Projects described in this ITP are included, Permittee is advised that an amendment to this ITP may be required prior to implementing the plans.	ITP Condition # 7.5	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	<u>Geographic Information Systems Data Files</u> : At least 30 days prior to the start of Covered Activities, the Permittee shall provide CDFW with separate Geographic Information Systems (GIS) data files for the temporary and permanent habitat impact areas authorized under this ITP for the Covered Species for the Covered Activities. If habitat for a Covered Species will be both temporarily and permanently impacted, the Permittee shall provide one set of GIS data files for each impact type. The Permittee shall provide any additional GIS data files for the Project or related Covered Species features within 30 days of CDFW's request. All GIS data files shall be provided in a format acceptable to CDFW.	ITP Condition # 7.6	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
3	<u>Designated Representative</u> : Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.	ITP Condition # 6.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
4	<u>Designated Biologist(s) and Designated Monitor(s)</u> : Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) and Designated Monitor(s) using the Biologist Resume Form (Attachment 2) or another format containing the same information at least 30 days before starting Covered Activities. The Designated Monitor(s) may assist the Designated Biologist(s) in compliance monitoring under the direct supervision of the Designated Biologist(s). Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, trapping, handling, and relocating of the Covered Species. Permittee shall also ensure that the Designated Biologist is experienced in the excavation of burrows actively used by the Covered Species and in the monitoring of construction activities under an ITP for the Covered Species. Permittee shall ensure that the Designated Monitor(s) is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist(s) and Designated Monitor(s) shall be responsible for monitoring Covered Species 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 and Designated Monitor in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist or Biological Monitor must be changed.	ITP Condition # 6.2	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
5	<u>E</u> ducation 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.	ITP Condition # 6.4	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
6	<u>T</u> rash 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.	ITP Condition # 6.6	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
7	<u>D</u> elineation of Ingress and Egress Routes. Permittee/Designated Biologist shall flag all access roads in the field from the paved road and vehicle operation shall be limited to these designated ingress and egress routes.	ITP Condition # 8.2	Before commencing ground- or vegetation-disturbing activities / Entire Project		
8	<u>D</u> ust 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.	ITP Condition # 6.7	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
9	<u>D</u> elineation of Work Area Boundaries. Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Work Area with fencing, stakes, or flags. The Work Area is defined as a discrete zone along any part of the active phase of the Project Area where Covered Activities will occur. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged Work Area. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in the Work Area.	ITP Condition # 6.9	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
10	<u>D</u> elineation 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. Permittee shall maintain all signs, stakes, flags, rope, cord, and fencing until the completion of Covered Activities in that area, at which time they should be removed.	ITP Condition # 6.10	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
11	CTS Mortality Reduction and Relocation Plan. The Designated Biologist shall prepare a CTS Mortality Reduction and Relocation Plan and submit it to CDFW for review and approval a minimum of 30 days prior to the beginning of Covered Activities. The CTS Mortality Reduction and Relocation Plan shall include, but not be limited to, a discussion and map of the portion of the Project Area which represents potential upland habitat; identification of the area within 1.3 miles of known or potential breeding habitat for Covered Species; detailed survey, capture, handling, and relocation methods; identification of relocation areas; and identification of a wildlife rehabilitation center or veterinary facility capable of treating injured animals. Covered Activities may not proceed until the CTS Mortality Reduction and Relocation Plan is approved in writing by CDFW. Designated Monitors are prohibited from capturing and handling the Covered Species unless specifically approved in writing by CDFW and under the direct supervision of the Designated Biologist(s). Any proposed changes to the CDFW-approved CTS Mortality Reduction and Relocation Plan shall be submitted in writing to CDFW and approved by CDFW in writing prior to implementation of any proposed CTS Mortality Reduction and Relocation Plan modifications.	ITP Condition # 8.1	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
12	SWHA Surveys. The Designated Biologist shall conduct preconstruction surveys during the nesting season (February 15 through September 15) at and within 0.5 mile of the Project Area. The Designated Biologist or Designated Representative shall provide the survey results to CDFW in a written report at least five (5) days prior to beginning Covered Activities.	ITP Condition # 8.23	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
13	SWHA Nest Abandonment Contingency Plan. The Designated Biologist(s) shall submit a SWHA Nest Abandonment Contingency Plan to CDFW for written approval prior to the start of Covered Activities. The plan shall include, but not be limited to, identification of capture methods, handling methods, methods to return SWHA back into the wild, and the identification of a CDFW-approved wildlife rehabilitation center or veterinary facility. The Permittee shall fund the recovery and hacking (controlled release) of the SWHA nestlings.	ITP Condition # 8.2	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
14	CTS Pre-Activity Clearance Surveys. No more than 14 days prior to starting Covered Activities, the Designated Biologist(s) shall survey the Project Area for individuals of CTS. These surveys shall provide 100 percent visual coverage (including burrow and crevice openings) of the Project Area and a 50-foot buffer zone around the Project Area. If any life stages (adults, eggs, or larvae) of CTS are found, the Designated Biologist(s) shall capture and relocate the CTS as per the CDFW-approved CTS Mortality Reduction and Relocation Plan (Condition of Approval 7.3). The Permittee shall provide the survey results to CDFW in a written report prior to the beginning of Covered Activities.	ITP Condition # 8.5	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
15	Flag Burrows/Crevices. During CTS Pre-Activity Clearance Surveys (Condition of Approval 8.3), the Designated Biologist shall flag all animal burrows and crevices suitable for CTS occupancy within the Project Area including a 50-foot buffer outside those areas to alert work crews to their presence. An avoidance buffer of 50 feet or greater around animal burrows/crevices shall be maintained regardless of if the burrow/crevice is in the Project Area or solely within the Project Area's 50-foot buffer zone. Flagged burrows/crevices which cannot be avoided by at least 50 feet shall be fully excavated in accordance with Condition of Approval 8.5 below.	ITP Condition # 8.6	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
