



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
South Coast Region  
3883 Ruffin Rd  
San Diego, CA 92123  
[R5LSCCompliance@wildlife.ca.gov](mailto:R5LSCCompliance@wildlife.ca.gov)  
(858) 467-4201  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



February 13, 2025

Hazem Gabr  
Southern California Edison  
2244 Walnut Grove Avenue  
Rosemead, CA 91770  
[Hazem.Gabr@SCE.com](mailto:Hazem.Gabr@SCE.com)

**EXTENSION OF LAKE OR STREAMBED ALTERATION AGREEMENT  
NOTIFICATION NO., EPIMS-VEN-24590-R5, SANTA CLARA RIVER AT SANTA  
PAULA AIRPORT PROJECT**

Dear Hazem Gabr:

The California Department of Fish and Wildlife (CDFW) received your request to extend the above referenced Lake or Streambed Alteration Agreement (Agreement) and extension fee on February 20, 2024. You requested to extend the expiration of your Agreement from February 24, 2024, to February 24, 2026.

Agreement because the measures contained in the Agreement no longer protect the fish and wildlife resources that the activity may substantially adversely affect. CDFW hereby agrees to extend the term of the agreement to February 24, 2026, with edits to the following measures to protect fish and wildlife resources. Edits to the Agreement are shown with track changes in Exhibit A. The revised Agreement is attached as Exhibit B.

All terms and conditions in the Agreement remain in effect unless otherwise noted herein.

Please sign and return one copy of this letter to acknowledge the extension and additional measures to protect fish and wildlife resources. Copies of the Agreement and this extension must be readily available at project work sites and must be presented when requested by a CDFW representative or agency with inspection authority.

If you have questions regarding this letter, please contact Andrew Chambers, Senior Environmental Scientist (Specialist) at (858) 203-5885, or by email at [Andrew.Chambers@wildlife.ca.gov](mailto:Andrew.Chambers@wildlife.ca.gov).

Hazem Gabr  
EPIMS-VEN-24590-R5  
February 13, 2025

Sincerely,

DocuSigned by:  
*Heather A. Pert*  
DF423498814B441...

Heather A. Pert, Environmental Program Manager

cc: California Department of Fish and Wildlife

Heather A. Pert, Environmental Program Manager  
Erika Cleugh, Senior Environmental Scientist (Supervisory)  
Andrew (Andy) Chambers, Senior Environmental Scientist (Specialist)  
Susan (Sue) Howell, Staff Services Analyst

Southern California Edison

Victoria Parsons, [Victoria.Parsons@SCE.com](mailto:Victoria.Parsons@SCE.com)  
Casey Quon, [Casey.Quon@SCE.com](mailto:Casey.Quon@SCE.com)

**ACKNOWLEDGEMENT**

I hereby agree to the above-referenced amendment.

Print Name: Hazem Gabr Date: 2/18/2025

Signed by:  
*Hazem Gabr*  
Signature: 108CBF95B90342D...

**EXHIBIT A**

Tracked changes version of the original final Agreement (see attached .pdf file).

**EXHIBIT B**

Revised version of the Final Agreement as Extended and Amended (see attached .pdf file).

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
SOUTH COAST REGION  
3883 RUFFIN ROAD  
SAN DIEGO, CALIFORNIA 92123



**STREAMBED ALTERATION AGREEMENT**  
EPIMS-VEN-24590-R5 (~~FINAL VERSION~~)  
SANTA CLARA RIVER

HAZEM GABR  
2244 WALNUT GROVE AVENUE, GO-1, QUAD 2C  
ENVIRONMENTAL SERVICE  
ROSEMEAD, CALIFORNIA 91770

**SANTA CLARA RIVER AT SANTA PAULA AIRPORT PROJECT**

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Southern California Edison (SCE; Permittee) or as represented by Hazem Gabr.

**RECITALS**

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on November 25, 2021, that Permittee intends to complete the ~~project~~Project described herein.

WHEREAS, pursuant to Fish and Game Code section 1603, CDFW has determined that the ~~project~~Project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the ~~project~~Project in accordance with the Agreement.

**PROJECT LOCATION**

The Santa Clara River at Santa Paula Airport Project (Project) is located within the Santa Clara River, in the County of Ventura, State of California; Latitude 34.348614°, Longitude -119.052619°; Latitude 34.362030°, Longitude -119.00862°; Latitude 34.361197°, Longitude -119.001310°; Assessor's Parcel Numbers (~~APN~~) 107-0-150-105, 107-0-140-455, 107-0-150-095, 104-0-107-095, 108-0-010-080, 046-0-230-245,

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**Style Definition:** Heading 4,H4: Font: Arial, 12 pt, Not Bold, Outline numbered + Level: 4 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Tab after: 1.1" + Indent at: 1.1"

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046-0-230-235, 046-0-230-215, 046-0-230-205, 046-0-132-030, 046-0-250-120, 046-0-250-170, 046-0-230-135, 046-0-230-215, 046-0-230-260.

## PROJECT DESCRIPTION

The ~~project~~Project is the initial removal and trimming of trees and vegetation to keep minimum clearance distances between vegetation and power line (Figure 1). The Vegetation Management (VM) pre-inspection team will first identify trees or vegetation in need of trim, brushing, or removal by field survey and/ or by utilizing LiDAR aerial imagery. A pre-inspection team conducts field surveys twice to identify location, species, quantity, and prescription necessary to achieve recommended clearance. The pre-inspection team are International Society of Arboriculture (ISA) certified arborists and utilize tools such as rangefinders to accurately assess the tree height and any branches that enter the recommended 12-foot clearance distance for 69 kilovolt (kV) or below lines or 30-foot clearance distance for lines above 69 kV.

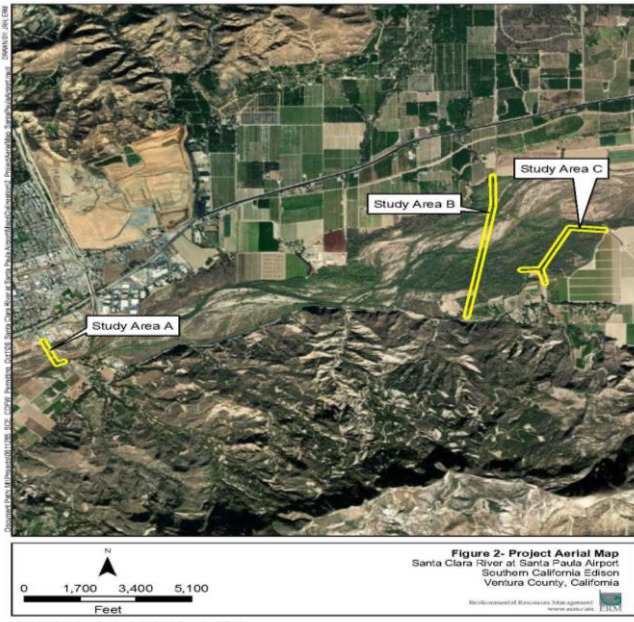
The proposed Project involves trimming and removal of trees and other vegetation within an approximate 21.09-acre area of which 18.80 acres (11,216 linear feet) is in the stream. The Project is located along a portion of SCE's 16kV Petit, 220kV Moorpark-Santa Clara No. 1 & 2, and 16kV Balcom circuits. Total impacts from the year of work equal 17.05 of impacts to the stream and associated *Populus fremontii* - *Fraxinus velutina* - *Salix gooddingii* forest and woodland alliance (Fremont cottonwood forest and woodland) habitat. Staging areas are located on established access roads outside wetted areas.

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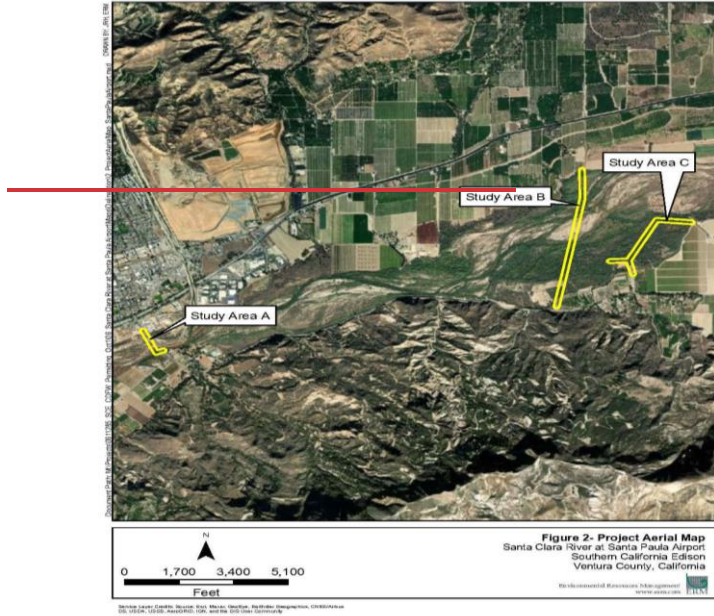
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**Figure 1: Project Location**



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**Table 2: Structures Requiring Brushing**

Work Area	Structure	Circuit Name	Structure Type	Latitude	Longitude
A	4485130E	Petit	Distribution Pole	34.3474	-119.0520
A	4485131E	Petit	Distribution Pole	34.3474	-119.0520
B	7017539/M15-T2	Moorpark-Santa Clara #1&2	Transmission Tower	34.3564	-119.0099
B	7017540/M15-T1	Moorpark-Santa Clara #1&2	Transmission Tower	34.3601	-119.0091
B	7017541/M14-T4	Moorpark-Santa Clara #1&2	Transmission Tower	34.3654	-119.0080
C	1202289E	Balcom	Distribution Pole	34.3575	-119.0030
C	925609E	Balcom	Distribution Pole	34.3581	-119.0032
C	1202290E	Balcom	Distribution Pole	34.3581	-119.0040
C	1202291E	Balcom	Distribution Pole	34.3580	-119.0048
C	925610E	Balcom	Distribution Pole	34.3589	-119.0027
C	925611E	Balcom	Distribution Pole	34.3598	-119.0023
C	925612E	Balcom	Distribution Pole	34.3607	-119.0019

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C	4376251E	Balcom	Distribution Pole	34.3611	-119.0016
C	794042E	Balcom	Distribution Pole	34.3638	-118.9987
C	4327944E	Balcom	Distribution Pole	34.3626	-118.9980
C	1418972E	Balcom	Distribution Pole	34.3626	-118.9969
C	4261888E	Balcom	Distribution Pole	34.3625	-118.9966

Vegetation Trimming:

Trimming actions would include trimming (crown reduction, directional or side pruning) of annual growth or old growth materials that are within the regulatory required setbacks. Trimming of vegetation with a canopy reduction of greater than 50%-percent will result in permanent impacts.

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Vegetation Brushing:

Pole brushing would involve the clearance of all vegetation to bare ground in a 10-foot radius around SCE's utility poles. Clearance is limited to any vegetation with branches less than 4four-inch diameter at breast height (DBH). Any branch or stem greater than 4four inches would be considered for vegetation trimming under line clearing. Vegetation brushing is considered a permanent impact.

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Structure Brushing:

Structure brushing would involve the clearance of all vegetation to bare ground in a 10-foot radius around SCE's utility poles or tower footings. Clearance is limited to any vegetation with branches less than 4four-inch DBH. Any branch or stem greater than 4four inches would be considered for vegetation trimming under line clearing. Complete removal of vegetation is included in structure brushing activities.

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Tree Removal:

This includes full removal with the stump and root system left intact in the ground; no ground disturbing activities would take place. Trees identified for removal are generally hazardous, dead, rotten, diseased, or structurally defective and are tall enough to present a strike hazard. Tree removal of native species would be considered a permanent impact. Tree removal activities will not take place.

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The crew would access the site either on foot, climbing where possible, or from a bucket truck staged on the road or existing road shoulder. The work would be conducted with

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hand-operated equipment such as differing length hand pruners, pruning saw, or chainsaw (refueling) or for pole brushing activity weed whacker; no mechanized equipment or vehicles would enter the drainage except where established access roads exist. A chipper with a collection truck would be utilized and staged on the road or disturbed road shoulder. All cut and chipped material would be contained and disposed of properly off-site.

**PROJECT IMPACTS**

Existing fish or wildlife resources the ~~project~~Project could substantially adversely affect include:

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**Fish:** southern California steelhead (*Oncorhynchus mykiss*), Santa Ana sucker (*Catostomus santaanae*), unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*);

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**Amphibians:** western toad (*Bufo boreas*), Baja California treefrog (*Pseudacris hypochondriaca*), California treefrog (*Pseudacris cadaverina*);

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**Reptiles:** two-striped gartersnake (*Thamnophis hammondi*), coast horned lizard (*Phrynosoma blainvillii*), coastal whiptail (*Aspidoscelis tigris stejnegeri*), California legless lizard (*Anniella pulchra*), western fence lizard (*Sceloporus occidentalis*), common side-blotched lizard (*Uta stansburiana*), western pond turtle (*Emys marmorata*);

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**Birds:** least Bell's vireo (*Vireo bellii pusillus*), western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), southwestern willow flycatcher (*Empidonax traillii extimus*), California condor (*Gymnogyps californianus*), white-tailed kite (*Elanus leucurus*), yellow warbler (*Setophaga petechia*), hooded oriole (*Icterus cucullatus*), western tanager (*Piranga ludovicaiana*), black-headed grosbeak (*Pheucticus melanocephalus*), California towhee (*Melospiza crissalis*), spotted towhee (*Pipilo maculatus*), lesser goldfinch (*Spinus psaltria*), house finch (*Haemorhous mexicanus*), ash-throated flycatcher (*Myiarchus cinerascens*), red-tailed hawk (*Buteo jamaicensis*), Costa's hummingbird (*Calypte costae*), western scrub-jay (*Aphelocoma californica*), western meadowlark (*Sturnella neglecta*), American crow (*Corvus brachyrhynchos*), common raven (*Corvus corax*), northern mockingbird (*Mimus polyglottos*), California quail (*Callipepla californica*), turkey vulture (*Cathartes aura*), mourning dove (*Zenaida macroura*), phainopepla (*Phainopepla nitens*), acorn woodpecker (*Melanerpes formicivorus*), wrenit (*Chamaea fasciata*), bald eagle (*Haliaeetus leucocephalus*), Bell's sparrow (*Amphispiza belli*), Nuttall's woodpecker (*Picoides nuttallii*), oak titmouse (*Baeolophus inornatus*), rufous-crowned sparrow (*Aimophila ruficeps*), yellow-rumped warbler (*Dendroica coronate*);

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**Mammals:** pallid bat (*Antrozous pallidus*), coyote (*Canis latrans*), mule deer (*Odocoileus hemionus*), California ground squirrel (*Otospermophilus beecheyi*), San Diego desert wood rat (*Neotoma lepida intermedia*);

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**Plants:** white rabbit-tobacco (*Pseudognaphalium leucocephalum*), California sagebrush (*Salvia leucophylla*), laurel sumac (*Malosma laurina*), black cottonwood (*Populus trichocarpa*), coast live oak (*Quercus agrifolia*), black willow (*Salix nigra*), cottonwood (*Populus* sp.), arroyo willow (*Salix lasiolepis*), willow (*Salix* spp.) and blue elderberry (*Sambucus nigra* ssp. *caerulea*);

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And all other riparian/wetland vegetation which provides habitat for these species and all other aquatic and wildlife resources in the Project vicinity.

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The adverse effects the ~~project~~Project could have on the fish or wildlife resources identified above include: loss of natural bed or bank; change in contour of bed, channel, or bank; change in gradient of bed, channel, or bank; change in channel cross-section; loss of bank stability over time; increase of bank erosion over time; change in composition of channel materials; soil compaction or other disturbance to soil layer; short-term release of contaminants; long-term release of contaminants; loss and decline of riparian and/or emergent marsh habitat; colonization by exotic plant or animal species; loss and decline of instream channel habitat; change to, or loss or decline of natural bed substrate; loss of nesting and foraging habitat of listed species; disruption to nesting birds and other wildlife; direct take of terrestrial species; disturbance from ~~project~~Project activities; loss or decline of aquatic species' habitat; loss of channel shading; loss of refugia sites within the bank and channel; loss or impediment of terrestrial animal species travel routes due to temporary structures; change in stream flow; change in flow depth, width, or velocity; change in channel form; and degradation of water quality.

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The ~~project~~Project will impact 47.023.022 acres of Fremont cottonwood forest and woodland habitat within the stream, with associated changes to the bed, bank, and channel, from vegetation management activities, based on the revised Project impacts provided by Permittee to CDFW on October 3, 2024.

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## MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

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### 1. Administrative Measures

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Permittee shall meet each administrative requirement described below.

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- 1.1 Habitat Classification and Impacts Analysis. Prior to initiation of Project activities, the Permittee shall submit to CDFW revised vegetation mapping that verifies the habitat classification and impact acreages for the Project. Habitat types shall be identified according to Sawyer et al. 2009 A Manual of California Vegetation. Habitat mapping at the alliance level will help establish baseline vegetation conditions. In addition to this mapping, Permittee shall provide CDFW with a figure that shows an overlay of this vegetation mapping by habitat type as well as the type of impacts the vegetation will be subject to. These impacts include, but are not limited to, trimming, brushing, and removal. Permittee shall quantify the impacts resulting from this Project by habitat type and state whether the impacts are permanent or temporary in nature.
- 1.2 Least Bell's Vireo, Southwestern Willow Flycatcher, and Western Yellow-billed Cuckoo Protocol Level Surveys. Prior to initiation of Project activities, the Permittee shall submit to CDFW the results of protocol level surveys for least Bell's vireo, southwestern willow flycatcher, and western yellow-billed cuckoo. Permittee shall adhere to Measure 2.14 for guidance on how these surveys shall be conducted and reporting measures.
- 1.3 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the ~~project~~Project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.4 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the ~~project~~Project at the ~~project~~Project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.5 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the ~~project~~Project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.6 Project Site Entry. Permittee agrees that CDFW personnel may enter the ~~project~~Project site at any time to verify compliance with the Agreement.
- 1.7 Property Not Owned by Permittee. To the extent that the Protective Measures of this Agreement provide for activities on another owner's property, they are agreed to with the understanding that Permittee shall first acquire the legal right to enter.
- 1.8 Notification Requirements. CDFW requires that Permittee: a) immediately notify CDFW in writing if monitoring reveals that any of the protective measures were not implemented during the period indicated in this program, or if it anticipates that

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measures will not be implemented within the time period specified; and, ~~b2~~) immediately notify CDFW if any of the protective measures are not providing the level of protection that is appropriate for the impact that is occurring, and recommendations, if any, for alternative protective measures.

