

# **INFORMATION HANDOUT**

**For Contract No. 10-0S8704**

**At 10-Sta-4-6.3/6.6**

**Identified by**

**Project ID 1000000742**

## **PERMITS**

United States Department of the Interior - Fish and Wildlife Service - Biological Opinion

United States Army Corps of Engineers

California Department of Fish and Wildlife - Incidental Take Permit

## **WATER QUALITY**

Central Valley Regional Water Quality Control Board - 401 Certification

## **AGREEMENTS**

California Department of Fish and Wildlife - Final Lake or Streambed Alteration Agreement



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846

In Reply Refer To:  
08ESMF00-2012-F-0670-1

February 25, 2013

Mr. Frank Meraz  
Chief, Central Region Biology North Branch  
California Department of Transportation, District 10  
855 M Street, Suite 200  
Fresno, California 93721

Subject: Formal Consultation for the Rockaway Shoulder Widening and Rumble Strips Project, Stanislaus County, California (California Department of Transportation EA 10-0S870, 10-STA-4-PM 6.3/6.5)

Dear Mr. Meraz:

This is the U.S. Fish and Wildlife Service's (Service) response to the California Department of Transportation's (Caltrans) request for formal consultation on the Rockaway Shoulder Widening and Rumble Strips Project (project) in Stanislaus County, California. Under the provisions of the July 1, 2007, Pilot Program Memorandum of Understanding between the Federal Highway Administration (FHWA) and Caltrans, FHWA assigned, and Caltrans assumed, FHWA's responsibilities under the National Environmental Policy Act as well as its responsibilities for environmental review, consultation, and coordination under other Federal environmental laws.

Your letter requesting consultation, dated September 26, 2012, was received in this office on September 27, 2012. At issue are the effects of this proposed project on the central California distinct population segment of the federally-listed as threatened California tiger salamander (*Ambystoma californiense*; central California tiger salamander). This document has been prepared in accordance with section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*) (Act).

The findings and recommendations of this biological opinion are based on: (1) the consultation history; and (2) other information available to the Service.

## Consultation History

*September 27, 2012.* The Service received a letter from Caltrans requesting to initiate formal consultation for the project. The initiation package also included a biological assessment (BA), dated September 2012 and entitled, *Rockaway Shoulder Widening and Rumble Strips*.

*November 2, 2012.* The Service e-mailed Caltrans with questions regarding the BA.

*November 9, 2012.* Caltrans e-mailed the Service with responses to several of the Service's November 2 questions.

*December 11, 2012.* Caltrans responded to the remaining November 2 BA-related questions. The Service considered the initiation package complete at this time.

*January 21-22, 2013.* The Service e-mailed Caltrans with additional questions regarding the project. Caltrans responded promptly.

## **BIOLOGICAL OPINION**

### **Project Description**

Caltrans proposes to widen the eastbound right shoulder of a segment of State Route (SR) 4 between post miles (PM) 6.3 and 6.5 to a width of 8 feet (ft.) in order to meet current federal standards. Caltrans also proposes to install rumble strips on the eastbound shoulder within this 0.2 mile (mi) segment; to upgrade drainage facilities to conform to hydraulic recommendations, including the replacement and/or extension of one drainage culvert in the proposed widened areas; and to construct a new driveway to the Orvis Property (APN # 101-400-5000, 101-401-5000), located at PM 6.4.

Approximately 1,600 cubic yards of borrow material will be imported since there will not be enough roadway excavation for the fill. Vehicle and equipment staging will occur only on the existing roadway and pullouts. Construction is anticipated to begin in June 2014 and be completed over the course of one construction season, before November 2014.

The purpose of the project is to improve traffic safety by reducing the potential severity and number of run-off-road collisions on eastbound SR 4. According to Caltrans, traffic accidents have occurred here at a rate higher than that of the statewide average for similar facilities.

### **Proposed Avoidance and Minimization Measures**

According to the BA and further discussion with Caltrans biologists, Caltrans proposes to implement the following measures to minimize and avoid impacts to the central California tiger salamander, which is likely to occur within the project area.