16	Burrow/Crevice Excavation. Prior to initiating Covered Activities within the Project Area and 50-foot buffer zone, animal burrows and crevices identified during the Pre-Activity Clearance Surveys (Condition of Approval 8.3) and flagged (Condition of Approval 8.4), shall be fully excavated by the Designated Biologist(s) based on the approved CTS Mortality Reduction and Relocation Plan (Condition of Approval 7.3). The Designated Biologist(s) shall relocate any live CTS discovered during burrow excavation in accordance with the CDFW-approved CTS Mortality Reduction and Relocation Plan required in Condition of Approval 7.3 above. Excavation shall occur no more than 14 days after the completion of the Pre-Activity Clearance Surveys as described in Condition of Approval 8.3 above.	ITP Condition # 8.5	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
17	CTS Exclusion Fencing. Prior to initiation of Covered Activities and following surveying, flagging, and excavating burrows/crevices in accordance with Conditions of Approval 8.3, 8.4, and 8.5 above, Permittee shall install temporary exclusion fencing around the perimeter of the Project Area to prevent Covered Species from migrating into the Project Area. The Permittee shall submit an CTS Exclusion Fencing Plan to CDFW for review and written approval a minimum of 30 days prior to commencing Covered Activities. The CTS Exclusion Fencing Plan shall include the type of fencing material and detailed design (including maps) and installation methods, gate design and location, and inspection, maintenance, repair, and replacement methods and intervals. The CTS exclusion fence shall be buried a minimum of four inches below ground surface and shall be equipped with one-way exits to avoid entrapment of CTS and other amphibians or reptiles. The Permittee shall also avoid small mammal burrows by a minimum of 50 feet during the installation of the exclusion fencing or as approved in the CTS Mortality Reduction and Relocation Plan required in Condition of Approval 7.3. Installation of exclusion fencing, and initiation of Covered Activities shall not proceed until the CTS Exclusion Fencing Plan has been approved in writing by CDFW.	ITP Condition # 8.8	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
18	Exclusion Fencing Installation. The Designated Biologist(s) shall accompany the exclusion fence construction crew to ensure that CTS are not killed or injured during fence installation. The CTS exclusion fencing shall be supported sufficiently to maintain its integrity under all conditions such as wind and heavy rain for the duration of the Covered Activities. The Designated Biologist(s) shall check the exclusion fence at least once weekly and inform Permittee of necessary maintenance or repairs. Exclusion fence shall be removed immediately upon completion of Covered Activities.	ITP Condition # 8.9	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
19	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 identified routes in the Project Area. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.	ITP Condition # 6.11	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
20	Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.11 of this ITP.	ITP Condition # 6.12	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
21	Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.	ITP Condition # 6.13	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
22	CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.	ITP Condition # 6.14	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
23	Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse from the Project Area, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.	ITP Condition # 6.15	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
25	<u>Covered Species Credits</u> . If the Permittee elects to purchase Covered Species credits to complete compensatory mitigation obligations, then Permittee shall purchase 4 acres of CTS habitat (3 acres of CTS upland habitat credits and 1 acre of CTS breeding habitat credits) and 5 2 acres of SWHA habitat (2 acres of SWHA foraging habitat credits and 3 acres of SWHA nesting habitat credits) and 3 acres of SWHA nesting habitat from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below. 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. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities or within 18 months from the issuance of this ITP if Security is provided.	ITP Condition # 9.1	Before commencing ground or vegetation disturbing activities (or within 18 months of issuance of the ITP if Security is Provided.	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
26	Performance Security: The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 9 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows: <u>Security Amount.</u> The Security shall be in the amount of \$1,027,000.00XXXX. This amount is determined by CDFW based on cost estimates identified by CDFW for purchase of bank credits from a CDFW-approved mitigation or conservation bank authorized for the Project. <u>Security Form.</u> 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. <u>Security Timeline.</u> 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. <u>Security Holder.</u> The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW. <u>Security Transmittal.</u> Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other. <u>Security Drawing.</u> 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. <u>Security Release.</u> 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 all required reports and restoration success standards are met.: Even if Security is provided, the Permittee must complete the required covered species credit purchase 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.	ITP Condition # 10.0 – 10.7	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
DURING CONSTRUCTION					
27	<u>Notification Before Commencement.</u> The Designated Representative shall notify CDFW and provide documentation of compliance with all pre-Project Conditions of Approval at least 14 calendar days before starting Covered Activities within the Project Area.	ITP Condition # 7.1	Entire Project	Permittee	
28	<u>Notification of Non-compliance.</u> The Designated Representative or Designated Biologist shall immediately notify CDFW via email 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 or Designated Biologist 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.	ITP Condition # 7.2	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
29	Designated Biologist On-site. The Designated Biologist shall be on-site during all ground-disturbing or vegetation-disturbing activities that may result in the take of Covered Species. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) check for compliance with all measures of the ITP; (3) check all exclusion zones; and (4) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by the ITP. The Designated Biologist shall conduct compliance inspections a minimum of once a week during periods of inactivity and after clearing, grubbing, and grading are completed.	ITP Condition # 8.3	Entire Project	Permittee	
30	Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist(s) 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(s) in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist(s) 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(s) 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.	ITP Condition # 6.3	Entire project	Permittee	
31	Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.8 and 7.9 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 also include an accounting of the number of acres that have been permanently and temporarily disturbed by the Project within each Work Area, both for the prior month, and the total since ITP issuance, if applicable; the number of acres of habitat disturbance anticipated to occur in each Work Area during the coming monthly, if applicable; a summary of all pre-activity surveys and compliance monitoring conducted during the previous month; and the activities authorized under the Covered Activities which occurred during the previous month. 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 Shaelyn Latronica (Shaelyn.Latronica@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.	ITP Condition # 7.7	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