- 1.9 Compliance. CDFW may, at its sole discretion, review relevant documents maintained by Permittee, interview Permittee's employees and agents, inspect the work site, and take other actions to assess compliance with or effectiveness of protective measures in this Agreement. CDFW shall verify compliance with protective measures to ensure the accuracy of Permittee's mitigation, monitoring, and reporting efforts.
- 1.10 Designated Biologist. At least 30 days prior to initiating ground- or vegetation-disturbing activities, Permittee shall submit to CDFW for review and approval a list of biological monitors (Designated Biologist) that will be involved with the ~~project~~Project. The list of Designated Biologists shall be provided to CDFW as soon as possible and include their names, qualifications, experience, and contact information. Designated Biologist shall: ~~a1~~) be knowledgeable and experienced in the biology and natural history of local plant and wildlife resources; ~~b2~~) be able to identify resources that are or have the potential to be present at the ~~project~~Project area; ~~e3~~) have previous biological monitoring experience on construction projects; ~~e4~~) have at least three ~~(3)~~ years of field experience conducting general and protocol level nesting bird surveys related to finding nests and monitoring them for the specific purpose of determining breeding status, egg incubation, chick maturity, and estimating fledge date; ~~e5~~) have the necessary experience and/or certifications for conducting protocol and focused surveys for species that may be present in the ~~project~~Project area; ~~f6~~) when needed, have obtained the proper documentation in regards to Scientific Collecting Permits (SCP) or Memorandum of Understanding (MOU).
- 1.11 Designated Biologist – Monitoring. A Designated Biologist shall be on-site to monitor all ~~project~~Project activities within and adjacent to streambed areas.
- 1.12 Agreed Work Activities. The activities identified in the above ~~project~~Project description constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that Permittee is precluded from doing other activities within the streams identified within the ~~project~~Project location. However, activities not specifically agreed to and resolved by this Agreement shall be subject to a separate notification.
- 1.13 Weather Limitations. Permittee's activities within the drainage shall be restricted to periods of dry weather (with less than a 40--percent chance of rain). Permittee shall monitor the National Weather Service ~~(NWS)-72-hr~~hour forecast for the ~~project~~Project area. No work shall occur when the stream is actively flowing, ponded, or during a dry-out period of 24 hours after the wet weather. Weather forecasts shall be documented upon request by CDFW.

## 2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

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2.1 Protected Species. This Agreement does not authorize take, incidental or otherwise, of any protected species. For the purpose of this Agreement, "protected species" means the following: A species fully protected under state law; a candidate species or species listed as threatened or endangered under the California Endangered Species Act (CESA; Fish & G. Code § 2050 et seq.) and/or the Endangered Species Act (ESA; 16 U.S.C. § 1531 et seq.); as State-listed rare plant species; or any other species for which take is prohibited under State or federal law.

2.2 Incidental Take Permit. An Incidental Take Permit (ITP) from CDFW may be required if the ~~project, project~~Project, Project construction, or any ~~project~~Project-related activity during the life of the ~~project~~Project will result in "take," as defined by the Fish and Game Code, of any species protected by CESA [Fish & G. Code, §§86, 2080, 2081, subd. (b) (c)]. This Agreement does not authorize take of any rare, threatened, or endangered species that may occur within or adjacent to the proposed work area, including least Bell's vireo. If there is a potential for take, Permittee shall immediately consult CDFW and obtain the necessary state permits and/or submit plans to avoid any impacts to the species. Consultation with U.S. Fish and Wildlife Service or National Ocean and Atmospheric Administration would be required to receive take authority for federally threatened and endangered species.

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2.3 Fully Protected Species. This Agreement does not authorize take, incidental or otherwise, of any fully protected species, including white-tailed kite, California condor, and unarmored threespine stickleback.

State of California fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock (Fish & G. Code §§ 3511, 4700, 5050 and 5515).

2.4 Reporting Sensitive Species Observations to the California Natural Diversity Database (CNDDDB). Permittee shall be responsible for reporting<sup>1</sup> all observations of threatened, endangered, or species of special concern to the CDFW Natural Diversity Data Base (CNDDDB) within 14 days of the sighting. ~~Information can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>~~ This includes submitting observations for sightings that occurred for ~~project~~Project surveys

<sup>1</sup> Information can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

already conducted and for the term of this Agreement. If observation forms are submitted, please include local CDFW personnel on any email or submit copies of the forms as an appendix to any future reports (this will help CDFW to ensure the data is recorded). For bird species, the CNDDDB will only accept observations that include confirmed nesting and/or breeding activities (with the exception for wintering observations of the burrowing owl).

- 2.5 Environmental Education Program/Materials. Educational materials shall be created and incorporated into an environmental training, to be conducted for all ~~project~~Project personnel entering the ~~project~~Project area where sensitive habitats and/or species may be present. Educational materials may be brief and concise but should illustrate sensitive species and their habitat, discuss any specific measures to protect the species, what to do if the species is observed, legal protections for those species, penalties for violations, and so forth. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site.

### Biological Resources

- 2.6 Pre-Work General Biological Surveys. Permittee shall have the Designated Biologist conduct a minimum of one ~~(1)~~ pre-~~project~~Project survey within and adjacent to the proposed work area within a ~~ten~~10-day period prior to the start of vegetation trimming and removal activities. Pre-~~project~~Project surveys shall include: ~~a~~1) general surveys for botanical and wildlife resources; ~~b~~2) the identification of any active burrows and/or woodrat nests (if active, they should be recorded, monitored for species observations, flagged, and mapped); and, ~~c~~3) work areas with flowing or standing water shall be visually surveyed for any aquatic species that may be impacted by ~~project~~Project activities. Survey results, including negative findings, analysis, recommendations, and field notes shall be submitted to CDFW for review no later than 48 hours prior to the start of ~~project~~Project activities. If any special-~~s~~status species are observed during the surveys, Permittee shall not commence with work activities and will contact CDFW immediately.
- 2.7 Work Hours. All work activities shall be confined to daylight hours. For purposes of this Agreement, "daylight hours" are defined as that daytime period between 30 minutes after sunrise and 30 minutes before sunset.
- 2.8 Listed and Other Special-~~s~~Status Species. Pre-activity surveys for potential rare, listed, or other sensitive status species shall be conducted by a ~~qualified wildlife biologist~~ (Designated Biologist) within 30 days prior to the start of any Project activity. Surveys shall be conducted in the Project work area and all access routes to avoid and minimize incidental take, confirm previous observations, identify any areas potentially occupied by listed or sensitive species, and clearly mark all resources to be avoided by Project activities. If any CESA-listed or ESA-listed species or candidate species are found or could be impacted by the work proposed, Permittee shall notify CDFW of the discovery prior to commencement of

any Project-related activity. An amended Agreement and/or a State Incidental Take Permit, pursuant to Fish and Game Code § 2081(b), and a new CEQA analysis may be necessary before the Project can begin. A Pre-Activity Survey Report shall be submitted to CDFW within ~~four~~<sup>one</sup> week of completing surveys. Surveys for listed or special-status species can run occur during general pre-activity surveys.

2.9 Southern California Steelhead. Southern California steelhead have been documented in Santa Clara River. In June 2021 the Fish and Game Commission (Commission) received a petition to list southern California steelhead as endangered under CESA. On May 13, 2022, the Commission provided public notice southern California steelhead are a candidate species under CESA.

No ~~project~~<sup>Project</sup> activities, including access, shall be conducted within flowing or ponded water in or near the Project area, or that may otherwise affect surface flows.

2.9.1 Southern California Steelhead Weather Restrictions. Work activities shall cease, and the ~~project~~<sup>Project</sup> site cleared of all work materials, once substantial rains begin. Substantial rains, for the purpose of this agreement, include rain that does not absorb into the ground within 24 hours of the rain event or triggers steelhead to migrate upstream.

2.10 Santa Ana Sucker, and Unarmored Threespine Stickleback Protection. To prevent any impact to southern California steelhead, Santa Ana sucker, and unarmored threespine stickleback, all work shall be completed without water contact techniques so that no work, including access, shall be performed in areas where there is any water present. Additionally, no dewatering activities are authorized. Unarmored threespine stickleback is a state fully protected species (see ~~Avoidance and Minimization~~<sup>Avoidance and Minimization</sup> Measure 2.3).

2.11 Take of Nesting Birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code Section 3513 makes it unlawful to take or possess any migratory nongame bird or part thereof except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918 (MBTA; 16 U.S.C. § 703 et seq.) before January 1, 2017, and subsequent rules and regulations adopted pursuant to the MBTA that are consistent with the Fish and Game Code. The issuance of this Agreement does not in any way exempt or excuse compliance with these statutes.-

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2.12 Nesting Birds. If construction or vegetation removal occurs between February 1 to September 15 (January 1 to July 31 for raptors), then Permittee shall make every effort to clear vegetation before February 1 (January 1 for raptors) and shall implement one of the following measures to avoid and minimize impacts to nesting birds.

2.12.1 The Designated Biologist shall survey for breeding/nesting habitat within and adjacent to the Project site for breeding/nesting birds. A minimum of two ~~(2)~~ breeding/nesting bird surveys shall be conducted during a one-~~(1)~~-week period with the last survey being conducted no more than 72 hours prior to initiation or continuation of Project activities within CDFW jurisdiction. Species that have established protocol survey guidelines shall be conducted using the most current protocol survey guidelines in the appropriate season prior to implementation of Project activities. The Designated Biologist shall conduct surveys for white-tailed kite, willow flycatcher, yellow warbler, least Bell's vireo, southwestern willow flycatcher, western yellow-billed cuckoo, and other Species of Concern likely to be found in the area or using the area to forage during the proposed Project activities. The Designated Biologist shall provide CDFW field notes or other documentation within 24 hours of completing the surveys. The report shall include how impacts to any nesting birds will be avoided. The Designated Biologist shall implement a default 300-foot minimum avoidance buffer for all common passerine birds and 500-foot minimum avoidance buffer for all special-status passerine and raptor species. The breeding habitat/nest site shall be fenced and/or flagged in all directions, and this area shall not be disturbed until the nest becomes inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, and the young will no longer be impacted by the Project. Observations of breeding/nesting threatened or endangered bird species during surveys shall be reported immediately to CDFW. If a lapse in Project-related work of five-~~(5)~~ days or longer occurs, another survey and consultation with CDFW shall be required before Project work can be reinitiated.

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2.12.2 The Permittee may propose an alternative plan for avoidance of nesting birds for CDFW concurrence.

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2.13 Take of Bird Nests. Permittee shall not take or destroy nests (or eggs) of birds that are designated under Federal and California State laws, MBTA and Fish and Game code sections 3503, 3503.5, 3511, and 3513.

2.14 Least Bell's Vireo, Western Yellow-billed Cuckoo, and Southwestern Willow Flycatcher. If Project activities cannot be completed outside the nesting season for



these species (February 1 through September 15), the Permittee shall postpone and/or cease work until the following conditions have been met:

2.14.1 Prior to initiation of Project activities, focused surveys following United States Fish and Wildlife Service (USFWS) protocols for least Bell's vireo, western yellow-billed cuckoo, and southwestern willow flycatcher shall be conducted during the breeding season and during morning hours and under appropriate weather conditions. The physical extent of the survey area shall be approved by CDFW prior to commencing surveys and shall include indirectly affected and buffer areas. Survey results shall be submitted in writing to CDFW for review and concurrence prior to start of work activities. This Agreement does not authorize take of CESA-listed species. Any such take shall require separate permitting. Liability for any take of such listed species remains the separate responsibility of Permittee for the duration of the Project (see Measure 2.1).

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2.14.2 ~~Survey protocol for least Bell's vireo can be found at: <https://www.fws.gov/sites/default/files/documents/survey-protocol-for-least-bells-vireo.pdf>. The surveys~~The surveys<sup>2</sup> shall include all eight surveys described in the protocol, at least 10 days apart, between April 10 and July 31, during morning hours and under appropriate weather conditions.

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2.14.3 ~~Survey protocol for southwester willow flycatcher can be found at: <https://pubs.usgs.gov/tm/tm2a10/pdf/tm2a10.pdf>.~~Please note that the survey protocol for southwestern willow flycatcher<sup>3</sup> requires a USFWS-permitted biologist to conduct three to five surveys over the course of the three survey periods (Survey Period 1: May 15 to May 31, Survey Period 2: June 1 to June 24, Period 3: June 25 to July 17) at least five days apart. Permittee shall provide CDFW with documentation of USFWS approval of the biologist prior to the start of the surveys.

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~~2.14.4 Survey protocol for western yellow-billed cuckoo can be found at: <https://ipac.ecosphere.fws.gov/guideline/survey/population/6901/office/654-13.pdf>.~~

<sup>2</sup> Survey protocol for least Bell's vireo can be found at: <https://www.fws.gov/sites/default/files/documents/survey-protocol-for-least-bells-vireo.pdf>.

<sup>3</sup> Survey protocol for southwester willow flycatcher can be found at: <https://pubs.usgs.gov/tm/tm2a10/pdf/tm2a10.pdf>.

2.14.4 Surveys for western yellow-billed cuckoo shall follow the USFWS protocol<sup>4</sup>.

2.14.5 If survey results indicate least Bell's vireo, western yellow-billed cuckoo, and/or southwestern willow flycatcher are present, the following avoidance measures shall be implemented:

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2.14.5.1 No construction or vegetation removal shall take place February 1 through September 15.

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2.14.5.2 –If least Bell's vireo, western yellow-billed cuckoo, and/or southwestern willow flycatcher is present and the avoidance measures identified above cannot be implemented, take may result, and an Incidental Take Permit (ITP) should be applied for and obtained from the CDFW. An ITP will include the following measures for minimization and mitigation: construction buffers, a biological monitor, sound walls, and habitat replacement.

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2.14.6 If survey results indicate least Bell's vireo, western yellow-billed cuckoo, and/or southwestern willow flycatcher are not present, a Designated Biologist shall be present on site during all work activities to monitor for late season nest establishment through September 15. If construction activities stop for more than three (3) days, a Designated Biologist shall conduct a focused survey for least Bell's vireo and southwestern willow flycatcher following USFWS protocols and submit the results to CDFW for review prior to re-initiation of Project activities.

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2.15 White-Tailed Kite and California Condor. The Designated Biologist shall survey the proposed work area to verify the presence or absence of white-tailed kite and California condor. Survey results, including locations of any detected individuals, negative findings, analysis, recommendations, and field notes shall be submitted to CDFW for review a minimum of five (5) days before the start of work or two (2) weeks after the conclusion of the survey, whichever comes first. This survey shall be completed before the start of work or if there is a pause in Project-related activities of five (5) days or more. Work shall not commence or continue until any white-tailed kite or California condor move from the area of their own volition. CDFW shall be notified of any white-tailed kite or California condor sightings within 1,000 feet of the work area. All observations must be reported to CDFW within 12 hours of observation. White-tailed kite and California condor are state fully protected species (see Avoidance and Minimization Measure 2.3).

<sup>4</sup> Survey protocol for western yellow-billed cuckoo can be found at: <https://ipac.ecosphere.fws.gov/guideline/survey/population/6901/office/65413.pdf>.

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- 2.16 California Legless Lizard and Coast Horned Lizard. Prior to work within suitable habitat the Designated biologist shall conduct a pre-activity survey for these species within 48 hours prior to starting Project activities. The biologist will identify and flag areas suitable to store equipment to prevent unintended impacts to buried lizards. Areas that cannot be avoided, or will require removal of ground cover used by the species, shall be gently raked with a hand tool (e.g., a garden rake) to a depth of two inches to locate any lizards that could be under the surface. Individuals of these species found in the work area shall be allowed to leave the ~~project~~Project work area of their own volition. Daily sweeps of overland travel routes shall be surveys for these species prior to ingress and egress. If any individuals are observed the details shall be included in the Post-Project Report (Reporting Measure ~~54.5~~).
- 2.17 Two Striped Garter Snake and Western Pond Turtle. Any individuals of these species discovered at the site during Project activities shall be allowed to move out of the Project area of their own volition. If any individuals are observed the details shall be included in the Post-Project Report (Reporting Measure ~~54.5~~).
- 2.18 Woodrat Middens. A preconstruction survey for woodrat middens by a ~~qualified~~ Designated Bbiologist shall be conducted within two ~~(2)~~ weeks prior to Project activities. Survey results, including locations of any detected individuals or middens displayed on a map, negative findings, analysis, recommendations, and field notes shall be submitted to CDFW for review and approval no later than 48 hours prior to the start of Project activities. If woodrat middens are present, then the analysis and recommendation section shall include measures that will be taken for avoidance based on species- and site-specific information. Should any woodrat individuals or middens be present at the Project site, the Permittee shall avoid all detected individuals and middens with a 500-foot buffer. CDFW shall review and provide written approval of other avoidance measures provided by the Designated Biologist in their report. The Designated Biologist shall not implement any additional avoidance measures aside from the 500-foot buffer without written approval from CDFW.
- 2.19 Special-~~s~~-Status Plants. Special-~~s~~-status plant species (including but not limited to white rabbit-tobacco) have the potential to occur on the Project work area where suitable habitat is present. Therefore, in areas scheduled for vegetation removal to bare ground or other activities that could ~~impacts~~impact special-~~s~~-status plants, Permittee shall conduct surveys during the blooming period prior to the start of those activities, using the CDFW 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>).<sup>5</sup> Survey Reporting shall be provided to CDFW at least ~~4~~one week prior to the start of vegetation removal activities. If sensitive plant species are identified, Permittee shall identify them with flagging and avoid with a 25-foot no-disturbance buffer during Project activities. If this avoidance is not feasible or work begins prior to

<sup>5</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

blooming season, Permittee shall consult with CDFW to determine whether a buffer reduction or alternative minimization measure for non-listed species is possible. Permittee shall not encroach on the 25-foot buffer unless CDFW provides advance, written approval to do so.

2.20 Non-listed Species and other vertebrates. The Designated Biologist shall be present during work in all streams and associated vegetation areas during all vegetation-removal to monitor for non-listed, special-status, and/or common ground-dwelling vertebrates encountered in the path of ~~project~~Project-related activities. Any individuals found shall not be harassed and shall be allowed to leave the ~~project~~Project area unharmed. If necessary, the Designated Biologist shall make every effort to move the species out of harm's way to the extent feasible by doing one of the following: (1) Utilize shovel, rake, or similar hand tool to gently re-direct the animal out of work area; and (2) Install exclusionary fencing to prevent species from re-entering disturbance area. The Designated Biologist shall have the authority to temporarily stop construction activities until the species is determined to be out of harm's way to an area with suitable habitat that will not be disturbed by ~~project~~Project activities. Should CDFW personnel visit the site during vegetation removal activities occurring within streams and associated vegetation and no Designated Biologist is available, Project activities within streams and associated vegetation shall be halted. Any wildlife encountered during surveys or work activities; the details shall be included in the Post-Project Report (Reporting Measure ~~54.5~~).