1. Prior to construction, Caltrans will install mesh fencing and/or new right-of-way (ROW) fencing along the edge of newly acquired ROW in order to prevent the encroachment of equipment and personnel outside of the designated work areas on sensitive central California tiger salamander habitat located outside the project area. Habitat adjacent to construction activities, but still within the ROW, will be established as environmentally sensitive areas (ESA) using exclusionary fencing also to prevent the encroachment of equipment and personnel into these areas.

2. Prior to project groundbreaking, Caltrans will implement a worker educational training to instruct personnel on the status of the central California tiger salamander, how to avoid unanticipated effects, and the potential penalties for not complying with the conditions and requirements of the biological opinion.
3. Construction will be timed to occur during the dry season (between approximately April 15 and November 15), so as to avoid impacting breeding individuals at seasonal wetland locations. The dry season window may depend on rainfall and/or site conditions. Caltrans will confirm its seasonal start and end dates with the Service 30 days prior to the commencement of groundbreaking and the completion of work, respectively, to ensure the schedule does not begin too early or finish too late.
4. A Service-approved biologist will be on-site or on-call during construction activities that could result in take of the species.
5. Chemicals, lubricants, and petroleum products will be monitored closely and precautions used. If a spill occurs, cleanup will take place immediately. All equipment will be maintained such that there will be no leaks of fluids such as gasoline, oils, or solvents.
6. Habitat areas impacted temporarily by project activities will be restored to original grade and contour once construction is completed.
7. Caltrans proposes to minimize the effects of the action on the central California tiger salamander resulting from the permanent modification and loss of 0.005 ac of aquatic breeding habitat by purchasing 0.015 ac worth of credits, and of 1.325 ac of upland habitat by purchasing 3.975 ac worth of credits (both at a 3:1 compensation ratio). This results in a total 3.99 ac worth of credits to be purchased at a Service-approved conservation bank. Caltrans has expressed interest in using the Mountain House Conservation Bank.

#### Action Area

The action area is defined in 50 CFR § 402.02, as “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” The action area includes the project impact area, defined by Caltrans as all areas that will be disturbed permanently or temporarily by construction activities; this encompasses the 0.2 mile segment of existing SR 4 hardscape along which shoulder widening, staging/access, and other construction work will take place; and portions of annual non-native grassland within the newly proposed right-of-way (ROW). The action area also includes portions of land that extend approximately 200 ft. from the project impact area which will experience further-reaching effects of widening activities such as visual and noise disturbance.

#### **Analytical Framework for the Jeopardy/No Jeopardy Determination**

In accordance with policy and regulation, the following analysis relies on four components to support the jeopardy/no jeopardy determination for the central California tiger salamander:

(1) the *Status of the Species*, which evaluates the range-wide condition of the central California tiger salamander, the factors responsible for that condition, and its survival and recovery needs; (2) the *Environmental Baseline*, which evaluates the condition of the central California tiger salamander in the action area, the factors responsible for that condition, and the role of the action area in the species' survival and recovery; (3) the *Effects of the Action*, which determines the direct and indirect impacts of the proposed Federal action and the effects of any interrelated or interdependent activities on the central California tiger salamander; and (4) *Cumulative Effects*, which evaluates the effects of future, non-Federal activities in the action area on the central California tiger salamander.

In accordance with policy and regulation, the jeopardy/no jeopardy determination is made by evaluating the effects of the proposed Federal action in the context of the current status of the central California tiger salamander, taking into account any cumulative effects, to determine if implementation of the proposed action is likely to cause an appreciable reduction in the likelihood of both the survival and recovery of these species in the wild.

The following analysis places an emphasis on consideration of the range-wide survival and recovery needs of the central California tiger salamander, and the role of the action area in meeting those needs as the context for evaluating the significance of the effects of the proposed Federal action, combined with cumulative effects, for purposes of making the jeopardy/no jeopardy determination. In short, a non-jeopardy determination is warranted if the proposed action is consistent with maintaining the role of habitat for the central California tiger salamander populations in the action area for the survival and recovery of the species.