32	Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 7.9; (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. ASRs shall be submitted to CDFW following the directions provided in Condition of Approval 7.10 above.	ITP Condition # 7.8	Entire Project	Permittee	
33	<u>SWHA Nest(s)</u> . If a SWHA nest is found at or within 0.5 mile of the Project Area, the Designated Biologist shall be present daily for the entire duration of any Covered Activities occurring during the nesting season (February 15 through September 15) and within 0.5 mile of the active nest, to monitor the behavior of the potentially affected SWHA. The Designated Biologist shall order the cessation of all Covered Activities if the bird(s) exhibits any distress and/or abnormal nesting behavior (swooping/stooping, excessive vocalization, distress calls, agitation, failure to remain on nest, failure to deliver prey items for an extended time period, failure to maintain nest, etc.) which may cause reproductive failure (nest abandonment and loss of eggs and/or young). Permittee shall not resume Covered Activities until CDFW has been consulted by the Designated Biologist, and both the Designated Biologist and CDFW confirm that the bird's behavior has returned to normal.	ITP Condition # 8.24	Entire Project	Permittee	
34	<u>SWHA Nest Buffers</u> . The Permittee and Designated Biologist shall ensure that no Covered Activities occur within 100 feet of a SWHA nest during the nesting season (February 15 through September 15). The 100-foot no disturbance buffer shall not be reduced or otherwise modified without prior written CDFW approval. Worker foot traffic, water and restroom facilities, employee break areas (permanent or temporary), and worker vehicle parking is prohibited within 1,000 feet of any SWHA nest without prior written CDFW approval.	ITP Condition # 8.25	Entire Project	Permittee	
35	<u>SWHA Nest Abandonment</u> . If a SWHA nest is abandoned, the Permittee shall notify CDFW immediately and initiate actions to salvage any abandoned eggs or hatchlings in accordance with the CDFW approved Nest Abandonment Contingency Plan required in Condition of Approval 7.4.	ITP Condition # 8.26	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
36	<u>Record of Covered Species Relocation.</u> The Designated Biologist shall maintain a record of Covered Species handled and all documented observations of Covered Species. This information shall include for each animal: (1) date, time, and location (Global Positioning System (GPS) coordinates and maps) and capture and/or observation as well as release, if applicable; (2) the name of the party that identified the Covered Species; (3) circumstances of the incident; (3) the general condition and health, noting all visible conditions including gait and behavior, ectoparasites, injuries, etc.; (4) any diagnostic markings, sex, age (juvenile or adult); (5) actions undertaken; (6) habitat description; and (7) ambient temperature when handled and released or observed. The Designated Biologist shall also submit this information to CDFW's California Natural Diversity Database (CNDDB) as per Condition of Approval 7.12 below. The Designated Biologist shall prepare a Relocation Summary and include it in the Monthly Compliance and Annual Status Reports described in Conditions of Approval 7.10 and 7.11, respectively, below.	ITP Condition # 7.6	Entire Project	Permittee	
37	<u>Covered Species Injury.</u> 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 name of 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 7.14. Notification shall include the date, time, location, and circumstances of the incident and the name of the facility where the animal was taken.	ITP Condition # 8.27	Entire Project	Permittee	
38	<u>Notification of Take or Injury.</u> Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (559) 243-4005 and by email to the CDFW Regional Representative. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, photograph(s), if possible, explanation as to cause of take or injury, and any other pertinent information.	ITP Condition # 7.11	Entire Project	Permittee	
39	<u>Notification of Non-compliance.</u> The Designated Representative or Designated Biologist shall immediately notify CDFW via email 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 or Designated Biologist 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.	ITP Condition # 7.2	Entire Project	Permittee	
40	<u>Construction Monitoring Documentation.</u> 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.	ITP Condition # 6.5	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
41	CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 30 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.	ITP Condition # 7.9	Entire Project	Permittee	
42	<u>Covering, Ramping, and Inspecting Excavations.</u> Permittee shall minimize the potential for Covered Species to become entrapped in excavations to the maximum extent practicable. To prevent inadvertent entrapment of Covered Species or any other animals during the construction phase of the Project, Permittee shall ensure that all excavated, steep-walled holes or trenches are covered, <u>ramped</u> , and inspected as described below. This measure does not apply to burrows excavated for salvaging Covered Species until such excavation is complete and no Covered Species remain in the burrow.	ITP Condition # 8.11	Entire Project	Permittee	
43	<u>Covered Species Observations.</u> During all Covered Activities within the Project Area, all workers shall inform the Designated Biologist(s) if a Covered Species is observed within or near the Project Area. All work in the vicinity of the Covered Species, which could injure or kill the animal, shall cease immediately until the Covered Species moves from the Project Area of its own accord or is relocated by the Designated Biologist(s) in accordance with the CDFW-approved CTS Mortality Reduction and Relocation Plan specified in Condition of Approval 7.3 above.	ITP Condition # 8.12	Entire Project	Permittee	
44	<u>Open Excavation Inspection.</u> The Designated Biologist(s) shall inspect all open holes, sumps, and trenches within the Project Area at the beginning, middle, and end of each day for trapped Covered Species. To prevent inadvertent entrapment of Covered Species, all open trenches, holes, sumps, and other excavations with sidewalls steeper than a 1:1 (45 degree) slope shall have an escape ramp of earth or a non-slip material with a less than 1:1 (45 degree) slope. The Designated Biologist(s) shall thoroughly inspect all trenches, holes, sumps, and other excavations for Covered Species (or other wildlife) before they are backfilled. If any worker discovers that Covered Species have become trapped, Permittee shall cease all Project-related activities in the vicinity and notify the Designated Biologist(s) immediately. Project workers and the Designated Biologist(s) shall provide the opportunity for the Covered Species to escape unimpeded out of the Work Area before allowing work to continue. Alternatively, if the Covered Species will not leave the Project Area unimpeded, the Designated Biologist(s) shall capture and relocate the Covered Species as per the CDFW approved CTS Mortality Reduction and Relocation Plan described in Condition of Approval 7.3, after receiving approval from the CDFW Regional Representative. If, at any time, a Covered Species is found incidentally trapped in the Project Area, the Permittee shall contact CDFW's Regional Representative within one (1) working day of the incident.	ITP Condition # 8.13	Entire Project	Permittee	
45	<u>Dry Season Work.</u> Permittee shall confine ground-disturbing activities to the dry season (generally May 1 to October 31) and shall complete activities prior to the onset of winter rains. Ground-disturbing activities conducted during the dry season shall not occur until on-site ponds are dry, unless surveys are conducted to demonstrate the absence of Covered Species eggs or larvae.	ITP Condition # 8.14	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