2.21 Bat Surveys. The Designated Biologist shall conduct a presence/absence survey for bats within a 300-foot buffer of the Project site. Trees, rocky cliff faces, caves, buildings, large shrubs, bridges, and culverts shall be surveyed. These presence/absence surveys shall be performed. The survey shall include a daytime and dusk survey being conducted no more than three ~~(3)~~ days before initiation of Project activities. The survey shall be conducted at minimum 30 minutes before sunset through 90 minutes after sunset. If Project activities are paused for three ~~(3)~~ days or more, then an additional survey shall be conducted prior to re-initiation of Project activities. Negative survey results shall be provided to CDFW prior to commencing Project activities or prior to re-initiation Project activities. If bats are found, CDFW shall be immediately notified (within 24 hours). The Permittee shall implement at least a 300-foot no-work buffer around bat roosts, and the Designated Biologist shall monitor the area for sensitivity to Project activities. If bats roosts appear to be disturbed, the Project activities shall immediately stop. The Permittee shall contact CDFW for additional measures and receive approval prior to resuming Project-related activities. CDFW reserves the right to provide additional provisions to this Agreement designed to protect nesting/roosting bats.

2.21.1 If avoidance requirements of the 300-foot no-work buffer around bat roosts cannot be met, Permittee may propose an alternative buffer for CDFW

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concurrency.

2.22 Bat Roosts Avoidance and Impact Minimization. To avoid the direct loss of bats that could result from removal of trees, vegetation, and/or structures that may provide day or night roost habitat (e.g., in cavities or under loose bark), the Permittee shall implement the following measures for all vegetation removal and structure removal authorized under this Agreement.

2.22.1 If bats are present, Permittee should make every attempt to avoid suitable bat roosting tree/structure removal from March 1 to September 30 to avoid impacts to bat maternity season. Trees and/or structures determined to be maternity roosts shall be left in place until the end of maternity season or until Designated Biologist verifies no pregnant females and young in non-volant stage are present.

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2.22.2 No less than three ~~(3)~~ days before scheduled initial vegetation removal and structure removal, the Permittee shall have the Designated Biologist approved by CDFW, specifically for bats, conduct pre-construction reconnaissance surveys to identify those trees and/or structures proposed for disturbance that could provide hibernacula, roosting, or nursery colony habitat for bats.

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2.22.3 Trees that are observed to have bat roosts shall not be sawed up or mulched immediately. A period of at least 24 hours, and preferably 48 hours at discretion of the Designated Biologist and/or CDFW, shall elapse prior to such operations to allow bats the additional opportunity to escape.

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2.22.4 If bats are not detected, but the Designated Biologist determines that roosting bats may be present at any time of year, it is preferable to slowly push any tree/structure down under operator's control using heavy machinery rather than felling it with a chainsaw. In order to ensure the optimum warning for any roosting bats that may still be present, the tree should be pushed lightly two to three times, with a pause of approximately 30 seconds between each nudge to allow bats to become active. The tree should then be pushed to the ground slowly and should remain in place until it is inspected by the Designated Biologist.

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2.22.5 The Designated Biologist shall document all pre-construction reconnaissance survey activities and prepare a summary report including a map of confirmed locations of bat roosts to CDFW upon completion of pre-construction

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reconnaissance surveys.

2.23 Care of Injured Bats. The Designated Biologist shall immediately transport bats to a CDFW-approved wildlife rehabilitation or veterinary facility if they are injured because of exclusion activities or structure demolition. Permittee shall identify an appropriate wildlife care facility before starting exclusion or demolition activities. Permittee shall bear any costs associated with the care or treatment of such injured bats.

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2.24 Capture of Injured Bats. The Designated Biologist shall capture injured bats by hand capture or methods approved by CDFW. Permittee shall not use mist nets or harp traps as capture techniques.

2.24

Prior to handling injured bats, the Designated Biologist is strongly encouraged to have received appropriate pre-exposure rabies vaccinations and boosters, and/or have maintained a rabies antibody titer recommended by the U.S. Department of Health and Human Services CDC and the California Department of Public Health (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Rabies.aspx>).<sup>6</sup>

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2.25 Care and Transport of Injured Bats. The Designated Biologist shall place captured bats in individual holding bags. The Designated Biologist shall place the holding bags inside a large plastic cooler on a stable surface away from Project construction and repairs to prevent tipping or other disturbance to the cooler. The cooler is intended to maintain a steady temperature for the bats, as well as to protect them from injury from debris, being stepped on, or any other external threat. The cooler shall not be completely closed to prevent suffocation of the bats inside the cooler.

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2.26 Invasive Species. Permittee shall conduct ~~project~~Project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), from one ~~project~~Project site and/or watershed to another. Prevention BMPs and guidelines for invasive plants can be found on the California Invasive Plant Council's website at: <http://www.cal-ipc.org/ip/prevention/index.php> and for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: <http://www.protectyourwaters.net/>.<sup>7</sup>

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2.27 Notification of Invasive Species. Permittee shall notify CDFW immediately if an invasive species not previously known to occur within the ~~project~~Project site is

<sup>6</sup> <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Rabies.aspx>  
<sup>7</sup> <http://www.protectyourwaters.net/>

discovered during ~~project~~Project activities by submitting a completed Suspect Invasive Species Report ~~(available online at: <https://wildlife.ca.gov/Conservation/Invasives/Report>)~~<sup>8</sup> and photos to the Invasive Species Program by email at: [invasives@wildlife.ca.gov](mailto:invasives@wildlife.ca.gov). Notification may also be provided by calling (866) 440-9530. Upon receiving notification, CDFW will provide Permittee with guidance for further action as appropriate to the species. A copy of the Suspect Invasive Species Report and photos shall be included in the Post-Project Report (Reporting Measure ~~54~~.5).

2.28 Remove Invasive Vegetation by Hand. Whenever practicable, invasive species shall be removed by hand or by hand-operated power tools rather than by chemical means. Where chemical control of non-native vegetation is deemed necessary within the bed, bank, or channel of the stream, and there is a possibility that the herbicides could come into contact with water, Permittee shall employ only those herbicides which are approved for aquatic use. If surfactants are required, they shall be restricted to non-ionic chemicals, such as Agri-Dex, which are approved for aquatic use.

2.29 Invasive Plant Control/Eradication. To minimize the spread of invasive plant species to ~~uninfested~~ areas within and outside of the ~~project~~Project site, Permittee shall implement control and eradication activities prior to the initiation of ground-disturbing activities. Permittee shall utilize control and eradication methods that are specific to the target species, avoid the spread and proliferation of other invasive plant species, and minimize damage to and/or removal of native plant species. All nonnative and invasive plants controlled or eradicated at the ~~project~~Project site treated in a manner that prevents the introduction and establishment of those species to new areas.

2.30 Invasive Plant Damage. All portions of non-native, invasive plant species that are damaged or broken by Project activities shall be cut, bagged, and removed from the Project work area to prevent distribution of seeds or other viable parts. Invasive species shall not be placed in or around the Project work area. All such material shall be appropriately disposed of at a licensed disposal site so as to not adversely affect native habitat near the work area.

2.31 Herbicide Use and Application. All herbicide use conditions for mixing, application and clean-up shall conform to all applicable federal, state, and local regulations. No herbicides shall be used where threatened or endangered species occur, when wind velocities are above ~~5~~five miles per hour, or when nesting birds could be exposed. Nothing in this Agreement represents a pesticide use recommendation that allows for actions which conflict with pesticide use. Any application of herbicide shall be done by a licensed applicator in accordance with all applicable, federal, state, and local laws and guidelines. All herbicides, surfactants, and other

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<sup>8</sup> <https://wildlife.ca.gov/Conservation/Invasives/Report>



pesticides utilized within or adjacent to CDFW jurisdictional areas and other sensitive aquatic habitat areas shall be registered for aquatic use by the California Department of Pesticide Regulation ~~(CDPR)~~. Herbicides shall be used only for selective treatment and to the minimum amount needed to prevent regrowth of vegetation. Herbicide use to kill native vegetation is prohibited.

2.32 Vegetation Trimming. There shall be no vegetation trimming beyond what has been agreed to in the ~~project~~Project description.

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2.33 Stockpiled Vegetation. No stockpiling of brush, loose soils, or similar debris material may occur within the ~~project~~Project area. No wood chipping material shall be spread on-site.

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2.34 Pest Control for Native Vegetation. A Designated Biologist or certified arborist shall survey trees prior to vegetation removal to determine if trees are impacted by infectious pests or diseases. If trees are impacted by pests or diseases, the Designated Biologist or certified arborist should prepare an Infectious Tree Disease Management Plan or develop a detailed, robust, enforceable, and feasible list of preventative measures. A plan/list should provide measures relevant for each tree or disease observed. To avoid the spread of infectious tree pests and diseases, infected trees should not be transported from a Project site without first being treated using best available management practices described in the Infectious Tree Disease Management Plan or list of preventative measures.

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### Equipment and Staging

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2.35 Staging Area. Staging/storage areas for equipment and materials shall be located outside of the stream in an area selected for its non-vegetated status.

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2.36 Flagging. The perimeter of the work site shall be adequately flagged to prevent damage to adjacent riparian habitat. Project personnel shall strictly limit their activities, vehicles, equipment, and construction materials to the ~~project~~Project footprint.

2.37 Lighting. Permittee's activities shall take place during daylight hours only. No night work or lights are authorized.

2.38 No Activities in Stream. No ~~project~~Project activities shall take place in the wetted portion of the stream. Vehicles shall not be driven or equipment operated in water covered portions of a stream or lake, or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed, except as otherwise provided for in the Agreement and as necessary to complete authorized work.

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- 2.39 Inspection of Project Equipment. Permittee shall inspect all vehicle, tools, waders, ~~and~~ boots, and other ~~project~~Project-related equipment and remove all visible soil/mud, plant materials, and animal remnants prior to entering and exiting the stream and/or between each use in different watersheds.
- 2.40 Decontamination Sites. If decontamination for aquatic invasive animal species is applicable, Permittee shall perform decontamination of vehicles, watercraft, and other ~~project~~Project gear and equipment in a designated location where runoff can be contained and not allowed to pass into CDFW jurisdictional areas and other sensitive habitat areas.

### Erosion

- 2.41 Erosion Control Measures. Permittee shall utilize erosion control measures throughout all phases of operation where sediment runoff from exposed slopes threatens to enter a river, stream, or lake. Any type of erosion control blanket or other product shall not use plastic and shall be weed-free. If netting is to be used, it must be flexible (e.g., "soft" hemp) so that snakes or other animals do not become trapped in the netting.
- 2.42 Sediment and Runoff Control. Sediment from ~~project~~Project-related activities shall be removed from upland areas or seasonally dry portions of the ephemeral drainages where it might likely be washed into the stream or inundated by high flows, or where it is likely to have a negative impact on emergent native vegetation, or where it is likely to have a negative impact on native trees. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
- 2.43 Excavation Spoils. Spoil excavation is not authorized under this Agreement.
- 2.44 Disturbed Soils. Permittee shall stabilize all disturbed soils within the ~~project~~Project site to reduce erosion potential, both during and following construction. Planting, seeding with native species, sterile seed mix, and mulching is acceptable. Where suitable vegetation cannot reasonably be expected to become established, seeding placed after October 15 shall be covered with non-erodible materials, such as coconut fiber matting, for stabilization.

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### Pollution, Litter and Cleanup

- 2.45 Operating Equipment and Vehicle Leaks. Any equipment operated within or adjacent to the ephemeral drainage shall be checked and maintained daily to prevent leaks of materials that could be deleterious to aquatic and terrestrial life or

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riparian habitat. All refueling and maintenance of equipment and vehicles shall be at least 150 feet from any aquatic habitat, wetland area, water body, or ephemeral drainages. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream, lake or ephemeral drainage shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak. Clean up equipment such as extra boom, absorbent pads, skimmers, shall be on-site prior to the start of ~~project~~Project-related activities.

2.46 Pollutants and Debris. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, cement or concrete or washings thereof, asphalt, paint, oil or other petroleum products or any other substances which could be hazardous to aquatic life, or other organic or earthen material from any logging, construction, or other associated ~~project~~Project-related activity shall be allowed to contaminate the soil and/or enter into or placed where it may be washed by rainfall or runoff into, any stream/channel/culvert/ditch. Any of these materials, placed within or where they may enter a stream/channel/culvert/ditch, by Permittee or any party working under contract, or with the permission of Permittee, shall be removed immediately. When ~~project~~Project-related activities are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high-water mark of any stream.

2.47 Pollution Compliance. Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall obey these laws and it shall be the responsibility of Permittee to ensure compliance.

2.48 Pollution Cleanup. The clean-up of all spills shall begin immediately. CDFW shall be notified immediately by Permittee of any spills that release hazardous material (e.g., oil, cement, fuel, etc.) into any stream/channel/culvert/ditch and CDFW shall be consulted regarding clean-up procedures.

2.49 Pick Up Debris. Permittee shall pick up all debris and waste daily. Permittee shall dispose of all ~~preject~~Project generated debris, materials, and rubbish in a legal manner. Permittee shall remove all human generated debris, such as yard and farm cuttings, broken concrete, construction waste, garbage, and trash.

### 3. Compensatory Measures

To compensate for the permanent adverse impacts to 3.022 acres of fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall ~~implement~~provide mitigation for permanent impacts through financial security (Measure 3.1), remediation of temporary impacts (Measure 3.4), and purchase at a mitigation bank (Measure 3.2), or off-site Permittee responsible mitigation (Measure 3.3) and each measure ~~thereafter~~listed below.

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3.1 ~~Project Impacts: Financial Security.~~ The Project will result in impacts to ~~17.023.022~~ **3.022** acres of Riparian Scrub habitat including black cottonwood forest and woodland with willow species within and associated with the stream. **Prior to initiating any Project-related activities**, Permittee shall provide CDFW with a financial security in the form of a letter of credit (LOC) or other funding mechanism acceptable to CDFW ~~to be used for the purchase of 17.02 acres of restoration credits at a CDFW-approved mitigation bank as described in Measure 3.5 either in accordance with Measure 3.2 or in accordance with Measure 3.3.~~

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~~3.1.1 Mitigation Bank. For a mitigation bank, Permittee shall obtain CDFW approval of 17.02 acres of restoration credits, bank sponsor, credit amount, habitat type(s) and map of the bank jurisdiction. Reestablishment, preservation, or enhancement credits may be at a higher mitigation ratio. Project~~

~~3.1.2 Revised Impacts. The Permittee shall submit to CDFW a revised habitat classification and impact analysis and the results of protocol level surveys for least bell's Vireo, southwestern willow flycatcher, and western yellow-billed cuckoo pursuant to Measure 1.1 and Measure 1.2 prior to implementation of Project activities. Please note that this proposed mitigation may be subject to change once CDFW reviews the requested material. CDFW retains the right to require additional mitigation should the proposed mitigation not be adequate to compensate for the impacts.~~

3.2 Mitigation Bank. Permittee shall compensate for 3.022 acres of impacts to stream bed, bank, and channel, through the acquisition of no less than 3.022 acres of stream bed or riparian habitat re-establishment credits through a CDFW-approved mitigation bank within the anadromous stretch of the Santa Clara River, or other location, approved in writing by CDFW. The Permittee shall submit the credit amount, bank sponsor, habitat types(s), map of the bank site, and map of the bank jurisdiction to CDFW for review and approval prior to purchasing the credits. A different type of bank credit may require a higher or lower mitigation ratio. Written CDFW approval of the mitigation bank is required prior to purchase of credits. The Permittee shall submit a record of purchase to CDFW **at least 30 days prior to the initiation of Project activities or within 12 months following start of Project activities**, which includes staging and site preparation, if security is provided pursuant to Measure 3.5. If mitigation credits are not available for purchase within 10 months following start of Project activities, then Measure 3.3 shall be implemented instead of the purchase of mitigation credits and shall be completed within 18 months following start of Project activities if Security is provided. Alternate banks, credit types, and/or credit amounts necessary to meet the mitigation obligation must be proposed for CDFW review and approval within 10 months following start of Project activities.

3.3 Permittee Responsible Mitigation – Off site (Mitigation Site). Permittee shall compensate for permanent impacts to 3.022 acres of stream bed, bank, and

channel, through the acquisition, and perpetual conservation and management of a Mitigation Site, or several mitigation sites, containing no less than 3.022 acres of stream and stream-associated habitat within the Santa Clara River watershed. The Permittee shall prepare a Habitat Mitigation and Monitoring Plan (HMMP), and a Long-Term Management Plan (LTMP) designed to sustain or surpass the habitat quality of the Mitigation Site in perpetuity. Permittee shall also establish long-term management funding. Permanent protection and funding for perpetual management of the Mitigation Site(s) must be complete **prior to initiation of Project activities, or within 18 months of starting Project activities if Security is provided** for all uncompleted obligations.

3.3.1 Mitigation Site Acquisition and Protection. Permittee shall obtain written approval from CDFW of the property eligibility for the proposed Mitigation Site(s) with a minimum of 3.022 acres of off-site streambed and stream-associated habitat. Permittee shall submit a proposed Mitigation Site, including: 1) a biological report with pertinent biological resources information (e.g., delineation, hydrological assessment, species occurrences); 2) Habitat Management Land Title Information; 3) Preliminary Title Report; 4) a Keyhole Markup Language file (e.g., KMZ files) of Assessor's Parcel(s); 5) Phase 1 Environmental Site Assessment Report; and 6) Mineral Risk Assessment Report, for CDFW review and approval **no later than five months prior to the start of Project activities or four months following start of Project activities if Security is provided**. See Permittee Checklist of Habitat Management Land Property Review and Protection<sup>9</sup>. CDFW shall provide a written approval or denial for property eligibility.

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3.3.2 Habitat Mitigation and Monitoring Plan. Permittee shall develop and submit to CDFW for review and written approval an HMMP, after CDFW approval of the Mitigation Site **and no later than four months prior to the start of Project activities or six months following start of Project activities if Security is provided**. Permittee shall ensure the HMMP is successfully implemented and be responsible for any cost incurred during the restoration/mitigation or in subsequent corrective measures. At a minimum, the HMMP shall include the following:

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3.3.3 Restoration Specialist. The HMMP shall be prepared by person(s) with expertise in southern California ecosystems and native plant re-vegetation techniques (Restoration Specialist). Planting, maintenance, monitoring, and reporting activities shall be overseen by the Restoration Specialist familiar with restoration of native plants.

3.3.4 Site Description. The HMMP shall include a description of the physical conditions and vegetation communities including a map and Geographic Information Systems (GIS) shapefiles. Photo-documentation of the site.

<sup>9</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=207700>

including restored areas, shall be provided before and after restoration.

3.3.5 Reference Site. If applicable, an appropriate reference site with as good or better-quality habitat than the pre-Project impact site shall be identified and approved by CDFW. The HMMP shall include survey information for the reference site.

3.3.6 Schedule. A schedule that outlines all foreseeable activities necessary.

3.3.7 Planting Plan. Details of the site preparation consisting of a detailed contouring/grading plan and details of native plant installation (Planting Plan), including the type and number of materials to be used (e.g., local native seeds, cutting, and/or container stock), source(s) of the materials, planting location, methods of installation, and a local California native plant palette. This Planting Plan shall include plantings of both overstory and understory vegetation as appropriate. All seeded/planted species installed shall include only local California native container plants and cuttings and shall be typical of the existing native plant species present within, or immediately adjacent to the site.

3.3.8 Native Plant Sources. Revegetation plant material shall be derived from cuttings, materials salvaged from disturbed areas, and/or seeds obtained from high quality specimen locations that exhibit healthy, sound, and viable seed from multiple populations occurring locally within the same drainages. The HMMP shall identify the percentage of seed collected from local native plants and shall not exceed 50-percent of the seed produced by a population of species during any given year. Any container stock, if used, shall be obtained from a licensed nursery which can ensure that container plants are pest free, and have not been subject the application of synthetic pesticides.

3.3.9 Sampling Techniques. The HMMP shall identify the sampling techniques (e.g., quadrats, transects, or relevé) to be used to collect quantitative/qualitative data (e.g., vegetation relative/absolute cover, density, diversity indices, recruitment, survivorship, etc.) for baseline conditions and to establish and measure success criteria. The sampling techniques shall have adequate detail so that it can be duplicated by different people and shall include a sample data collection sheet that shows appropriate data to be collected per the proposed sampling methodology.

3.3.10 Survey Timing. The primary monitoring surveys to determine the success of restoration efforts (survival, cover, and growth of plants) shall be conducted at a minimum twice annually in Spring and Fall.

3.3.11 Maintenance Activities. The HMMP shall provide a description of maintenance operations with particular emphasis on invasive species control and watering methods and schedules. If irrigation is required, details on any irrigation to be used, irrigation designs and/or plans, and timing/schedule.

Irrigation may only be used to help the plants become established during the first three years following planting. Watering/ irrigation of the site shall be discontinued at least two years prior to completion of the monitoring period.

3.3.12 Success Criteria. The HMMP shall identify the success criteria for the Mitigation Site and shall be compared against an appropriate reference site with as good or better-quality habitat than the pre-Project impact site. The success criteria shall include percent relative and absolute cover (invasive and native vegetation), species diversity, abundance, and any other measures of success deemed appropriate by CDFW.

3.3.13 Monitoring and Reporting. The HMMP shall include monitoring and reporting procedures, with a sample data collection sheet. Permittee shall have the Restoration Specialist monitor the recovery of plant, wildlife, and aquatic resources in the area following mitigation implementation. Monitoring of plant, wildlife, and aquatic resources shall be done twice a year, in Spring and Fall, with an annual quantitative survey to determine the success of restoration efforts (survival, cover, and growth of plants) through the term of restoration. The results and analysis shall be submitted with the annual restoration monitoring report to CDFW **by February 1 of each year** after mitigation implementation for at least five years and until mitigation success criteria have been met. This report shall include the status and any success trends (i.e., comparison throughout the five years of monitoring) for the success criteria outlined in the HMMP. Photos from designated photo stations shall be included.

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3.3.14 Corrective Actions. The HMMP shall include a description of corrective actions to be taken if restoration measures do not meet the proposed criteria or targets. If the survival and cover requirements have not been met as established in the HMMP, the Permittee shall follow contingency measures, including but not limited to, performing modifications to the existing habitat, creation of new habitat on or off site, or purchase of mitigation credits from a mitigation bank. Any contingency actions will be determined in coordination with CDFW. If Permittee proposes to meet the success criteria through modifications to the existing habitat or creation of additional habitat, Permittee shall be responsible for maintaining and monitoring these areas with the same survival and growth requirements for five years after planting, or until CDFW deems the sites successful.

3.3.15 Mitigation Site Land Manager. Permittee shall designate both an interim and long-term land manager approved by CDFW. After CDFW approval of the Mitigation Site and no later than four months prior to the start of Project activities or six months following start of Project activities if Security is provided, Permittee shall obtain CDFW approval or denial of a land manager entity to manage the Mitigation Site within 60 days of the approval. Permittee shall identify separate entities to fulfill the grantee and land manager roles



and shall not identify the same entity to fulfill both roles. Permittee shall also provide the necessary documents requested by CDFW for due diligence review at the time the land manager is proposed following the Checklist for Entities being Considered to Hold Conservation Easements or Manage and Steward Mitigation Land<sup>10</sup>. Permittee shall also obtain CDFW approval of an interim Mitigation Site Land Manager if they are different than the long-term Mitigation Site manager. The interim and/or long-term land managers may be the landowner, or another party approved by CDFW. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW, for review and approval, of any subsequent changes with the Mitigation Site Land Manager within 30 days of the change.

3.3.16 Start-Up Activities. Permittee shall provide for the implementation of start-up activities, including the initial site protection and enhancement of the CDFW-approved Mitigation Site(s). Start-up activities include, at a minimum: 1) preparing both a HMMP and an LTMP for CDFW approval; 2) conducting baseline biological assessment and land survey report during the first growing season; 3) developing and transferring to the GIS data if applicable; 4) establishing initial fencing (if necessary); 5) conducting initial removal of litter and debris; and 6) installing signage.

3.3.17 Mitigation Site Conservation Easement. Permittee shall record a Conservation Easement (CE) approved by CDFW with an entity, to be approved by CDFW in its sole discretion, acting as grantee for the CE. CDFW shall be expressly named in the CE as a third-party beneficiary.

3.3.17.1 After CDFW approval of the Mitigation Site and **no later than four months prior to the start of Project activities or six months following start of Project activities if Security is provided**, Permittee shall provide to CDFW, for review and approval, a draft CE prepared using a CDFW-provided CE template, a updated title report, and other documents specified in the most current version at time of document submittal of the Permittee Checklist of Habitat Management Land Property Review and Protection<sup>11</sup>, or a revised version to be provided by CDFW. All documents conveying the Mitigation Site(s) and all conditions of title are subject to the review and approval of CDFW prior to recordation of the CE.

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3.3.17.2 Permittee shall identify separate entities to fulfill the grantee, and land manager roles and shall not identify the same entity to fulfill both roles.

3.3.17.3 The CE shall expressly require implementation of the LTMP by the grantor, and land manager as authorized by the grantor and landowner

<sup>10</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=225933>

<sup>11</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=207700>

and shall expressly require the identified grantee to monitor implementation of the LTMP.

3.3.17.4 Permittee shall record the CE after CDFW approval of the CE and all associated documents prior to the start of Project activities or within 18 months following the start of Project activities if Security is provided.

3.3.17.5 Permittee shall be responsible for all costs associated with the CE, including recording, CE monitoring, and long-term management costs.

3.3.18 Mitigation Success. After the fifth monitoring year, if the site has met the success criteria outlined in the HMMP, CDFW may request a site visit to determine if the mitigation portion of the Agreement is deemed complete. The site should be free of trash and any irrigation infrastructure shall be removed if it is used (unless there is an acceptable justification for leaving the irrigation system in place).

3.3.19 Mitigation Site Long-Term Management Plan. After CDFW approval of the Mitigation Site and no later than three months prior to the start of Project activities or seven months following start of Project activities if Security is provided, Permittee shall provide an LTMP to CDFW for review and written approval<sup>12</sup>. The LTMP shall be implemented in perpetuity and shall be designed to sustain or surpass the habitat quality of the Mitigation Site(s) upon achieving HMMP success criteria as approved by CDFW in writing. Permittee shall consult with CDFW for LTMP requirements and for an appropriate LTMP template prior to preparing the draft LTMP. The CDFW-approved long-term Mitigation Site Land Manager shall be responsible for implementing the LTMP. At a minimum, the LTMP shall include:

3.3.19.1 Site Description. A description of the physical conditions and vegetation communities of the Mitigation Site(s) expected, including water resources and habitat types, and a map that identifies the location of the site(s).

3.3.19.2 Management Goals. A description of management goals related to sustaining habitat quality, wildlife usage, and overall function of the Mitigation Site.

3.3.19.3 Management Tasks. A description of specific tasks and management strategies proposed to meet management goals, including but not limited to fencing, invasive species management, trash and trespass control, and resource monitoring using a monitoring and management schedule, adaptive management plans, and strategies to address foreseeable site disturbances (e.g., dumping, wildfires, unauthorized

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<sup>12</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=137386&inline>

recreational activities, etc.), and maintenance of signage and fencing.

3.3.19.4 Reporting. A description of the reporting procedures including a Management Report, which shall be completed every five years documenting at a minimum:

3.3.19.4.1 Management activities completed within the previous five-year term, including: 1) any remedial measures completed; 2) details of non-native and invasive species management such as (a) species and location where they were treated and/or removed, (b) the amount and frequency of removal, and (c) the techniques used; 3) fencing information; 4) resource monitoring, adaptive management strategies developed and how they were implemented; and 5) enforcement activity necessary.

3.3.19.4.2 An assessment of overall habitat quality within the Mitigation Site, including: 1) any changes to native and non-native vegetation cover; 2) any shifts in habitat type; 3) any loss of habitat cover; 4) any change in water resources; and 5) any new invasive species observed.

3.3.19.4.3 An evaluation of the success or failure of management strategies implemented and any changes to management strategies proposed in response to the successes or failures.

3.3.19.4.4 The Management Report shall include photos documenting the management activities.

3.3.20 Mitigation Site Endowment Fund. Permittee shall ensure that the Mitigation Site is perpetually managed, maintained, and monitored by the Mitigation Site Land Manager as described in this Agreement, the CE, and the LTMP approved by CDFW. Permittee shall provide long-term management funding for the perpetual management of the Mitigation Site by establishing a separate long-term management fund (Endowment) for the site. The Endowment is a sum of money, held in a CDFW-approved fund that provides funds for perpetual management, monitoring, and other activities on the Mitigation Site consistent with the management plan(s) required by this Agreement. Endowment as used in this Agreement shall refer to the Endowment Deposit Amount and all interest, dividends, other earnings, additions, and appreciation thereon. The Endowment shall be governed by this Agreement, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

After the interim management period, Permittee shall ensure that the designated Mitigation Site Land Manager implements the management and monitoring of the Mitigation Site according to the LTMP. The long-term Mitigation Site Land Manager shall be obligated to manage and monitor the

Mitigation Site in perpetuity to preserve their conservation values in accordance with this Agreement, the CE, and the LTMP. Such activities shall be funded through the Endowment.

3.3.21 Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be an entity qualified pursuant to Government Code sections 65965-65968, as amended, and approved in writing by CDFW in its sole discretion. Permittee shall submit to CDFW a written proposal for an Endowment Manager along with a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). CDFW shall notify Permittee in writing of its approval or disapproval of the proposed Endowment Manager.

3.3.22 Endowment Deposit Amount. After obtaining CDFW written approval of the Mitigation Site(s), LTMP, and Endowment Manager, Permittee shall prepare, in coordination with the Mitigation Site Land Manager, a Long-Term Management Endowment Property Analysis Record (PAR) or PAR-equivalent analysis to calculate the amount of funding necessary to ensure the long-term management of the Mitigation Site (Endowment Deposit Amount) consistent with the LTMP.

3.3.23 Property Analysis Record for Long-Term Management Fund. Permittee shall provide to CDFW for review and approval a PAR, or substantially equivalent analysis for the Mitigation Site developed in coordination with the long-term Mitigation Site Land Manager. The Permittee shall submit to CDFW for review and approval the results of the Long-Term Management Endowment PAR before transferring funds to the Endowment Manager and no later than three months prior to the start of Project activities or ~~seven~~ 12 months following start of Project activities if Security is provided. The PAR shall identify the costs for implementation of the Mitigation Site LTMP and calculate an endowment that is sufficient to fund the implementation of the LTMP in perpetuity (Long-term Endowment Fund; Endowment).

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3.3.24 Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the Long-Term Management Endowment PAR and adjust for any additional administrative, periodic, or annual fee.

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

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

higher percent contingency may be required upon CDFW approval.

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

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

3.3.26 Transfer Long-term Endowment Funds. Permittee shall transfer the Long-Term Endowment Funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above prior to the start of Project activities or within 18 months following start of Project activities if Security is provided. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this Agreement, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

3.23.4 Remediation of Temporary Impacts. The Permittee shall restore all areas within the Project area temporarily impacted by Project activities, such as staging areas and temporary access areas. Temporary impact areas altered during the Project shall be returned to natural contours without creating a possible future bank erosion problem.

~~3.3 Compensation for Unauthorized Impacts. Permittee shall conserve habitat at a minimum 5:1 ratio for impacts beyond those authorized in this Agreement. In the event that additional habitat conservation is required, the type of habitat conservation shall be determined by CDFW, and may include creation, restoration, enhancement, and/or preservation.~~

~~4. Financial Security~~

3.5 Financial Security Mechanism. If permanent protection and funding for perpetual management of compensatory habitat is not complete prior to the initiation of Project activities, Permittee shall provide financial security in the form of an LOC, or other form of security approved by CDFW. The LOC, or other form of security approved by CDFW, shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to complete the compensatory mitigation measures of this Agreement.

4.13.6 Letter of Credit. A LOC or other funding mechanism acceptable to CDFW for the amount of all mitigation measures pursuant to this Agreement shall be submitted to CDFW for approval and shall be executed prior to initiation of Project activities. ThisThe amount of the LOC shall be \$5,957,0001,208,800.00,

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based on the average cost of ~~47,023,022~~ acres at \$400,000.00 per acre at the time of this Agreement of restoration credits at a CDFW-approved mitigation bank, or an alternative mitigation lands acquisition as proposed to and approved by CDFW in accordance with this Agreement.

4.23.7 Draft Copy of LOC. The Permittee shall provide a draft copy of the LOC to CDFW at the address listed below for review and approval **prior to execution of security**. The LOC shall not be executed without CDFW's prior approval.

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4.33.8 Expiration of LOC. In the event that the LOC will expire before the mitigation obligations have been met, the Permittee shall be responsible for providing CDFW a new LOC to replace the existing LOC **at least sixty (60) days prior to the expiration date.**

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4.43.9 Execution of LOC. Upon execution of the LOC, the Permittee shall provide the original to the address listed on the LOC template, and one copy of the executed document to CDFW at the address listed below in the Contact Information section.

**5.4. Reporting Measures**

Permittee shall meet each reporting requirement described below.

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5.14.1 Notification Prior to Work. Permittee shall notify CDFW, in writing, at least five (~~5~~) days prior to initiation of ~~project~~Project-related activities and at least ~~five~~5 days prior to completion of ~~project~~Project and restoration activities. Notification shall be sent through the Environmental Permit Information Management System (EPIMS) and to the e-mail address: [EPIMS.R5@wildlife.ca.gov](mailto:EPIMS.R5@wildlife.ca.gov). Reference # ~~EPIMS~~-VEN-24590-R5.

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5.24.2 Project Reporting. All surveys, pre and post construction notifications, monitoring reports, and any other required communication between Permittee and CDFW shall be submitted through EPIMS as well as to the email address [EPIMS.R5@wildlife.ca.gov](mailto:EPIMS.R5@wildlife.ca.gov) Reference # ~~EPIMS~~-VEN-24590-R5 and CC ~~Frederic.Rieman@wildlife.ca.gov~~Andrew.Chambers@wildlife.ca.gov.

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5.34.3 Sediment Transport and Hydrology. Permittee shall submit an annual report detailing changes to bed, bank, and channel due to loss of vegetation. Increased sediment transport and changes to water quality, including dissolved oxygen levels, turbidity, and algal blooms, shall be included in the report.

5.44.4 Pre-Project Report. Within two (~~2~~) weeks of the start of Project activities, Permittee shall provide pre-Project photographs of conditions before any vegetation removal, brushing, or crowning has occurred. Pre-Project photographs shall have been taken within the previous 30 days.

5.54.5 Post-Project Report. Permittee shall provide a post-Project report to CDFW no later than 60 days after the conclusion of Project-related

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activities. This report shall include, but is not limited to, the following: pre-Project photographs, the total amount of area impacted that year, post-Project photographs, species observed during Project activities, newly identified invasive species, and a digital GIS shapefile of all areas that have been maintained for vegetation. This report shall document the final quantities of vegetation and trees removed, brushed, trimmed and crowned, the percentage of canopy cover removed for each tree, and include clear photographs to document before, during, and after vegetation maintenance activities.

5-64.6 Format of Reports. All reports shall be submitted to CDFW electronically and shall include geographic information system (GIS) shapefiles<sup>13</sup>, along with the appropriate metadata, of the ~~project~~Project area. ~~For more details on creating shapefiles, please visit~~ <http://www.esri.com/library/whitepapers/pdfs/shapefile.pdf>. ~~Electronic versions of reports shall be submitted through EPIMS<sup>14</sup>.~~

~~Electronic versions of reports shall be submitted through EPIMS. Click or paste this link in your browser to be routed to EPIMS:~~ <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>.

**CONTACT INFORMATION**

Any communication that Permittee or CDFW submits to the other shall be submitted through EPIMS as instructed by CDFW.