46	Rain Forecast. The Designated Biologist(s) and Permittee shall monitor the National Weather Service 72-hour forecast for the Project Area if Covered Activities within CTS habitat are scheduled to occur from October 15 through January 15. If a 70 percent or greater chance of rainfall is predicted within 24 hours of Project activity, the Designated Biologist(s) shall survey the Project Area before Covered Activities begin each day rain is forecast to capture and relocate CTS that are discovered during the surveys. If precipitation begins during Covered Activities, the Designated Biologist(s) shall remain at the Project Area for the duration of the rain event for Covered Activities to continue. If rain exceeds ½ inch during a 24-hour period, all Covered Activities shall cease until it is no longer raining, and no further rain is forecast. Covered Activities may continue in the Project Area under these conditions if the exclusion fence has been installed as required by Conditions of Approval 8.7 and 8.8.	ITP Condition # 8.15	Entire Project	Permittee	
47	Vehicle and Equipment Inspection. Within the Project Area, workers shall inspect under vehicles and equipment for Covered Species before the vehicles and equipment are moved. If a Covered Species is present, the worker shall notify the Designated Biologist(s) and wait for the Covered Species to move unimpeded out of the Project Area. Alternatively, if the Covered Species will not leave the Project Area unimpeded, the Designated Biologist(s) shall capture and relocate the Covered Species as per the CDFW-approved CTS Mortality Reduction and Relocation Plan described in Condition of Approval 7.3, after receiving approval from the CDFW Regional Representative. If, at any time, a Covered Species is found in the Project Area, the Permittee shall contact CDFW's Regional Representative within one (1) working day of discovery.	ITP Condition # 8.16	Entire Project	Permittee	
48	Pipes and other Structures Entrapment Prevention. Permittee shall ensure that all pipes, hoses, conduit, culverts, or similar materials stockpiled or installed in the Project Area are capped or otherwise enclosed at the ends to prevent entry by Covered Species. Workers shall thoroughly inspect all construction pipe, culverts, or other similar structures with a diameter of one inch or greater that are stored for one or more overnight periods for the Covered Species before the object is subsequently moved, buried, or capped. If an individual of the Covered Species is discovered inside a pipe, culvert, or similar structure during inspection, the worker shall notify the Designated Biologist(s) and wait for the Covered Species to move unimpeded to a safe location. Alternatively, the Designated Biologist(s) may move Covered Species out of harm's way outside of the Project Area in compliance with the approved CTS Mortality Reduction and Relocation Plan required in Condition of Approval 7.3. If a Covered Species is found within the Mitigation Site, the Designated Biologist(s) may move the Covered Species to an area where Covered Activities are not planned outside of the Work Areas, and in compliance with the approved CTS Mortality Reduction and Relocation Plan required in Condition of Approval 7.3.	ITP Condition # 8.17	Entire Project	Permittee	
49	Covered Species Observations. During all Covered Activities within the Project Area, all workers shall inform the Designated Biologist(s) if a Covered Species is observed within or near the Project Area. All work in the vicinity of the observed Covered Species, which could injure or kill the animal, shall cease immediately until it moves from the Project Area of its own accord, or the Designated Biologist(s) relocates the Covered Species following the CDFW-approved CTS Mortality Reduction and Relocation Plan specified in Condition of Approval 7.3 above.	ITP Condition # 8.18	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
50	Night Work. All Covered Activities shall terminate 30 minutes before sunset and shall not resume until 30 minutes after sunrise except when night work is associated with an emergency response (defined by an imminent threat to life or significant property). Permittee shall ensure that all vehicle traffic necessary during nighttime hours associated with an emergency response shall be conducted with extra caution to minimize impacts to the Covered Species. Permittee shall use sunrise and sunset times established by the United States Naval Observatory Astronomical Applications Department for the geographic area where the Project is located.	ITP Condition # 8.19	Entire Project	Permittee	
51	<u>Stockpiles</u> . Permittee shall ensure that soil stockpiles are placed where soil shall not pass into potential Covered Species breeding habitat, or into any "Waters of the State," in accordance with Fish and Game Code section 5650. Permittee shall appropriately protect stockpiles to prevent soil erosion. Permittee shall stockpile and stage all materials and equipment in a manner that discourages Covered Species' use. In all locations, Permittee shall not place bundled or loose materials directly on the ground. These materials shall be elevated to discourage use by Covered Species. Permittee shall not place materials outside of exclusion fencing.	ITP Condition # 8.20	Entire Project	Permittee	
52	<u>Record of Handling and Covered Species Reporting</u> . All Covered Species captures, relocations, and observations by the Designated Biologist(s) shall include the following documented information: the date, time, and location of each occurrence using Global Positioning System technology; the name of the party that identified the animal; circumstances of the incident; the general condition and health of each individual; any diagnostic markings, sex, and age (juvenile or adult); actions undertaken; and habitat description. Permittee shall also submit this information to the CNDDB as per Condition of Approval 7.12. This information should also be included in the Monthly Compliance Reports.	ITP Condition # 8.21	Entire Project	Permittee	
53	<u>Best Management Practices</u> . Permittee shall implement Best Management Practices (BMPs), including a Storm Water Pollution Plan and Water Pollution Control Program, to minimize effects to Covered Species during Covered Activities. Permittee shall implement BMPs to prevent sedimentation from entering Environmentally Sensitive Areas and to reduce erosion, dust, noise, and other deleterious aspects of construction-related Covered Activities. These BMPs may include, but not be limited to, silt fencing, temporary berms, restrictions on cleaning equipment in or near Environmentally Sensitive Areas, and temporary sediment disposal.	ITP Condition # 8.22	Entire Project	Permittee	
54	<u>Pesticide Use</u> . Permittee shall ensure that all pesticide use (mixing, application, and clean-up) is done by a licensed or certified applicator in accordance with all applicable state, federal, and local regulations. Permittee shall only apply pesticide sprays via ground application when wind speed measures less than 3 miles per hour. Permittee shall ensure that great care is taken to avoid pesticide drift outside the boundaries of the Project Overburden Site and/or Mitigation Site Work Areas. Permittee shall ensure that any pesticide used where there is the possibility that the pesticide could come into direct contact with water is approved for use in an aquatic environment.	ITP Condition # 8.28	Entire Project	Permittee	
POST-CONSTRUCTION					
55	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.	ITP Condition # 6.15	Post-construction	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
56	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.	ITP Condition # 7.10	Post-construction and after completion of mitigation	Permittee	