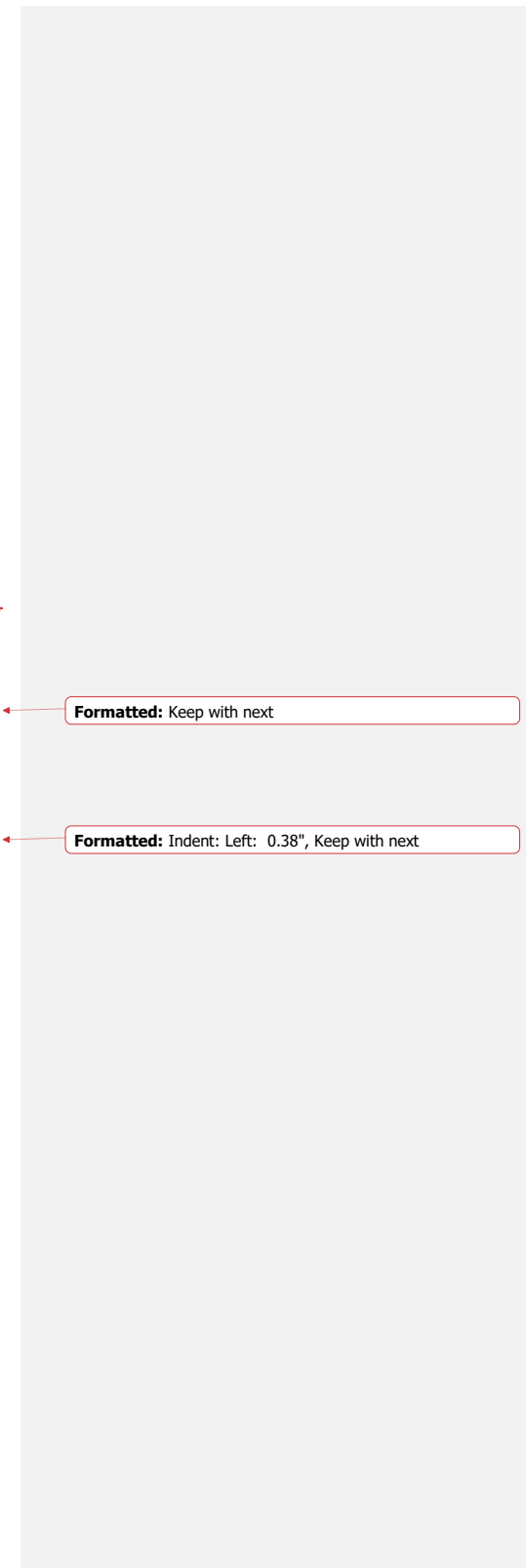
To Permittee:

Hazem Gabr  
Southern California Edison  
EPIMS-VEN-24590-R5  
Santa Clara River at Santa Paula Airport  
2244 Walnut Grove Avenue,  
Rosemead, California 91770  
[Hazem.Gabr@SCE.com](mailto:Hazem.Gabr@SCE.com)

To CDFW:

Department of Fish and Wildlife  
South Coast Region  
3030 Old Ranch Parkway, Suite 400  
Seal Beach, CA 90740  
EPIMS-VEN-24590-R5  
Santa Clara River at Santa Paula Airport  
[EPIMS.R5@wildlife.ca.gov](mailto:EPIMS.R5@wildlife.ca.gov)

<sup>13</sup> <http://www.esri.com/library/whitepapers/pdfs/shapefile.pdf>  
<sup>14</sup> <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>



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[Frederic.Rieman@wildlife.ca.gov](mailto:Frederic.Rieman@wildlife.ca.gov)  
[EPIMS.R5@wildlife.ca.gov](mailto:EPIMS.R5@wildlife.ca.gov)  
[Andrew.Chambers@wildlife.ca.gov](mailto:Andrew.Chambers@wildlife.ca.gov)

## LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the ~~project~~Project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the ~~project~~Project. The decision to proceed with the ~~project~~Project is Permittee's alone.

## SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

## ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

## OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with, or obtaining any other permits or authorizations that might be required under, other federal, state, or local laws or regulations before beginning the ~~project~~Project or an activity related to it. For example, if the ~~project~~Project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other

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form of authorization from the ~~U.S. Fish and Wildlife Service~~ SFWS or National Marine Fisheries Service.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the Fish and Game Code including, but not limited to, Fish and Game Code sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

#### **AMENDMENT**

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

#### **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

#### **EXTENSIONS**

In accordance with Fish and Game Code section 1605, subdivision (b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall

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include with the completed form, payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with Fish and Game Code section 1605, subdivisions (b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the ~~project~~Project the Agreement covers (Fish & G. Code § 1605, subd. (f)).

**EFFECTIVE DATE**

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable Fish and Game Code section 711.4 filing fee ~~listed at~~ <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.<sup>15</sup>

**TERM**

This Agreement shall expire on February 24, ~~2024~~2026, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as Fish and Game Code section 1605, subdivision (a)(2) requires.

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**AUTHORITY**

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

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**AUTHORIZATION**

This Agreement authorizes only the ~~project~~Project described herein. If Permittee begins or completes a project different from the ~~project~~Project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with Fish and Game Code section 1602.

**CONCURRENCE**

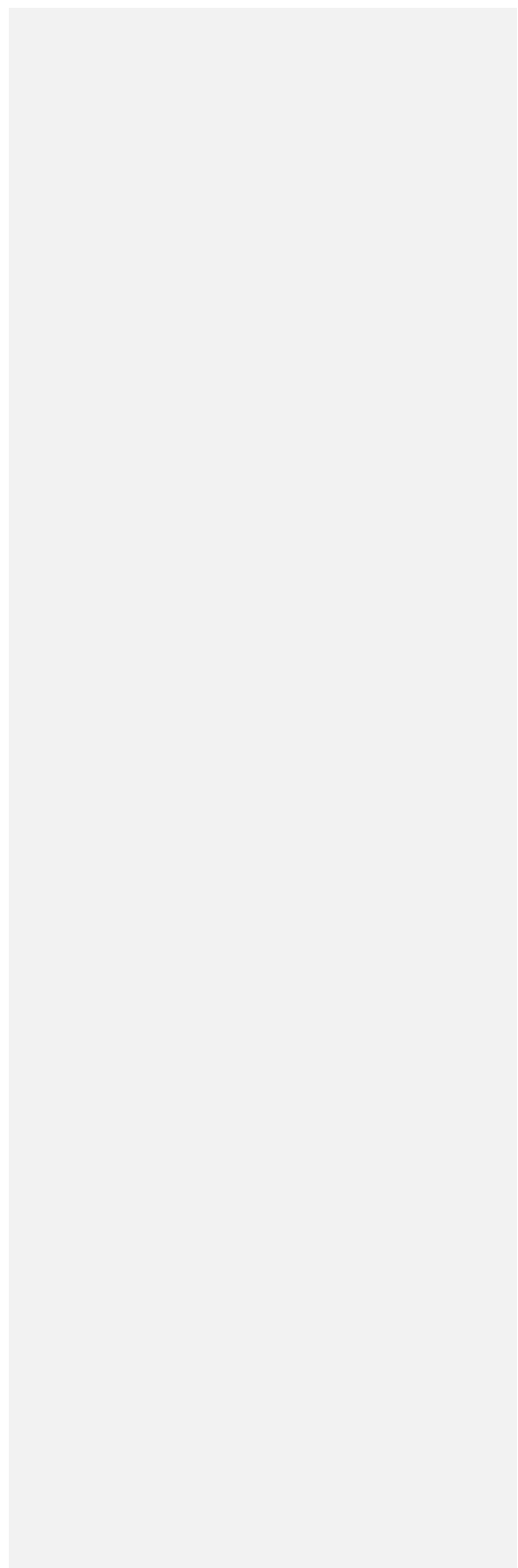
Through the electronic signature by Permittee or permittee's representative as evidenced by the attached concurrence from CDFW's EPIMS, Permittee accepts and agrees to comply with all provisions contained herein.

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<sup>15</sup> <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>

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**The EPIMS concurrence page containing electronic signatures must be attached to this agreement to be valid.**



**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
SOUTH COAST REGION  
3883 RUFFIN ROAD  
SAN DIEGO, CALIFORNIA 92123



**STREAMBED ALTERATION AGREEMENT**  
EPIMS-VEN-24590-R5  
SANTA CLARA RIVER

HAZEM GABR  
2244 WALNUT GROVE AVENUE, GO-1, QUAD 2C  
ENVIRONMENTAL SERVICE  
ROSEMEAD, CALIFORNIA 91770

**SANTA CLARA RIVER AT SANTA PAULA AIRPORT PROJECT**

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Southern California Edison (SCE; Permittee) or as represented by Hazem Gabr.

**RECITALS**

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on November 25, 2021, that Permittee intends to complete the Project described herein.

WHEREAS, pursuant to Fish and Game Code section 1603, CDFW has determined that the Project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the Project in accordance with the Agreement.

**PROJECT LOCATION**

The Santa Clara River at Santa Paula Airport Project (Project) is located within the Santa Clara River, in the County of Ventura, State of California; Latitude 34.348614°, Longitude -119.052619°; Latitude 34.362030°, Longitude -119.00862°; Latitude 34.361197°, Longitude -119.001310°; Assessor's Parcel Numbers 107-0-150-105, 107-0-140-455, 107-0-150-095, 104-0-107-095, 108-0-010-080, 046-0-230-245, 046-0-230-235, 046-0-230-215, 046-0-230-205, 046-0-132-030, 046-0-250-120, 046-0-250-170, 046-0-230-135, 046-0-230-215, 046-0-230-260.

## PROJECT DESCRIPTION

The Project is the initial removal and trimming of trees and vegetation to keep minimum clearance distances between vegetation and power line (Figure 1). The Vegetation Management (VM) pre-inspection team will first identify trees or vegetation in need of trim, brushing, or removal by field survey and/ or by utilizing LiDAR aerial imagery. A pre-inspection team conducts field surveys twice to identify location, species, quantity, and prescription necessary to achieve recommended clearance. The pre-inspection team are International Society of Arboriculture (ISA) certified arborists and utilize tools such as rangefinders to accurately assess the tree height and any branches that enter the recommended 12-foot clearance distance for 69 kilovolt (kV) or below lines or 30-foot clearance distance for lines above 69 kV.

The proposed Project involves trimming and removal of trees and other vegetation within an approximate 21.09-acre area of which 18.80 acres (11,216 linear feet) is in the stream. The Project is located along a portion of SCE's 16kV Petit, 220kV Moorpark-Santa Clara No. 1 & 2, and 16kV Balcom circuits. Total impacts from the year of work equal 17.05 of impacts to the stream and associated *Populus fremontii* - *Fraxinus velutina* - *Salix gooddingii* forest and woodland alliance (Fremont cottonwood forest and woodland) habitat. Staging areas are located on established access roads outside wetted areas.

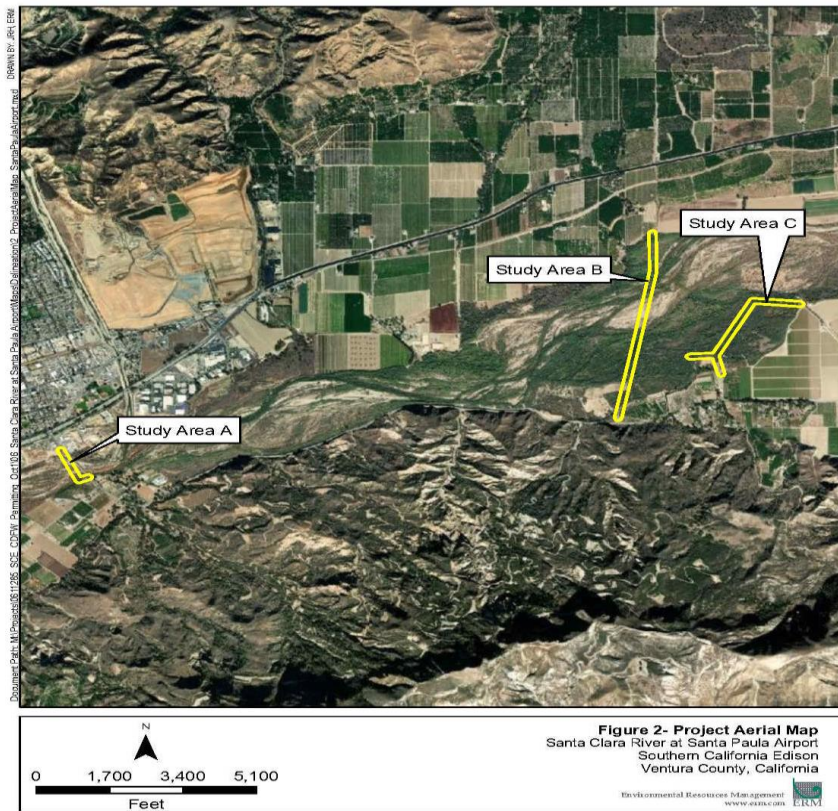


Figure 1: Project Location

**Table 2: Structures Requiring Brushing**

Work Area	Structure	Circuit Name	Structure Type	Latitude	Longitude
A	4485130E	Petit	Distribution Pole	34.3474	-119.0520
A	4485131E	Petit	Distribution Pole	34.3474	-119.0520
B	7017539/M15-T2	Moorpark-Santa Clara #1&2	Transmission Tower	34.3564	-119.0099
B	7017540/M15-T1	Moorpark-Santa Clara #1&2	Transmission Tower	34.3601	-119.0091
B	7017541/M14-T4	Moorpark-Santa Clara #1&2	Transmission Tower	34.3654	-119.0080
C	1202289E	Balcom	Distribution Pole	34.3575	-119.0030
C	925609E	Balcom	Distribution Pole	34.3581	-119.0032
C	1202290E	Balcom	Distribution Pole	34.3581	-119.0040
C	1202291E	Balcom	Distribution Pole	34.3580	-119.0048
C	925610E	Balcom	Distribution Pole	34.3589	-119.0027
C	925611E	Balcom	Distribution Pole	34.3598	-119.0023
C	925612E	Balcom	Distribution Pole	34.3607	-119.0019
C	4376251E	Balcom	Distribution Pole	34.3611	-119.0016
C	794042E	Balcom	Distribution Pole	34.3638	-118.9987
C	4327944E	Balcom	Distribution Pole	34.3626	-118.9980
C	1418972E	Balcom	Distribution Pole	34.3626	-118.9969
C	4261888E	Balcom	Distribution Pole	34.3625	-118.9966

Vegetation Trimming:

Trimming actions would include trimming (crown reduction, directional or side pruning) of annual growth or old growth materials that are within the regulatory required setbacks. Trimming of vegetation with a canopy reduction of greater than 50-percent will result in permanent impacts.

Vegetation Brushing:

Pole brushing would involve the clearance of all vegetation to bare ground in a 10-foot radius around SCE’s utility poles. Clearance is limited to any vegetation with branches less than four-inch diameter at breast height (DBH). Any branch or stem greater than four inches would be considered for vegetation trimming under line clearing. Vegetation brushing is considered a permanent impact.



### Structure Brushing:

Structure brushing would involve the clearance of all vegetation to bare ground in a 10-foot radius around SCE's utility poles or tower footings. Clearance is limited to any vegetation with branches less than four-inch DBH. Any branch or stem greater than four inches would be considered for vegetation trimming under line clearing. Complete removal of vegetation is included in structure brushing activities.

### Tree Removal:

This includes full removal with the stump and root system left intact in the ground; no ground disturbing activities would take place. Trees identified for removal are generally hazardous, dead, rotten, diseased, or structurally defective and are tall enough to present a strike hazard. Tree removal of native species would be considered a permanent impact. Tree removal activities will not take place.

The crew would access the site either on foot, climbing where possible, or from a bucket truck staged on the road or existing road shoulder. The work would be conducted with hand-operated equipment such as differing length hand pruners, pruning saw, or chainsaw (refueling) or for pole brushing activity weed whacker; no mechanized equipment or vehicles would enter the drainage except where established access roads exist. A chipper with a collection truck would be utilized and staged on the road or disturbed road shoulder. All cut and chipped material would be contained and disposed of properly off-site.

## **PROJECT IMPACTS**

Existing fish or wildlife resources the Project could substantially adversely affect include:

**Fish:** southern California steelhead (*Oncorhynchus mykiss*), Santa Ana sucker (*Catostomus santaanae*), unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*);

**Amphibians:** western toad (*Bufo boreas*), Baja California treefrog (*Pseudacris hypochondriaca*), California treefrog (*Pseudacris cadaverina*);

**Reptiles:** two-striped gartersnake (*Thamnophis hammondi*), coast horned lizard (*Phrynosoma blainvillii*), coastal whiptail (*Aspidoscelis tigris stejnegeri*), California legless lizard (*Anniella pulchra*), western fence lizard (*Sceloporus occidentalis*), common side-blotched lizard (*Uta stansburiana*), western pond turtle (*Emys marmorata*);

**Birds:** least Bell's vireo (*Vireo bellii pusillus*), western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), southwestern willow flycatcher (*Empidonax traillii extimus*), California condor (*Gymnogyps californianus*), white-tailed kite (*Elanus leucurus*), yellow warbler (*Setophaga petechia*), hooded oriole (*Icterus cucullatus*), western tanager (*Piranga ludovicaiana*), black-headed grosbeak (*Pheucticus melanocephalus*),

California towhee (*Melospiza crissalis*), spotted towhee (*Pipilo maculatus*), lesser goldfinch (*Spinus psaltria*), house finch (*Haemorrhous mexicanus*), ash-throated flycatcher (*Myiarchus cinerascens*), red-tailed hawk (*Buteo jamaicensis*), Costa's hummingbird (*Calypte costae*), western scrub-jay (*Aphelocoma californica*), western meadowlark (*Sturnella neglecta*), American crow (*Corvus brachyrhynchos*), common raven (*Corvus corax*), northern mockingbird (*Mimus polyglottos*), California quail (*Callipepla californica*), turkey vulture (*Cathartes aura*), mourning dove (*Zenaidura macroura*), phainopepla (*Phainopepla nitens*), acorn woodpecker (*Melanerpes formicivorus*), wrenit (*Chamaea fasciata*), bald eagle (*Haliaeetus leucocephalus*), Bell's sparrow (*Amphispiza belli*), Nuttall's woodpecker (*Picoides nuttallii*), oak titmouse (*Baeolophus inornatus*), rufous-crowned sparrow (*Aimophila ruficeps*), yellow-rumped warbler (*Dendroica coronata*);

**Mammals:** pallid bat (*Antrozous pallidus*), coyote (*Canis latrans*), mule deer (*Odocoileus hemionus*), California ground squirrel (*Otospermophilus beecheyi*), San Diego desert wood rat (*Neotoma lepida intermedia*);

**Plants:** white rabbit-tobacco (*Pseudognaphalium leucocephalum*), California sagebrush (*Salvia leucophylla*), laurel sumac (*Malosma laurina*), black cottonwood (*Populus trichocarpa*), coast live oak (*Quercus agrifolia*), black willow (*Salix nigra*), cottonwood (*Populus* sp.), arroyo willow (*Salix lasiolepis*), willow (*Salix* spp.) and blue elderberry (*Sambucus nigra* ssp. *caerulea*);

And all other riparian/wetland vegetation which provides habitat for these species and all other aquatic and wildlife resources in the Project vicinity.

The adverse effects the Project could have on the fish or wildlife resources identified above include: loss of natural bed or bank; change in contour of bed, channel, or bank; change in gradient of bed, channel, or bank; change in channel cross-section; loss of bank stability over time; increase of bank erosion over time; change in composition of channel materials; soil compaction or other disturbance to soil layer; short-term release of contaminants; long-term release of contaminants; loss and decline of riparian and/or emergent marsh habitat; colonization by exotic plant or animal species; loss and decline of instream channel habitat; change to, or loss or decline of natural bed substrate; loss of nesting and foraging habitat of listed species; disruption to nesting birds and other wildlife; direct take of terrestrial species; disturbance from Project activities; loss or decline of aquatic species' habitat; loss of channel shading; loss of refugia sites within the bank and channel; loss or impediment of terrestrial animal species travel routes due to temporary structures; change in stream flow; change in flow depth, width, or velocity; change in channel form; and degradation of water quality.