Attachment 2

***** Please Note: While use of this form is not mandatory, CDFW strongly recommends completing this form as it will ensure the receipt of adequate information and expedite CDFW review of biologist's qualifications. *****

Name of Biologist & Contact Information

Education: (include year graduated)

Training/Workshops: (be prepared to provide copies of certificates upon request; these should be related to the Covered Species (or similar species) in the Incidental Take Permit)

Certifications: (please provide any copies of a CDFW Scientific Collecting Permit, MOU, or USFWS 10(a)(1)(A)) permit; these should be related to the Covered Species (or similar species) in the Incidental Take Permit)

Species Name #1: (Example: California Tiger Salamander)

Project Name #1 (list the information below for all projects (separately) where biologist worked with this species; projects may be listed more than once under each separate species and please only include projects on the resume that demonstrate experience with the Covered Species (or similar species) in the ITP)

Location:

Project date completed: To and from date (month and year)

Incidental Take Permit (ITP) # (and Other Agency Permits):

Lead biologist Information: Name and contact information (phone number and email address)

Reference: Name and contact information, if different from above (phone number and email address)

Work description:

Estimated Survey Hours:

Estimated Monitoring Hours:

Individuals Observed: # of adults and # of juveniles

Individuals Handled: # of adults and # of juveniles

Burrows excavated:

Project Name #2

Location:

Project date completed: To and from date

Incidental Take Permit # (and Other Agency Permits):

Lead biologist Information: Name and contact information (phone number and email address)

Reference: Name and contact information, if different from above (phone number and email address)

Work description:

Estimated Survey Hours:

Estimated Monitoring Hours:

Individuals Observed: # of adults and # of juveniles

Individuals Handled: # of adults and # of juveniles

Burrows excavated:

Project Name #3 ...

Species Name #2: (Example: Similar or related species to CTS)

Project Name #1 (list the information below for all projects (separately) where the biologist worked with this species)

Location:

Project date completed: To and from date

Incidental Take Permit # (and Other Agency Permits):

Lead biologist Information: Name and contact information (phone number and email address)

Reference: Name and contact information, if different from above (phone number and email address)

Work description:

Estimated Survey Hours:

Estimated Monitoring Hours:

Individuals Observed: # of adults and # of juveniles

Individuals Handled: # of adults and # of juveniles

Burrows excavated:

Project Name #2

Location:

Project date completed: To and from date

Incidental Take Permit # (and Other Agency Permits):

Lead biologist Information: Name and contact information (phone number and email address)

Reference: Name and contact information, if different from above (phone number and email address)

Work description:

Estimated Survey Hours:

Estimated Monitoring Hours:

Individuals Observed: # of adults and # of juveniles

Individuals Handled: # of adults and # of juveniles

Burrows excavated:

Project Name #3 ...

Include any other relevant information to the Covered Species or implementation of Conditions of Approval in the ITP

Attachment 3

The Declining Amphibian Task Force Fieldwork Code of Practice

A code of practice, prepared by the Declining Amphibian Task Force (DAPTF) to provide guidelines for use by anyone conducting field work at amphibian breeding sites or in other aquatic habitats. Observations of diseased and parasite-infected amphibians are now being frequently reported from sites all over the world. This has given rise to concerns that releasing amphibians following a period of captivity, during which time they can pick up unapparent infections of novel disease agents, may cause an increased risk of mortality in wild populations. Amphibian pathogens and parasites can also be carried in a variety of ways between habitats on the hands, footwear, or equipment of fieldworkers, which can spread them to novel localities containing species which have had little or no prior contact with such pathogens or parasites. Such occurrences may be implicated in some instances where amphibian populations have declined. Therefore, it is vitally important for those involved in amphibian research (and other wetland/pond studies including those on fish, invertebrates and plants) to take steps to minimize the spread of disease and parasites between study sites.

1. Remove mud, snails, algae, and other debris from nets, traps, boots, vehicle tires and all other surfaces. Rinse cleaned items with sterilized (e.g. boiled or treated) water before leaving each study site.
2. Boots, nets, traps, etc., should then be scrubbed with 70% ethanol solution (or sodium hypochlorite 3 to 6%) and rinsed clean with sterilized water between study sites. Avoid cleaning equipment in the immediate vicinity of a pond or wetland.
3. In remote locations, clean all equipment as described above upon return to the lab or "base camp". Elsewhere, when washing machine facilities are available, remove nets from poles and wash with bleach on a "delicates" cycle, contained in a protective mesh laundry bag.
4. When working at sites with known or suspected disease problems, or when sampling populations of rare or isolates species, wear disposable gloves and change them between handling each animal. Dedicate sets of nets, boots, traps, and other equipment to each site being visited. Clean and store them separately and the end of each field day.
5. When amphibians are collected, ensure the separation of animals from different sites and take great care to avoid indirect contact between them (e.g. via handling, reuse of containers) or with other captive animals. Isolation from un-sterilized plants or soils which have been taken from other sites is also essential. Always use disinfected/disposable husbandry equipment.
6. Examine collected amphibians for the presence of diseases and parasites soon after capture. Prior to their release or the release of any progeny, amphibians should be quarantined for a period and thoroughly screened for the presence of any potential disease agents.
7. Used cleaning materials (liquids, etc.) should be disposed of safely and if necessary taken back to the lab for proper disposal. Used disposable gloves should be retained for safe disposal in sealed bags.

Attachment 4

[Financial institution letterhead]

IRREVOCABLE STANDBY LETTER OF CREDIT
NO. **[number issued by financial institution]**

Issue Date: **[date]**

Beneficiary:

California Department of Fish and Wildlife
Habitat Conservation Planning Branch
Post Office Box 944209
Sacramento, CA 94244-2090
Attn: HCPB Contract Coordinator

Amount: U.S. \$**[dollar number]** **[(dollar amount)]**

Expiry: **[Date]** at our counters

Dear Sirs:

1. At the request and on the instruction of our customer, **[name of applicant]** ("Applicant"), we, **[name of financial institution]** ("Issuer"), hereby establish in favor of the beneficiary, the California Department of Fish and Wildlife ("CDFW"), this irrevocable standby letter of credit ("Credit") in the principal sum of U.S. \$**[dollar number]** **[(dollar amount)]** ("Principal Sum").
2. We are informed this Credit is and has been established for the benefit of CDFW pursuant to the terms of the incidental take permit for the **[name of project]** issued by CDFW to the Applicant on **[date]** (No. **[number]**) ("Permit").
3. We are further informed that pursuant to the Permit, the Applicant has agreed to complete certain mitigation requirements, as set forth in conditions **[numbers]** in the Permit ("Mitigation Requirements").
4. We are finally informed that this Credit is intended by CDFW and the Applicant to serve as a security device for the performance by the Applicant of the Mitigation Requirements.
5. CDFW shall be entitled to draw upon this Credit only by presentation of a duly executed Certificate for Drawing ("Certificate") in the same form as Attachment A,

which is attached hereto, at our office located at [***name and address of financial institution***].

6. The Certificate shall be completed and signed by an Authorized Representative of CDFW as defined in paragraph 12 below. Presentation by CDFW of a completed Certificate may be made in person or by registered mail, return receipt requested, or by overnight courier.
7. Upon presentation of a duly executed Certificate as above provided, payment shall be made to CDFW, or to the account of CDFW, in immediately available funds, as CDFW shall specify.
8. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give CDFW prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Credit, state the reasons therefore, and await further instruction.
9. Upon being notified that the demand for payment was not effected in conformity with the Credit, CDFW may correct any such non-conforming demand for payment under the terms and conditions stated herein.
10. All drawings under this Credit shall be paid with our funds. Each drawing honored by us hereunder shall reduce, *pro tanto*, the Principal Sum. By paying to CDFW an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.
11. This Credit will be cancelled or the Principal Sum will be reduced upon receipt by us of Certificate of Cancellation/Reduction, which: (i) shall be in the form of Attachment B, which is attached hereto, and (ii) shall be completed and signed by an Authorized Representative of CDFW, as defined in paragraph 12 below.
12. An Authorized Representative shall mean the Director of CDFW; the General Counsel of CDFW; a Regional Manager of CDFW; or the Branch Chief of CDFW's Habitat Conservation Planning Branch.
13. This Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof, unless at least sixty (60) days prior to any such date, we notify CDFW in writing by registered mail, return receipt requested, or by overnight courier that we elect not to consider this Credit extended for any such period.
14. Communications with respect to this Credit shall be in writing and addressed to us at [***name and address of financial institution***], specifically referring upon such writing to this credit by number. The address for notices with respect to this Credit shall be: (i) for CDFW: Department of Fish and Wildlife, Habitat

Conservation Planning Branch, Post Office Box 944209, Sacramento, CA 94244-2090, Attn: HCPB Contract Coordinator; and (ii) for the Applicant: [***name and address of applicant***].