The Project will impact 3.022 acres of Fremont cottonwood forest and woodland habitat within the stream, with associated changes to the bed, bank, and channel, from vegetation management activities, based on the revised Project impacts provided by Permittee to CDFW on October 3, 2024.

## MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

### 1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Habitat Classification and Impacts Analysis. Prior to initiation of Project activities, the Permittee shall submit to CDFW revised vegetation mapping that verifies the habitat classification and impact acreages for the Project. Habitat types shall be identified according to Sawyer et al. 2009 A Manual of California Vegetation. Habitat mapping at the alliance level will help establish baseline vegetation conditions. In addition to this mapping, Permittee shall provide CDFW with a figure that shows an overlay of this vegetation mapping by habitat type as well as the type of impacts the vegetation will be subject to. These impacts include, but are not limited to, trimming, brushing, and removal. Permittee shall quantify the impacts resulting from this Project by habitat type and state whether the impacts are permanent or temporary in nature.
- 1.2 Least Bell's Vireo, Southwestern Willow Flycatcher, and Western Yellow-billed Cuckoo Protocol Level Surveys. Prior to initiation of Project activities, the Permittee shall submit to CDFW the results of protocol level surveys for least Bell's vireo, southwestern willow flycatcher, and western yellow-billed cuckoo. Permittee shall adhere to Measure 2.14 for guidance on how these surveys shall be conducted and reporting measures.
- 1.3 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the Project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.4 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the Project at the Project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.5 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the Project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.6 Project Site Entry. Permittee agrees that CDFW personnel may enter the Project site at any time to verify compliance with the Agreement.

- 1.7 Property Not Owned by Permittee. To the extent that the Protective Measures of this Agreement provide for activities on another owner's property, they are agreed to with the understanding that Permittee shall first acquire the legal right to enter.
- 1.8 Notification Requirements. CDFW requires that Permittee: 1) immediately notify CDFW in writing if monitoring reveals that any of the protective measures were not implemented during the period indicated in this program, or if it anticipates that measures will not be implemented within the time period specified; and, 2) immediately notify CDFW if any of the protective measures are not providing the level of protection that is appropriate for the impact that is occurring, and recommendations, if any, for alternative protective measures.
- 1.9 Compliance. CDFW may, at its sole discretion, review relevant documents maintained by Permittee, interview Permittee's employees and agents, inspect the work site, and take other actions to assess compliance with or effectiveness of protective measures in this Agreement. CDFW shall verify compliance with protective measures to ensure the accuracy of Permittee's mitigation, monitoring, and reporting efforts.
- 1.10 Designated Biologist. At least 30 days prior to initiating ground- or vegetation-disturbing activities, Permittee shall submit to CDFW for review and approval a list of biological monitors (Designated Biologist) that will be involved with the Project. The list of Designated Biologists shall be provided to CDFW as soon as possible and include their names, qualifications, experience, and contact information. Designated Biologist shall: 1) be knowledgeable and experienced in the biology and natural history of local plant and wildlife resources; 2) be able to identify resources that are or have the potential to be present at the Project area; 3) have previous biological monitoring experience on construction projects; 4) have at least three years of field experience conducting general and protocol level nesting bird surveys related to finding nests and monitoring them for the specific purpose of determining breeding status, egg incubation, chick maturity, and estimating fledge date; 5) have the necessary experience and/or certifications for conducting protocol and focused surveys for species that may be present in the Project area; 6) when needed, have obtained the proper documentation in regards to Scientific Collecting Permits (SCP) or Memorandum of Understanding (MOU).
- 1.11 Designated Biologist – Monitoring. A Designated Biologist shall be on-site to monitor all Project activities within and adjacent to streambed areas.
- 1.12 Agreed Work Activities. The activities identified in the above Project description constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that Permittee is precluded from doing other activities within the streams identified within the Project location. However, activities not specifically agreed to and resolved by this Agreement shall be subject to a separate notification.

1.13 Weather Limitations. Permittee's activities within the drainage shall be restricted to periods of dry weather (with less than a 40-percent chance of rain). Permittee shall monitor the National Weather Service 72-hour forecast for the Project area. No work shall occur when the stream is actively flowing, ponded, or during a dry-out period of 24 hours after the wet weather. Weather forecasts shall be documented upon request by CDFW.

## 2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

2.1 Protected Species. This Agreement does not authorize take, incidental or otherwise, of any protected species. For the purpose of this Agreement, "protected species" means the following: A species fully protected under state law; a candidate species or species listed as threatened or endangered under the California Endangered Species Act (CESA; Fish & G. Code § 2050 et seq.) and/or the Endangered Species Act (ESA; 16 U.S.C. § 1531 et seq.); as State-listed rare plant species; or any other species for which take is prohibited under State or federal law.

2.2 Incidental Take Permit. An Incidental Take Permit (ITP) from CDFW may be required if the Project, Project construction, or any Project-related activity during the life of the Project will result in "take," as defined by the Fish and Game Code, of any species protected by CESA [Fish & G. Code, §§86, 2080, 2081, subd. (b) (c)]. This Agreement does not authorize take of any rare, threatened, or endangered species that may occur within or adjacent to the proposed work area, including least Bell's vireo. If there is a potential for take, Permittee shall immediately consult CDFW and obtain the necessary state permits and/or submit plans to avoid any impacts to the species. Consultation with U.S. Fish and Wildlife Service or National Ocean and Atmospheric Administration would be required to receive take authority for federally threatened and endangered species.

2.3 Fully Protected Species. This Agreement does not authorize take, incidental or otherwise, of any fully protected species, including white-tailed kite, California condor, and unarmored threespine stickleback.

State of California fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock (Fish & G. Code §§ 3511, 4700, 5050 and 5515).

2.4 Reporting Sensitive Species Observations to the California Natural Diversity Database (CNDDDB). Permittee shall be responsible for reporting<sup>1</sup> all observations of threatened, endangered, or species of special concern to the CDFW Natural

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<sup>1</sup> Information can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

Diversity Data Base (CNDDDB) within 14 days of the sighting. This includes submitting observations for sightings that occurred for Project surveys already conducted and for the term of this Agreement. If observation forms are submitted, please include local CDFW personnel on any email or submit copies of the forms as an appendix to any future reports (this will help CDFW to ensure the data is recorded). For bird species, the CNDDDB will only accept observations that include confirmed nesting and/or breeding activities (with the exception for wintering observations of the burrowing owl).

- 2.5 Environmental Education Program/Materials. Educational materials shall be created and incorporated into an environmental training, to be conducted for all Project personnel entering the Project area where sensitive habitats and/or species may be present. Educational materials may be brief and concise but should illustrate sensitive species and their habitat, discuss any specific measures to protect the species, what to do if the species is observed, legal protections for those species, penalties for violations, and so forth. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site.

## **Biological Resources**

- 2.6 Pre-Work General Biological Surveys. Permittee shall have the Designated Biologist conduct a minimum of one pre-Project survey within and adjacent to the proposed work area within a 10-day period prior to the start of vegetation trimming and removal activities. Pre-Project surveys shall include: 1) general surveys for botanical and wildlife resources; 2) the identification of any active burrows and/or woodrat nests (if active, they should be recorded, monitored for species observations, flagged, and mapped); and 3) work areas with flowing or standing water shall be visually surveyed for any aquatic species that may be impacted by Project activities. Survey results, including negative findings, analysis, recommendations, and field notes shall be submitted to CDFW for review no later than 48 hours prior to the start of Project activities. If any special-status species are observed during the surveys, Permittee shall not commence with work activities and will contact CDFW immediately.
- 2.7 Work Hours. All work activities shall be confined to daylight hours. For purposes of this Agreement, "daylight hours" are defined as that daytime period between 30 minutes after sunrise and 30 minutes before sunset.
- 2.8 Listed and Other Special-status Species. Pre-activity surveys for potential rare, listed, or other sensitive status species shall be conducted by a Designated Biologist within 30 days prior to the start of any Project activity. Surveys shall be conducted in the Project work area and all access routes to avoid and minimize incidental take, confirm previous observations, identify any areas potentially occupied by listed or sensitive species, and clearly mark all resources to be avoided by Project activities. If any CESA-listed or ESA-listed species or candidate species are found or could be impacted by the work proposed, Permittee shall

notify CDFW of the discovery prior to commencement of any Project-related activity. An amended Agreement and/or a State Incidental Take Permit, pursuant to Fish and Game Code § 2081(b), and a new CEQA analysis may be necessary before the Project can begin. A Pre-Activity Survey Report shall be submitted to CDFW within one week of completing surveys. Surveys for listed or special-status species can run occur during general pre-activity surveys.

- 2.9 Southern California Steelhead. Southern California steelhead have been documented in Santa Clara River. In June 2021 the Fish and Game Commission (Commission) received a petition to list southern California steelhead as endangered under CESA. On May 13, 2022, the Commission provided public notice southern California steelhead are a candidate species under CESA.

No Project activities, including access, shall be conducted within flowing or ponded water in or near the Project area, or that may otherwise affect surface flows.

- 2.9.1 Southern California Steelhead Weather Restrictions. Work activities shall cease, and the Project site cleared of all work materials, once substantial rains begin. Substantial rains, for the purpose of this agreement, include rain that does not absorb into the ground within 24 hours of the rain event or triggers steelhead to migrate upstream.

- 2.10 Santa Ana Sucker, and Unarmored Threespine Stickleback Protection. To prevent any impact to southern California steelhead, Santa Ana sucker, and unarmored threespine stickleback, all work shall be completed without water contact techniques so that no work, including access, shall be performed in areas where there is any water present. Additionally, no dewatering activities are authorized. Unarmored threespine stickleback is a state fully protected species (see Measure 2.3).

- 2.11 Take of Nesting Birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code Section 3513 makes it unlawful to take or possess any migratory nongame bird or part thereof except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918 (MBTA; 16 U.S.C. § 703 et seq.) before January 1, 2017, and subsequent rules and regulations adopted pursuant to the MBTA that are consistent with the Fish and Game Code. The issuance of this Agreement does not in any way exempt or excuse compliance with these statutes.

- 2.12 Nesting Birds. If construction or vegetation removal occurs between February 1 to September 15 (January 1 to July 31 for raptors), then Permittee shall make every



effort to clear vegetation before February 1 (January 1 for raptors) and shall implement one of the following measures to avoid and minimize impacts to nesting birds.

2.12.1 The Designated Biologist shall survey for breeding/nesting habitat within and adjacent to the Project site for breeding/nesting birds. A minimum of two breeding/nesting bird surveys shall be conducted during a one-week period with the last survey being conducted no more than 72 hours prior to initiation or continuation of Project activities within CDFW jurisdiction. Species that have established protocol survey guidelines shall be conducted using the most current protocol survey guidelines in the appropriate season prior to implementation of Project activities. The Designated Biologist shall conduct surveys for white-tailed kite, willow flycatcher, yellow warbler, least Bell's vireo, southwestern willow flycatcher, western yellow-billed cuckoo, and other Species of Concern likely to be found in the area or using the area to forage during the proposed Project activities. The Designated Biologist shall provide CDFW field notes or other documentation within 24 hours of completing the surveys. The report shall include how impacts to any nesting birds will be avoided. The Designated Biologist shall implement a default 300-foot minimum avoidance buffer for all common passerine birds and 500-foot minimum avoidance buffer for all special-status passerine and raptor species. The breeding habitat/nest site shall be fenced and/or flagged in all directions, and this area shall not be disturbed until the nest becomes inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, and the young will no longer be impacted by the Project. Observations of breeding/nesting threatened or endangered bird species during surveys shall be reported immediately to CDFW. If a lapse in Project-related work of five days or longer occurs, another survey and consultation with CDFW shall be required before Project work can be reinitiated.

2.12.2 The Permittee may propose an alternative plan for avoidance of nesting birds for CDFW concurrence.

2.13 Take of Bird Nests. Permittee shall not take or destroy nests (or eggs) of birds that are designated under Federal and California State laws, MBTA and Fish and Game code sections 3503, 3503.5, 3511, and 3513.

2.14 Least Bell's Vireo, Western Yellow-billed Cuckoo, and Southwestern Willow Flycatcher. If Project activities cannot be completed outside the nesting season for these species (February 1 through September 15), the Permittee shall postpone and/or cease work until the following conditions have been met:

2.14.1 Prior to initiation of Project activities, focused surveys following United States Fish and Wildlife Service (USFWS) protocols for least Bell's vireo, western yellow-billed cuckoo, and southwestern willow flycatcher shall be conducted during the breeding season and during morning hours and under appropriate weather conditions. The physical extent of the survey area shall be approved

by CDFW prior to commencing surveys and shall include indirectly affected and buffer areas. Survey results shall be submitted in writing to CDFW for review and concurrence prior to start of work activities. This Agreement does not authorize take of CESA-listed species. Any such take shall require separate permitting. Liability for any take of such listed species remains the separate responsibility of Permittee for the duration of the Project (see Measure 2.1).

2.14.2 The surveys<sup>2</sup> shall include all eight surveys described in the protocol, at least 10 days apart, between April 10 and July 31, during morning hours and under appropriate weather conditions.

2.14.3 Please note that the survey protocol for southwestern willow flycatcher<sup>3</sup> requires a USFWS-permitted biologist to conduct three to five surveys over the course of the three survey periods (Survey Period 1: May 15 to May 31, Survey Period 2: June 1 to June 24, Period 3: June 25 to July 17) at least five days apart. Permittee shall provide CDFW with documentation of USFWS approval of the biologist prior to the start of the surveys.

2.14.4 Surveys for western yellow-billed cuckoo shall follow the USFWS protocol<sup>4</sup>.

2.14.5 If survey results indicate least Bell's vireo, western yellow-billed cuckoo, and/or southwestern willow flycatcher are present, the following avoidance measures shall be implemented:

2.14.5.1 No construction or vegetation removal shall take place February 1 through September 15.

2.14.5.2 If least Bell's vireo, western yellow-billed cuckoo, and/or southwestern willow flycatcher is present and the avoidance measures identified above cannot be implemented, take may result, and an Incidental Take Permit (ITP) should be applied for and obtained from the CDFW. An ITP will include the following measures for minimization and mitigation: construction buffers, a biological monitor, sound walls, and habitat replacement.

2.14.6 If survey results indicate least Bell's vireo, western yellow-billed cuckoo, and/or southwestern willow flycatcher are not present, a Designated Biologist shall be present on site during all work activities to monitor for late season nest establishment through September 15. If construction activities stop for more than three days, a Designated Biologist shall conduct a focused survey

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<sup>2</sup> Survey protocol for least Bell's vireo can be found at:

<https://www.fws.gov/sites/default/files/documents/survey-protocol-for-least-bells-vireo.pdf>.

<sup>3</sup> Survey protocol for southwest willow flycatcher can be found at:

<https://pubs.usgs.gov/tm/tm2a10/pdf/tm2a10.pdf>.

<sup>4</sup> Survey protocol for western yellow-billed cuckoo can be found at:

<https://ipac.ecosphere.fws.gov/guideline/survey/population/6901/office/65413.pdf>.

for least Bell's vireo and southwestern willow flycatcher following USFWS protocols and submit the results to CDFW for review prior to re-initiation of Project activities.

- 2.15 White-Tailed Kite and California Condor. The Designated Biologist shall survey the proposed work area to verify the presence or absence of white-tailed kite and California condor. Survey results, including locations of any detected individuals, negative findings, analysis, recommendations, and field notes shall be submitted to CDFW for review a minimum of five days before the start of work or two weeks after the conclusion of the survey, whichever comes first. This survey shall be completed before the start of work or if there is a pause in Project-related activities of five days or more. Work shall not commence or continue until any white-tailed kite or California condor move from the area of their own volition. CDFW shall be notified of any white-tailed kite or California condor sightings within 1,000 feet of the work area. All observations must be reported to CDFW within 12 hours of observation. White-tailed kite and California condor are state fully protected species (see Avoidance and Minimization Measure 2.3).
- 2.16 California Legless Lizard and Coast Horned Lizard. Prior to work within suitable habitat the Designated biologist shall conduct a pre-activity survey for these species within 48 hours prior to starting Project activities. The biologist will identify and flag areas suitable to store equipment to prevent unintended impacts to buried lizards. Areas that cannot be avoided, or will require removal of ground cover used by the species, shall be gently raked with a hand tool (e.g., a garden rake) to a depth of two inches to locate any lizards that could be under the surface. Individuals of these species found in the work area shall be allowed to leave the Project work area of their own volition. Daily sweeps of overland travel routes shall be surveys for these species prior to ingress and egress. If any individuals are observed the details shall be included in the Post-Project Report (Reporting Measure 4.5).
- 2.17 Two Striped Garter Snake and Western Pond Turtle. Any individuals of these species discovered at the site during Project activities shall be allowed to move out of the Project area of their own volition. If any individuals are observed the details shall be included in the Post-Project Report (Reporting Measure 4.5).
- 2.18 Woodrat Middens. A preconstruction survey for woodrat middens by a Designated Biologist shall be conducted within two weeks prior to Project activities. Survey results, including locations of any detected individuals or middens displayed on a map, negative findings, analysis, recommendations, and field notes shall be submitted to CDFW for review and approval no later than 48 hours prior to the start of Project activities. If woodrat middens are present, then the analysis and recommendation section shall include measures that will be taken for avoidance based on species- and site-specific information. Should any woodrat individuals or middens be present at the Project site, the Permittee shall avoid all detected individuals and middens with a 500-foot buffer. CDFW shall review and provide

written approval of other avoidance measures provided by the Designated Biologist in their report. The Designated Biologist shall not implement any additional avoidance measures aside from the 500-foot buffer without written approval from CDFW.