15. This Credit may not be transferred.
16. This Credit is subject to the International Standby Practices 1998 ("ISP 98"). As to matters not covered by the ISP 98 and to the extent not inconsistent with the ISP 98, this credit shall be governed by and construed in accordance with the Uniform Commercial Code, Article 5 of the State of California.
17. This Credit shall, if not canceled, expire on [***expiration date***], or any extended expiration date.
18. We hereby agree with CDFW that documents presented in compliance with the terms of this Credit will be duly honored upon presentation, as specified herein.
19. This Credit sets forth in full the terms of our undertaking. Such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which this Credit is referred to or to which this Credit relates and any such reference shall not be deemed to incorporate herein by reference any document or instrument.

[***Name of financial institution***]

By: _____
Name: _____
Title: _____
Telephone: _____

ATTACHMENT A

CERTIFICATE FOR DRAWING

[CDFW Letterhead]

[Date]

[Name and address of financial institution]

Re: Irrevocable Standby Letter of Credit No. **[number issued by financial institution]**

The undersigned, a duly Authorized Representative of the California Department of Fish and Wildlife ("CDFW"), as defined in paragraph 12 of the above-referenced standby letter of credit ("Credit"), hereby certifies to the Issuer that:

1. **[Insert one of the following statements:** "In the opinion of CDFW, the Applicant has failed to complete the Mitigation Requirements referenced in paragraph 3 of the Credit." **or** "As set forth in paragraph 13, the Issuer has informed CDFW that the Credit will not be extended and the Applicant has not provided CDFW with an equivalent security approved by CDFW to replace the Credit."]
2. The undersigned is authorized under the terms of the Credit to present this Certificate as the sole means of demanding payment on the Credit.
3. CDFW is therefore making a drawing under the Credit in amount of U.S. \$_____.
4. The amount demanded does not exceed the Principal Sum of the Credit.

Therefore, CDFW has executed and delivered this certificate as of this ____ day of **[month]**, **[year]**.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

[Insert one of the following: "Director" **or** "General Counsel" **or** "Regional Manager, [Name of Regional Office]" **or** "Chief, Habitat Conservation Planning Branch"]

ATTACHMENT B

CERTIFICATE FOR CANCELLATION/REDUCTION

[**CDFW Letterhead**]

[**Date**]

[**Name and address of financial institution**]

Re: Irrevocable Standby Letter of Credit No. [**number issued by financial institution**]

The undersigned, a duly Authorized Representative of the California Department of Fish and Wildlife ("CDFW"), as defined in the paragraph 12 in the above-referenced Irrevocable Standby Letter of Credit ("Credit"), hereby certifies to the Issuer that:

1. [**Insert one of the following statements:** "The Applicant has presented documentary evidence of full compliance with the Mitigation Requirements referenced in paragraph 3 of the Credit." **or** "The Applicant has presented documentary evidence of compliance with the following Mitigation Requirement[(s)] referenced in paragraph 3 of the Credit: [**insert brief description of requirement(s) or requirement number(s) completed**]." **or** "The Applicant has provided CDFW with an equivalent security approved by CDFW to replace the Credit."]
2. [**Insert one of the following statements:** "CDFW therefore requests the cancellation of the Credit." **or** "CDFW therefore requests a reduction in the Principal Sum in the amount of \$_____, thereby making the new Principal Sum \$_____."]

Therefore, CDFW has executed and delivered this certificate as of this ____ day of [**month**], [**year**].

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

[**Insert one of the following:** "Director" **or** "General Counsel" **or** "Regional Manager, [**Name of Regional Office**]" **or** "Chief, Habitat Conservation Planning Branch"]

State of California - Department of Fish and Wildlife
MITIGATION PAYMENT TRANSMITTAL FORM
 DFW 1057 (REV.05/18/21)



Project Applicant Instructions: Please fill out and attach this form to payment. For conservation banks, also attach the Bill(s) of Sale for credits sold. One form may be used for multiple transactions, **BUT YOU MUST USE A SEPARATE FORM FOR EACH CHECK YOU TRANSMIT.** Make sure to include Project Name, Project Tracking Number, and ASB Mitigation Tracking Number (if available) on the attached payment type.

1. DATE: _____ TO: _____ Regional Manager _____ Region Office Address	2. FROM: _____ Name _____ Mailing Address _____ City, State, Zip _____ Telephone Number/FAX Number
3. RE: _____ Project Name as appears on permit/agreement	

4. AGREEMENT/ACCOUNT INFORMATION: (check the applicable type)

☐ 2081 Permit
 ☐ Conservation Bank
 ☐ 2835 NCCP
 ☐ 1802 Agreement
 ☐ 1600 Agreement
 ☐ Other _____

Project Tracking Number

5. PAYMENT TYPE (One check per form only): The following funds are being remitted in connection with the above referenced project:

Check information:

Total \$ _____ Check No. _____

Account No. _____ Bank Routing No. _____

a. Endowment: for Long-Term Management Subtotal \$ _____

b. Habitat Enhancement Subtotal \$ _____

c. Security:

1. Cash Refundable Security Deposit Subtotal \$ _____

2. Letter of Credit Subtotal \$ _____

1. Financial Institution: _____

2. Letter of Credit Number: _____

3. Date of Expiration: _____

ACCOUNTING OFFICE USE ONLY	
Description	FI\$Cal Coding
Speedchart (Project, Program, Reference, Fund)	
Reporting Structure	
Category	
Date Established: _____ By: _____	

Please send this form to asbmitigation@wildlife.ca.gov

Attachment 6

Amended Incidental Take Permit No. 2081-2021-096-04-A1

(Minor Amendment No. 1)

1. The Authority section has been amended to read as follows:

Permittee:	Merced County Department of Public Works
Principal Officer:	Dana HertfelderNathan Bray , P.E., Director of Public Works/Road Commissioner
Contact Person:	Oscar Ortiz, Merced County oscar.ortiz@countyofmerced.com
Mailing Address:	345 West 7th Street Merced, California 95341

2. Amended ITP³ Background:

On February 8, 2024, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2021-096-04 (ITP) to Merced County Department of Public Works (Permittee) authorizing take of California tiger salamander (*Ambystoma californiense*) and Swainson's hawk (*Buteo swainsoni*) (collectively, the Covered Species) associated with and incidental to the Black Rascal Creek Flood Control Protection Project (Project) in Merced County, California. The Project as described in the ITP originally issued by CDFW includes the construction and modification of stormwater infrastructure to provide flood attenuation and protection within the Black Rascal Creek watershed to minimize flood risk within the City of Merced and Merced County.

On May 12, 2026, CDFW received an official request from the Permittee and the corresponding fee payment on June 16, 2026, for a Minor Amendment to the ITP to extend the expiration date of the ITP from January 31, 2027, to January 31, 2032. The Project is delayed pending the approval of the following permits associated with the Project: (1) U.S. Army Corps of Engineering (USACE) Section 404 permit No. SPK-2021-00278; (2) USACE Section 408 permit No. 19653; and (3) Central Valley Flood Protection Board Encroachment Permit No. 19643.

CDFW now reissues this ITP. The original ITP includes all the operative provisions as of the effective date of this Amended ITP. Attachment 6 to this Amended ITP shows the specific red-line changes made to the original ITP as a result of Amendment No. 1.

3. Effective Date and Expiration Date of this ITP has been amended to read as follows:

The original ITP was executed in duplicate original form and became effective when a duplicate original was acknowledged by signature of the Permittee on the last page of the

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

original ITP and returned to CDFW's Habitat Conservation Planning Branch. The original ITP's effective date was February 8, 2024. This remains the effective date for the original take authorization. This amended ITP shall become effective ~~when issued~~ as of the date signed by CDFW below. Unless renewed by CDFW, this Amended ITP and its authorization to take the Covered Species shall expire on January 31, ~~2027-2032~~.

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 the Final Mitigation Report Condition of Approval of this ITP.

4. Condition of Approval Monthly Compliance Report (COA 7.7) has been amended to read as follows:

Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in the Compliance Monitoring and Record of Covered Species Relocation Conditions of Approval 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 also include an accounting of the number of acres that have been permanently and temporarily disturbed by the Project within each Work Area, both for the prior monthly, and the total since ITP issuance, if applicable; the number of acres of habitat disturbance anticipated to occur in each Work Area during the coming monthly, if applicable; a summary of all pre-activity surveys and compliance monitoring conducted during the previous month; and the activities authorized under the Covered Activities which occurred during the previous month. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via email to CDFW's Regional Representative, Regional CESA Program, and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is ~~Crystal Sinclair (Crystal.Sinclair@wildlife.ca.gov)~~, Shaelyn Latronica (Shaelyn.Latronica@wildlife.ca.gov), Regional CESA Program email is R4CESA@wildlife.ca.gov, and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

5. The Notices section has been amended to read as follows:

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

~~Crystal Sinclair~~
Shaelyn Latronica
 California Department of Fish and Wildlife
 1234 East Shaw Avenue
 Fresno, California 93710
 Telephone (559) ~~578-0416~~246-2584
Crystal.Sinclair@wildlife.ca.gov
Shaelyn.Latronica@wildlife.ca.gov

6. The Findings Pursuant to CESA have been amended to read as follows:

- (9) CDFW finds that this Amendment is a Minor Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).
- (10) Issuance of this Amendment will not increase the amount of take of the Covered Species compared to the Project as originally approved, nor will this Amendment increase other Project impacts on the Covered Species (i.e., “impacts of taking” as used in Fish and Game Code Section 2081, subd. (b)(2)).
- (11) Issuance of this Amendment does not affect CDFW’s previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

7. The Attachments section has been amended to read as follows:

FIGURE 1	Project Area
FIGURE 2	Habitat Types
FIGURE 3	Basin Inundation Areas
ATTACHMENT 1	Mitigation Monitoring and Reporting Program (MMRP)
ATTACHMENT 2	Biologist Resume Form
ATTACHMENT 3	Declining Amphibian Populations Task Force Fieldwork Code of Practice
ATTACHMENT 4	Letter of Credit Form
ATTACHMENT 5	Mitigation Payment Transmittal Form
<u>ATTACHMENT 6</u>	<u>Minor Amendment No. 1 with Track Changes</u>