- 2.19 Special-status Plants. Special-status plant species (including but not limited to white rabbit-tobacco) have the potential to occur on the Project work area where suitable habitat is present. Therefore, in areas scheduled for vegetation removal to bare ground or other activities that could impact special-status plants, Permittee shall conduct surveys during the blooming period prior to the start of those activities, using the CDFW 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities<sup>5</sup>. Survey Reporting shall be provided to CDFW at least one week prior to the start of vegetation removal activities. If sensitive plant species are identified, Permittee shall identify them with flagging and avoid with a 25-foot no-disturbance buffer during Project activities. If this avoidance is not feasible or work begins prior to blooming season, Permittee shall consult with CDFW to determine whether a buffer reduction or alternative minimization measure for non-listed species is possible. Permittee shall not encroach on the 25-foot buffer unless CDFW provides advance, written approval to do so.
- 2.20 Non-listed Species and other vertebrates. The Designated Biologist shall be present during work in all streams and associated vegetation areas during all vegetation-removal to monitor for non-listed, special-status, and/or common ground-dwelling vertebrates encountered in the path of Project-related activities. Any individuals found shall not be harassed and shall be allowed to leave the Project area unharmed. If necessary, the Designated Biologist shall make every effort to move the species out of harm's way to the extent feasible by doing one of the following: 1) Utilize shovel, rake, or similar hand tool to gently re-direct the animal out of work area; and 2) Install exclusionary fencing to prevent species from re-entering disturbance area. The Designated Biologist shall have the authority to temporarily stop construction activities until the species is determined to be out of harm's way to an area with suitable habitat that will not be disturbed by Project activities. Should CDFW personnel visit the site during vegetation removal activities occurring within streams and associated vegetation and no Designated Biologist is available, Project activities within streams and associated vegetation shall be halted. Any wildlife encountered during surveys or work activities; the details shall be included in the Post-Project Report (Reporting Measure 4.5).
- 2.21 Bat Surveys. The Designated Biologist shall conduct a presence/absence survey for bats within a 300-foot buffer of the Project site. Trees, rocky cliff faces, caves, buildings, large shrubs, bridges, and culverts shall be surveyed. These presence/absence surveys shall be performed. The survey shall include a daytime and dusk survey being conducted no more than three days before initiation of Project activities. The survey shall be conducted at minimum 30 minutes before

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<sup>5</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

sunset through 90 minutes after sunset. If Project activities are paused for three days or more, then an additional survey shall be conducted prior to re-initiation of Project activities. Negative survey results shall be provided to CDFW prior to commencing Project activities or prior to re-initiation Project activities. If bats are found, CDFW shall be immediately notified (within 24 hours). The Permittee shall implement at least a 300-foot no-work buffer around bat roosts, and the Designated Biologist shall monitor the area for sensitivity to Project activities. If bats roosts appear to be disturbed, the Project activities shall immediately stop. The Permittee shall contact CDFW for additional measures and receive approval prior to resuming Project-related activities. CDFW reserves the right to provide additional provisions to this Agreement designed to protect nesting/roosting bats.

2.21.1 If avoidance requirements of the 300-foot no-work buffer around bat roosts cannot be met, Permittee may propose an alternative buffer for CDFW concurrence.

2.22 Bat Roosts Avoidance and Impact Minimization. To avoid the direct loss of bats that could result from removal of trees, vegetation, and/or structures that may provide day or night roost habitat (e.g., in cavities or under loose bark), the Permittee shall implement the following measures for all vegetation removal and structure removal authorized under this Agreement.

2.22.1 If bats are present, Permittee should make every attempt to avoid suitable bat roosting tree/structure removal from March 1 to September 30 to avoid impacts to bat maternity season. Trees and/or structures determined to be maternity roosts shall be left in place until the end of maternity season or until Designated Biologist verifies no pregnant females and young in non-volant stage are present.

2.22.2 No less than three days before scheduled initial vegetation removal and structure removal, the Permittee shall have the Designated Biologist approved by CDFW, specifically for bats, conduct pre-construction reconnaissance surveys to identify those trees and/or structures proposed for disturbance that could provide hibernacula, roosting, or nursery colony habitat for bats.

2.22.3 Trees that are observed to have bat roosts shall not be sawed up or mulched immediately. A period of at least 24 hours, and preferably 48 hours at discretion of the Designated Biologist and/or CDFW, shall elapse prior to such operations to allow bats the additional opportunity to escape.

2.22.4 If bats are not detected, but the Designated Biologist determines that roosting bats may be present at any time of year, it is preferable to slowly push any tree/structure down under operator's control using heavy machinery rather than felling it with a chainsaw. In order to ensure the optimum warning for any roosting bats that may still be present, the tree should be pushed lightly two to three times, with a pause of approximately 30 seconds between each nudge

to allow bats to become active. The tree should then be pushed to the ground slowly and should remain in place until it is inspected by the Designated Biologist.

- 2.22.5 The Designated Biologist shall document all pre-construction reconnaissance survey activities and prepare a summary report including a map of confirmed locations of bat roosts to CDFW upon completion of pre-construction reconnaissance surveys.
- 2.23 Care of Injured Bats. The Designated Biologist shall immediately transport bats to a CDFW-approved wildlife rehabilitation or veterinary facility if they are injured because of exclusion activities or structure demolition. Permittee shall identify an appropriate wildlife care facility before starting exclusion or demolition activities. Permittee shall bear any costs associated with the care or treatment of such injured bats.
- 2.24 Capture of Injured Bats. The Designated Biologist shall capture injured bats by hand capture or methods approved by CDFW. Permittee shall not use mist nets or harp traps as capture techniques. Prior to handling injured bats, the Designated Biologist is strongly encouraged to have received appropriate pre-exposure rabies vaccinations and boosters, and/or have maintained a rabies antibody titer recommended by the U.S. Department of Health and Human Services CDC and the California Department of Public Health<sup>6</sup>.
- 2.25 Care and Transport of Injured Bats. The Designated Biologist shall place captured bats in individual holding bags. The Designated Biologist shall place the holding bags inside a large plastic cooler on a stable surface away from Project construction and repairs to prevent tipping or other disturbance to the cooler. The cooler is intended to maintain a steady temperature for the bats, as well as to protect them from injury from debris, being stepped on, or any other external threat. The cooler shall not be completely closed to prevent suffocation of the bats inside the cooler.
- 2.26 Invasive Species. Permittee shall conduct Project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), from one Project site and/or watershed to another. Prevention BMPs and guidelines for invasive plants can be found on the California Invasive Plant Council's website at: <http://www.cal-ipc.org/ip/prevention/index.php> and for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website<sup>7</sup>.
- 2.27 Notification of Invasive Species. Permittee shall notify CDFW immediately if an invasive species not previously known to occur within the Project site is discovered during Project activities by submitting a completed Suspect Invasive Species

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<sup>6</sup> <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Rabies.aspx>

<sup>7</sup> <http://www.protectyourwaters.net/>

Report<sup>8</sup> and photos to the Invasive Species Program by email at: [invasives@wildlife.ca.gov](mailto:invasives@wildlife.ca.gov). Notification may also be provided by calling (866) 440-9530. Upon receiving notification, CDFW will provide Permittee with guidance for further action as appropriate to the species. A copy of the Suspect Invasive Species Report and photos shall be included in the Post-Project Report (Reporting Measure 4.5).

- 2.28 Remove Invasive Vegetation by Hand. Whenever practicable, invasive species shall be removed by hand or by hand-operated power tools rather than by chemical means. Where chemical control of non-native vegetation is deemed necessary within the bed, bank, or channel of the stream, and there is a possibility that the herbicides could come into contact with water, Permittee shall employ only those herbicides which are approved for aquatic use. If surfactants are required, they shall be restricted to non-ionic chemicals, such as Agri-Dex, which are approved for aquatic use.
- 2.29 Invasive Plant Control/Eradication. To minimize the spread of invasive plant species to areas within and outside of the Project site, Permittee shall implement control and eradication activities prior to the initiation of ground-disturbing activities. Permittee shall utilize control and eradication methods that are specific to the target species, avoid the spread and proliferation of other invasive plant species, and minimize damage to and/or removal of native plant species. All nonnative and invasive plants controlled or eradicated at the Project site treated in a manner that prevents the introduction and establishment of those species to new areas.
- 2.30 Invasive Plant Damage. All portions of non-native, invasive plant species that are damaged or broken by Project activities shall be cut, bagged, and removed from the Project work area to prevent distribution of seeds or other viable parts. Invasive species shall not be placed in or around the Project work area. All such material shall be appropriately disposed of at a licensed disposal site so as to not adversely affect native habitat near the work area.
- 2.31 Herbicide Use and Application. All herbicide use conditions for mixing, application and clean-up shall conform to all applicable federal, state, and local regulations. No herbicides shall be used where threatened or endangered species occur, when wind velocities are above five miles per hour, or when nesting birds could be exposed. Nothing in this Agreement represents a pesticide use recommendation that allows for actions which conflict with pesticide use. Any application of herbicide shall be done by a licensed applicator in accordance with all applicable, federal, state, and local laws and guidelines. All herbicides, surfactants, and other pesticides utilized within or adjacent to CDFW jurisdictional areas and other sensitive aquatic habitat areas shall be registered for aquatic use by the California Department of Pesticide Regulation. Herbicides shall be used only for selective

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<sup>8</sup> <https://wildlife.ca.gov/Conservation/Invasives/Report>



treatment and to the minimum amount needed to prevent regrowth of vegetation. Herbicide use to kill native vegetation is prohibited.

- 2.32 Vegetation Trimming. There shall be no vegetation trimming beyond what has been agreed to in the Project description.
- 2.33 Stockpiled Vegetation. No stockpiling of brush, loose soils, or similar debris material may occur within the Project area. No wood chipping material shall be spread on-site.
- 2.34 Pest Control for Native Vegetation. A Designated Biologist or certified arborist shall survey trees prior to vegetation removal to determine if trees are impacted by infectious pests or diseases. If trees are impacted by pests or diseases, the Designated Biologist or certified arborist should prepare an Infectious Tree Disease Management Plan or develop a detailed, robust, enforceable, and feasible list of preventative measures. A plan/list should provide measures relevant for each tree or disease observed. To avoid the spread of infectious tree pests and diseases, infected trees should not be transported from a Project site without first being treated using best available management practices described in the Infectious Tree Disease Management Plan or list of preventative measures.

### **Equipment and Staging**

- 2.35 Staging Area. Staging/storage areas for equipment and materials shall be located outside of the stream in an area selected for its non-vegetated status.
- 2.36 Flagging. The perimeter of the work site shall be adequately flagged to prevent damage to adjacent riparian habitat. Project personnel shall strictly limit their activities, vehicles, equipment, and construction materials to the Project footprint.
- 2.37 Lighting. Permittee's activities shall take place during daylight hours only. No night work or lights are authorized.
- 2.38 No Activities in Stream. No Project activities shall take place in the wetted portion of the stream. Vehicles shall not be driven or equipment operated in water covered portions of a stream or lake, or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed, except as otherwise provided for in the Agreement and as necessary to complete authorized work.
- 2.39 Inspection of Project Equipment. Permittee shall inspect all vehicle, tools, waders, boots, and other Project-related equipment and remove all visible soil/mud, plant materials, and animal remnants prior to entering and exiting the stream and/or between each use in different watersheds.
- 2.40 Decontamination Sites. If decontamination for aquatic invasive animal species is applicable, Permittee shall perform decontamination of vehicles, watercraft, and other Project gear and equipment in a designated location where runoff can be

contained and not allowed to pass into CDFW jurisdictional areas and other sensitive habitat areas.

## **Erosion**

- 2.41 Erosion Control Measures. Permittee shall utilize erosion control measures throughout all phases of operation where sediment runoff from exposed slopes threatens to enter a river, stream, or lake. Any type of erosion control blanket or other product shall not use plastic and shall be weed-free. If netting is to be used, it must be flexible (e.g., "soft" hemp) so that snakes or other animals do not become trapped in the netting.
- 2.42 Sediment and Runoff Control. Sediment from Project-related activities shall be removed from upland areas or seasonally dry portions of the ephemeral drainages where it might likely be washed into the stream or inundated by high flows, or where it is likely to have a negative impact on emergent native vegetation, or where it is likely to have a negative impact on native trees. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
- 2.43 Excavation Spoils. Spoil excavation is not authorized under this Agreement.
- 2.44 Disturbed Soils. Permittee shall stabilize all disturbed soils within the Project site to reduce erosion potential, both during and following construction. Planting, seeding with native species, sterile seed mix, and mulching is acceptable. Where suitable vegetation cannot reasonably be expected to become established, seeding placed after October 15 shall be covered with non-erodible materials, such as coconut fiber matting, for stabilization.

## **Pollution, Litter and Cleanup**

- 2.45 Operating Equipment and Vehicle Leaks. Any equipment operated within or adjacent to the ephemeral drainage shall be checked and maintained daily to prevent leaks of materials that could be deleterious to aquatic and terrestrial life or riparian habitat. All refueling and maintenance of equipment and vehicles shall be at least 150 feet from any aquatic habitat, wetland area, water body, or ephemeral drainages. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream, lake or ephemeral drainage shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak. Clean up equipment such as extra boom, absorbent pads, skimmers, shall be on-site prior to the start of Project-related activities.
- 2.46 Pollutants and Debris. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, cement or concrete or washings thereof, asphalt, paint, oil or other petroleum products or any other substances which could be hazardous to

aquatic life, or other organic or earthen material from any logging, construction, or other associated Project-related activity shall be allowed to contaminate the soil and/or enter into or placed where it may be washed by rainfall or runoff into, any stream/channel/culvert/ditch. Any of these materials, placed within or where they may enter a stream/channel/culvert/ditch, by Permittee or any party working under contract, or with the permission of Permittee, shall be removed immediately. When Project-related activities are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high-water mark of any stream.

- 2.47 Pollution Compliance. Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall obey these laws and it shall be the responsibility of Permittee to ensure compliance.
- 2.48 Pollution Cleanup. The clean-up of all spills shall begin immediately. CDFW shall be notified immediately by Permittee of any spills that release hazardous material (e.g., oil, cement, fuel, etc.) into any stream/channel/culvert/ditch and CDFW shall be consulted regarding clean-up procedures.
- 2.49 Pick Up Debris. Permittee shall pick up all debris and waste daily. Permittee shall dispose of all Project generated debris, materials, and rubbish in a legal manner. Permittee shall remove all human generated debris, such as yard and farm cuttings, broken concrete, construction waste, garbage, and trash.

### 3. Compensatory Measures

To compensate for the permanent adverse impacts to 3.022 acres of fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall provide mitigation for permanent impacts through financial security (Measure 3.1), remediation of temporary impacts (Measure 3.4), and purchase at a mitigation bank (Measure 3.2), or off-site Permittee responsible mitigation (Measure 3.3) and each measure thereafter.

- 3.1 Financial Security. The Project will result in impacts to 3.022 acres of Riparian Scrub habitat including black cottonwood forest and woodland with willow species within and associated with the stream. **Prior to initiating any Project-related activities**, Permittee shall provide CDFW with a financial security in the form of a letter of credit (LOC) or other funding mechanism acceptable to CDFW as described in Measure 3.5 either in accordance with Measure 3.2 or in accordance with Measure 3.3.
- 3.2 Mitigation Bank. Permittee shall compensate for 3.022 acres of impacts to stream bed, bank, and channel, through the acquisition of no less than 3.022 acres of stream bed or riparian habitat re-establishment credits through a CDFW-approved mitigation bank within the anadromous stretch of the Santa Clara River, or other location, approved in writing by CDFW. The Permittee shall submit the credit amount, bank sponsor, habitat types(s), map of the bank site, and map of the bank jurisdiction to CDFW for review and approval prior to purchasing the credits. A

different type of bank credit may require a higher or lower mitigation ratio. Written CDFW approval of the mitigation bank is required prior to purchase of credits. The Permittee shall submit a record of purchase to CDFW **at least 30 days prior to the initiation of Project activities or within 12 months following start of Project activities**, which includes staging and site preparation, if security is provided pursuant to Measure 3.5. If mitigation credits are not available for purchase within 10 months following start of Project activities, then Measure 3.3 shall be implemented instead of the purchase of mitigation credits and shall be completed within 18 months following start of Project activities if Security is provided. Alternate banks, credit types, and/or credit amounts necessary to meet the mitigation obligation must be proposed for CDFW review and approval within 10 months following start of Project activities.

3.3 Permittee Responsible Mitigation – Off site (Mitigation Site). Permittee shall compensate for permanent impacts to 3.022 acres of stream bed, bank, and channel, through the acquisition, and perpetual conservation and management of a Mitigation Site, or several mitigation sites, containing no less than 3.022 acres of stream and stream-associated habitat within the Santa Clara River watershed. The Permittee shall prepare a Habitat Mitigation and Monitoring Plan (HMMP), and a Long-Term Management Plan (LTMP) designed to sustain or surpass the habitat quality of the Mitigation Site in perpetuity. Permittee shall also establish long-term management funding. Permanent protection and funding for perpetual management of the Mitigation Site(s) must be complete **prior to initiation of Project activities, or within 18 months of starting Project activities if Security is provided** for all uncompleted obligations.

3.3.1 Mitigation Site Acquisition and Protection. Permittee shall obtain written approval from CDFW of the property eligibility for the proposed Mitigation Site(s) with a minimum of 3.022 acres of off-site streambed and stream-associated habitat. Permittee shall submit a proposed Mitigation Site, including: 1) a biological report with pertinent biological resources information (e.g., delineation, hydrological assessment, species occurrences); 2) Habitat Management Land Title Information; 3) Preliminary Title Report; 4) a Keyhole Markup Language file (e.g., KMZ files) of Assessor's Parcel(s); 5) Phase 1 Environmental Site Assessment Report; and 6) Mineral Risk Assessment Report, for CDFW review and approval **no later than five months prior to the start of Project activities or four months following start of Project activities if Security is provided**. See Permittee Checklist of Habitat Management Land Property Review and Protection<sup>9</sup>. CDFW shall provide a written approval or denial for property eligibility.

3.3.2 Habitat Mitigation and Monitoring Plan. Permittee shall develop and submit to CDFW for review and written approval an HMMP, after CDFW approval of the Mitigation Site **and no later than four months prior to the start of Project activities or six months following start of Project activities if Security is**

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<sup>9</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=207700>

**provided.** Permittee shall ensure the HMMP is successfully implemented and be responsible for any cost incurred during the restoration/mitigation or in subsequent corrective measures. At a minimum, the HMMP shall include the following:

- 3.3.3 Restoration Specialist. The HMMP shall be prepared by person(s) with expertise in southern California ecosystems and native plant re-vegetation techniques (Restoration Specialist). Planting, maintenance, monitoring, and reporting activities shall be overseen by the Restoration Specialist familiar with restoration of native plants.
- 3.3.4 Site Description. The HMMP shall include a description of the physical conditions and vegetation communities including a map and Geographic Information Systems (GIS) shapefiles. Photo-documentation of the site, including restored areas, shall be provided before and after restoration.
- 3.3.5 Reference Site. If applicable, an appropriate reference site with as good or better-quality habitat than the pre-Project impact site shall be identified and approved by CDFW. The HMMP shall include survey information for the reference site.
- 3.3.6 Schedule. A schedule that outlines all foreseeable activities necessary.
- 3.3.7 Planting Plan. Details of the site preparation consisting of a detailed contouring/grading plan and details of native plant installation (Planting Plan), including the type and number of materials to be used (e.g., local native seeds, cutting, and/or container stock), source(s) of the materials, planting location, methods of installation, and a local California native plant palette. This Planting Plan shall include plantings of both overstory and understory vegetation as appropriate. All seeded/planted species installed shall include only local California native container plants and cuttings and shall be typical of the existing native plant species present within, or immediately adjacent to the site.
- 3.3.8 Native Plant Sources. Revegetation plant material shall be derived from cuttings, materials salvaged from disturbed areas, and/or seeds obtained from high quality specimen locations that exhibit healthy, sound, and viable seed from multiple populations occurring locally within the same drainages. The HMMP shall identify the percentage of seed collected from local native plants and shall not exceed 50-percent of the seed produced by a population of species during any given year. Any container stock, if used, shall be obtained from a licensed nursery which can ensure that container plants are pest free, and have not been subject the application of synthetic pesticides.
- 3.3.9 Sampling Techniques. The HMMP shall identify the sampling techniques (e.g., quadrats, transects, or relevé) to be used to collect quantitative/qualitative data (e.g., vegetation relative/absolute cover, density,

diversity indices, recruitment, survivorship, etc.) for baseline conditions and to establish and measure success criteria. The sampling techniques shall have adequate detail so that it can be duplicated by different people and shall include a sample data collection sheet that shows appropriate data to be collected per the proposed sampling methodology.

3.3.10 Survey Timing. The primary monitoring surveys to determine the success of restoration efforts (survival, cover, and growth of plants) shall be conducted at a minimum twice annually in Spring and Fall.

3.3.11 Maintenance Activities. The HMMP shall provide a description of maintenance operations with particular emphasis on invasive species control and watering methods and schedules. If irrigation is required, details on any irrigation to be used, irrigation designs and/or plans, and timing/schedule. Irrigation may only be used to help the plants become established during the first three years following planting. Watering/ irrigation of the site shall be discontinued at least two years prior to completion of the monitoring period.

3.3.12 Success Criteria. The HMMP shall identify the success criteria for the Mitigation Site and shall be compared against an appropriate reference site with as good or better-quality habitat than the pre-Project impact site. The success criteria shall include percent relative and absolute cover (invasive and native vegetation), species diversity, abundance, and any other measures of success deemed appropriate by CDFW.

3.3.13 Monitoring and Reporting. The HMMP shall include monitoring and reporting procedures, with a sample data collection sheet. Permittee shall have the Restoration Specialist monitor the recovery of plant, wildlife, and aquatic resources in the area following mitigation implementation. Monitoring of plant, wildlife, and aquatic resources shall be done twice a year, in Spring and Fall, with an annual quantitative survey to determine the success of restoration efforts (survival, cover, and growth of plants) through the term of restoration. The results and analysis shall be submitted with the annual restoration monitoring report to CDFW **by February 1 of each year** after mitigation implementation for at least five years and until mitigation success criteria have been met. This report shall include the status and any success trends (i.e., comparison throughout the five years of monitoring) for the success criteria outlined in the HMMP. Photos from designated photo stations shall be included.

3.3.14 Corrective Actions. The HMMP shall include a description of corrective actions to be taken if restoration measures do not meet the proposed criteria or targets. If the survival and cover requirements have not been met as established in the HMMP, the Permittee shall follow contingency measures, including but not limited to, performing modifications to the existing habitat, creation of new habitat on or off site, or purchase of mitigation credits from a mitigation bank. Any contingency actions will be determined in coordination

with CDFW. If Permittee proposes to meet the success criteria through modifications to the existing habitat or creation of additional habitat, Permittee shall be responsible for maintaining and monitoring these areas with the same survival and growth requirements for five years after planting, or until CDFW deems the sites successful.

3.3.15 Mitigation Site Land Manager. Permittee shall designate both an interim and long-term land manager approved by CDFW. After CDFW approval of the Mitigation Site and no later than four months prior to the start of Project activities or six months following start of Project activities if Security is provided, Permittee shall obtain CDFW approval or denial of a land manager entity to manage the Mitigation Site within 60 days of the approval. Permittee shall identify separate entities to fulfill the grantee and land manager roles and shall not identify the same entity to fulfill both roles. Permittee shall also provide the necessary documents requested by CDFW for due diligence review at the time the land manager is proposed following the Checklist for Entities being Considered to Hold Conservation Easements or Manage and Steward Mitigation Land<sup>10</sup>. Permittee shall also obtain CDFW approval of an interim Mitigation Site Land Manager if they are different than the long-term Mitigation Site manager. The interim and/or long-term land managers may be the landowner, or another party approved by CDFW. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW, for review and approval, of any subsequent changes with the Mitigation Site Land Manager within 30 days of the change.

3.3.16 Start-Up Activities. Permittee shall provide for the implementation of start-up activities, including the initial site protection and enhancement of the CDFW-approved Mitigation Site(s). Start-up activities include, at a minimum: 1) preparing both a HMMP and an LTMP for CDFW approval; 2) conducting baseline biological assessment and land survey report during the first growing season; 3) developing and transferring to the GIS data if applicable; 4) establishing initial fencing (if necessary); 5) conducting initial removal of litter and debris; and 6) installing signage.

3.3.17 Mitigation Site Conservation Easement. Permittee shall record a Conservation Easement (CE) approved by CDFW with an entity, to be approved by CDFW in its sole discretion, acting as grantee for the CE. CDFW shall be expressly named in the CE as a third-party beneficiary.

3.3.17.1 After CDFW approval of the Mitigation Site and **no later than four months prior to the start of Project activities or six months following start of Project activities if Security is provided**, Permittee shall provide to CDFW, for review and approval, a draft CE prepared using a CDFW-provided CE template, a updated title report,

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<sup>10</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=225933>



and other documents specified in the most current version at time of document submittal of the Permittee Checklist of Habitat Management Land Property Review and Protection<sup>11</sup>, or a revised version to be provided by CDFW. All documents conveying the Mitigation Site(s) and all conditions of title are subject to the review and approval of CDFW prior to recordation of the CE.

- 3.3.17.2 Permittee shall identify separate entities to fulfill the grantee, and land manager roles and shall not identify the same entity to fulfill both roles.
- 3.3.17.3 The CE shall expressly require implementation of the LTMP by the grantor, and land manager as authorized by the grantor and landowner and shall expressly require the identified grantee to monitor implementation of the LTMP.
- 3.3.17.4 Permittee shall record the CE after CDFW approval of the CE and all associated documents prior to the start of Project activities or within 18 months following the start of Project activities if Security is provided.
- 3.3.17.5 Permittee shall be responsible for all costs associated with the CE, including recording, CE monitoring, and long-term management costs.

3.3.18 Mitigation Success. After the fifth monitoring year, if the site has met the success criteria outlined in the HMMP, CDFW may request a site visit to determine if the mitigation portion of the Agreement is deemed complete. The site should be free of trash and any irrigation infrastructure shall be removed if it is used (unless there is an acceptable justification for leaving the irrigation system in place).

3.3.19 Mitigation Site Long-Term Management Plan. **After CDFW approval of the Mitigation Site and no later than three months prior to the start of Project activities or seven months following start of Project activities if Security is provided**, Permittee shall provide an LTMP to CDFW for review and written approval<sup>12</sup>. The LTMP shall be implemented in perpetuity and shall be designed to sustain or surpass the habitat quality of the Mitigation Site(s) upon achieving HMMP success criteria as approved by CDFW in writing. Permittee shall consult with CDFW for LTMP requirements and for an appropriate LTMP template prior to preparing the draft LTMP. The CDFW-approved long-term Mitigation Site Land Manager shall be responsible for implementing the LTMP. At a minimum, the LTMP shall include:

- 3.3.19.1 Site Description. A description of the physical conditions and vegetation communities of the Mitigation Site(s) expected, including water resources and habitat types, and a map that identifies the

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<sup>11</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=207700>

<sup>12</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=137386&inline>

location of the site(s).

3.3.19.2 Management Goals. A description of management goals related to sustaining habitat quality, wildlife usage, and overall function of the Mitigation Site.

3.3.19.3 Management Tasks. A description of specific tasks and management strategies proposed to meet management goals, including but not limited to fencing, invasive species management, trash and trespass control, and resource monitoring using a monitoring and management schedule, adaptive management plans, and strategies to address foreseeable site disturbances (e.g., dumping, wildfires, unauthorized recreational activities, etc.), and maintenance of signage and fencing.

3.3.19.4 Reporting. A description of the reporting procedures including a Management Report, which shall be completed every five years documenting at a minimum:

3.3.19.4.1 Management activities completed within the previous five-year term, including: 1) any remedial measures completed; 2) details of non-native and invasive species management such as (a) species and location where they were treated and/or removed, (b) the amount and frequency of removal, and (c) the techniques used; 3) fencing information; 4) resource monitoring, adaptive management strategies developed and how they were implemented; and 5) enforcement activity necessary.

3.3.19.4.2 An assessment of overall habitat quality within the Mitigation Site, including: 1) any changes to native and non-native vegetation cover; 2) any shifts in habitat type; 3) any loss of habitat cover; 4) any change in water resources; and 5) any new invasive species observed.

3.3.19.4.3 An evaluation of the success or failure of management strategies implemented and any changes to management strategies proposed in response to the successes or failures.

3.3.19.4.4 The Management Report shall include photos documenting the management activities.

3.3.20 Mitigation Site Endowment Fund. Permittee shall ensure that the Mitigation Site is perpetually managed, maintained, and monitored by the Mitigation Site Land Manager as described in this Agreement, the CE, and the LTMP approved by CDFW. Permittee shall provide long-term management funding for the perpetual management of the Mitigation Site by establishing a separate long-term management fund (Endowment) for the site. The Endowment is a sum of money, held in a CDFW-approved fund that provides

funds for perpetual management, monitoring, and other activities on the Mitigation Site consistent with the management plan(s) required by this Agreement. Endowment as used in this Agreement shall refer to the Endowment Deposit Amount and all interest, dividends, other earnings, additions, and appreciation thereon. The Endowment shall be governed by this Agreement, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

After the interim management period, Permittee shall ensure that the designated Mitigation Site Land Manager implements the management and monitoring of the Mitigation Site according to the LTMP. The long-term Mitigation Site Land Manager shall be obligated to manage and monitor the Mitigation Site in perpetuity to preserve their conservation values in accordance with this Agreement, the CE, and the LTMP. Such activities shall be funded through the Endowment.

- 3.3.21 Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be an entity qualified pursuant to Government Code sections 65965-65968, as amended, and approved in writing by CDFW in its sole discretion. Permittee shall submit to CDFW a written proposal for an Endowment Manager along with a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). CDFW shall notify Permittee in writing of its approval or disapproval of the proposed Endowment Manager.
- 3.3.22 Endowment Deposit Amount. After obtaining CDFW written approval of the Mitigation Site(s), LTMP, and Endowment Manager, Permittee shall prepare, in coordination with the Mitigation Site Land Manager, a Long-Term Management Endowment Property Analysis Record (PAR) or PAR-equivalent analysis to calculate the amount of funding necessary to ensure the long-term management of the Mitigation Site (Endowment Deposit Amount) consistent with the LTMP.
- 3.3.23 Property Analysis Record for Long-Term Management Fund. Permittee shall provide to CDFW for review and approval a PAR, or substantially equivalent analysis for the Mitigation Site developed in coordination with the long-term Mitigation Site Land Manager. The Permittee shall submit to CDFW for review and approval the results of the Long-Term Management Endowment PAR before transferring funds to the Endowment Manager and no later than three months prior to the start of Project activities or ~~seven~~ 12 months following start of Project activities if Security is provided. The PAR shall identify the costs for implementation of the Mitigation Site LTMP and calculate an endowment that is sufficient to fund the implementation of the LTMP in perpetuity (Long-term Endowment Fund; Endowment).
- 3.3.24 Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the Long-Term

Management Endowment PAR and adjust for any additional administrative, periodic, or annual fee.

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

3.3.25.1 Contingency. A minimum of 10-percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events. A higher percent contingency may be required upon CDFW approval.

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

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

3.3.26 Transfer Long-term Endowment Funds. Permittee shall transfer the Long-Term Endowment Funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above **prior to the start of Project activities or within 18 months following start of Project activities if Security is provided**. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this Agreement, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

3.4 Remediation of Temporary Impacts. The Permittee shall restore all areas within the Project area temporarily impacted by Project activities, such as staging areas and temporary access areas. Temporary impact areas altered during the Project shall be returned to natural contours without creating a possible future bank erosion problem.

3.5 Financial Security Mechanism. If permanent protection and funding for perpetual management of compensatory habitat is not complete prior to the initiation of Project activities, Permittee shall provide financial security in the form of an LOC, or other form of security approved by CDFW. The LOC, or other form of security approved by CDFW, shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to complete the compensatory mitigation measures of this Agreement.

- 3.6 Letter of Credit. A LOC or other funding mechanism acceptable to CDFW for all mitigation measures pursuant to this Agreement shall be submitted to CDFW for approval and shall be executed **prior to initiation of Project activities**. The amount of the LOC shall be \$1,208,800.00, based on the average cost of 3.022 acres at \$400,000.00 per acre at the time of this Agreement of restoration credits at a CDFW-approved mitigation bank, or an alternative mitigation lands acquisition as proposed to and approved by CDFW in accordance with this Agreement.
- 3.7 Draft Copy of LOC. The Permittee shall provide a draft copy of the LOC to CDFW at the address listed below for review and approval **prior to execution of security**. The LOC shall not be executed without CDFW's prior approval.
- 3.8 Expiration of LOC. In the event that the LOC will expire before the mitigation obligations have been met, the Permittee shall be responsible for providing CDFW a new LOC to replace the existing LOC **at least 60 days prior to the expiration date**.
- 3.9 Execution of LOC. Upon execution of the LOC, the Permittee shall provide the original to the address listed on the LOC template, and one copy of the executed document to CDFW at the address listed below in the Contact Information section.

#### 4. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 4.1 Notification Prior to Work. Permittee shall notify CDFW, in writing, at least five days prior to initiation of Project-related activities and at least five days prior to completion of Project and restoration activities. Notification shall be sent through the Environmental Permit Information Management System (EPIMS) and to the e-mail address: [EPIMS.R5@wildlife.ca.gov](mailto:EPIMS.R5@wildlife.ca.gov), Reference # EPIMS-VEN-24590-R5.
- 4.2 Project Reporting. All surveys, pre and post construction notifications, monitoring reports, and any other required communication between Permittee and CDFW shall be submitted through EPIMS as well as to the email address [EPIMS.R5@wildlife.ca.gov](mailto:EPIMS.R5@wildlife.ca.gov) Reference # EPIMS-VEN-24590-R5 and CC [Andrew.Chambers@wildlife.ca.gov](mailto:Andrew.Chambers@wildlife.ca.gov).
- 4.3 Sediment Transport and Hydrology. Permittee shall submit an annual report detailing changes to bed, bank, and channel due to loss of vegetation. Increased sediment transport and changes to water quality, including dissolved oxygen levels, turbidity, and algal blooms, shall be included in the report.
- 4.4 Pre-Project Report. Within two weeks of the start of Project activities, Permittee shall provide pre-Project photographs of conditions before any vegetation removal, brushing, or crowning has occurred. Pre-Project photographs shall have been taken within the previous 30 days.

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- 4.5 Post-Project Report. Permittee shall provide a post-Project report to CDFW no later than 60 days after the conclusion of Project-related activities. This report shall include, but is not limited to, the following: pre-Project photographs, the total amount of area impacted that year, post-Project photographs, species observed during Project activities, newly identified invasive species, and a digital GIS shapefile of all areas that have been maintained for vegetation. This report shall document the final quantities of vegetation and trees removed, brushed, trimmed and crowned, the percentage of canopy cover removed for each tree, and include clear photographs to document before, during, and after vegetation maintenance activities.
- 4.6 Format of Reports. All reports shall be submitted to CDFW electronically and shall include geographic information system GIS shapefiles<sup>13</sup>, along with the appropriate metadata, of the Project area. Electronic versions of reports shall be submitted through EPIMS<sup>14</sup>.

## CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be submitted through EPIMS as instructed by CDFW.

### To Permittee:

Hazem Gabr  
Southern California Edison  
EPIMS-VEN-24590-R5  
Santa Clara River at Santa Paula Airport  
2244 Walnut Grove Avenue,  
Rosemead, California 91770  
[Hazem.Gabr@SCE.com](mailto:Hazem.Gabr@SCE.com)

### To CDFW:

Department of Fish and Wildlife  
South Coast Region  
3030 Old Ranch Parkway, Suite 400  
Seal Beach, CA 90740  
EPIMS-VEN-24590-R5  
Santa Clara River at Santa Paula Airport  
[EPIMS.R5@wildlife.ca.gov](mailto:EPIMS.R5@wildlife.ca.gov)  
[Andrew.Chambers@wildlife.ca.gov](mailto:Andrew.Chambers@wildlife.ca.gov)

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<sup>13</sup> <http://www.esri.com/library/whitepapers/pdfs/shapefile.pdf>

<sup>14</sup> <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>

## **LIABILITY**

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the Project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the Project. The decision to proceed with the Project is Permittee's alone.

## **SUSPENSION AND REVOCATION**

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

## **ENFORCEMENT**

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

## **OTHER LEGAL OBLIGATIONS**

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with, or obtaining any other permits or authorizations that might be required under, other federal, state, or local laws or regulations before beginning the Project or an activity related to it. For example, if the Project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the USFWS or National Marine Fisheries Service.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the Fish and Game



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Code including, but not limited to, Fish and Game Code sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

## **AMENDMENT**

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **EXTENSIONS**

In accordance with Fish and Game Code section 1605, subdivision (b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with Fish and Game Code section 1605, subdivisions (b) through (e).

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If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the Project the Agreement covers (Fish & G. Code § 1605, subd. (f)).

## **EFFECTIVE DATE**

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable Fish and Game Code section 711.4 filing fee<sup>15</sup>.

## **TERM**

This Agreement shall expire on February 24, 2026, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as Fish and Game Code section 1605, subdivision (a)(2) requires.

## **AUTHORITY**

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

## **AUTHORIZATION**

This Agreement authorizes only the Project described herein. If Permittee begins or completes a project different from the Project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with Fish and Game Code section 1602.

## **CONCURRENCE**

Through the electronic signature by Permittee or permittee's representative as evidenced by the attached concurrence from CDFW's EPIMS, Permittee accepts and agrees to comply with all provisions contained herein.

**The EPIMS concurrence page containing electronic signatures must be attached to this agreement to be valid.**

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<sup>15</sup> <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>