### **Status of the Species**

*Species Description:* The central California distinct population segment of the tiger salamander was listed as threatened on August 04, 2004. The central California tiger salamander is a large, stocky, terrestrial salamander with a broad, rounded snout. Recorded adult measurements have been as much as 8.2 inches long (Petranka, 1998). Central California tiger salamanders exhibit sexual dimorphism (differences in body appearance based on gender) with males tending to be larger than females. The coloration of the adults generally consists of random white or yellowish markings against a black body. The markings tend to be more concentrated on the sides of the body; whereas other salamander species tend to have brighter yellow spotting that is heaviest on the dorsal surface.

*Distribution:* The historic distribution for the California tiger salamander in the Central Valley and surrounding foothills included northern Yolo County southward to northwestern Kern County and northern Tulare County. Currently, the central California tiger salamander is known to occupy the Bay Area (central and southern Alameda, Santa Clara, western Stanislaus, western Merced, and the majority of San Benito counties), Central Valley (Yolo, Sacramento, Solano, eastern Contra Costa, northeastern Alameda, San Joaquin, Stanislaus, Merced, and northwestern Madera counties), southern San Joaquin Valley (portions of Madera, central Fresno, and northern Tulare and Kings Counties), and the Central Coast Range (southern Santa Cruz, Monterey, northern San Luis Obispo, and portions of western San Benito, Fresno, and Kern counties).

*Life History:* The central California tiger salamander has an obligate biphasic life cycle (Shaffer *et al.*, 2004). Although the larvae develop in the vernal pools and ponds in which they were born, the species is otherwise terrestrial and spend most of their post-metamorphic lives in widely dispersed underground retreats (Shaffer *et al.*, 2004; Trenham *et al.*, 2001). Because they spend most of their lives underground, the animals rarely are encountered even in areas where central California tiger salamanders are abundant. Subadult and adult central California tiger salamanders typically spend the dry summer and fall months in the burrows of small mammals, such as California ground squirrels and Botta's pocket gopher (Storer, 1925; Loredo and Van Vuren, 1996; Petranka, 1998; Trenham, 1998b). Central California tiger salamanders may also use landscape features such as leaf litter or desiccation cracks in the soil for upland refugia. Although central California tiger salamanders are members of a family of "burrowing" salamanders, they are not known to create their own burrows. This may be due to the hardness of soils in the California ecosystems in which they are found. Central California tiger salamanders depend on persistent small mammal activity to create, maintain, and sustain sufficient underground refugia for the species.

Upland burrows inhabited by central California tiger salamanders have often been referred to as aestivation-sites. However, "aestivation" implies a state of inactivity, while most evidence suggests that the animals remain active in their underground dwellings. Van Hattem (2004) found that salamanders move, feed, and remain active in their burrows. Because adults arrive at breeding ponds in good condition and are heavier when entering the pond than when leaving, researchers have long inferred that they are feeding while underground. A number of direct observations have confirmed this (Trenham, 2001; Van Hattem, 2004). Thus, "upland habitat" is a more accurate description of the terrestrial areas used by central California tiger salamanders.

Central California tiger salamanders typically emerge from their underground refugia at night during the fall or winter rainy season (November-May) to migrate to their breeding ponds (Stebbins, 1985, 1989; Shaffer *et al.*, 1993; Trenham *et al.*, 2000). The breeding period is closely associated with the rainfall patterns in any given year with fewer adults migrating and breeding in drought years (Loredo and Van Vuren, 1996; Trenham *et al.*, 2000). Historically, breeding ponds were likely limited to vernal pools, but now include livestock stock ponds. Ideal breeding ponds are typically fishless, free of non-native predators, and seasonal or semi-permanent (Barry and Shaffer, 1994; Petranka, 1998). After breeding and egg-laying is complete, adults leave the pool and return to their upland refugia (Loredo *et al.*, 1996; Trenham, 1998b). Adult central California tiger salamanders often continue to emerge nightly for approximately the next two weeks to feed in their upland habitat (Shaffer *et al.*, 1993).

Following metamorphosis, juvenile central California tiger salamanders leave their pools and move to upland habitat. This emigration can occur in both wet and dry conditions (Loredo and Van Vuren, 1996; Loredo *et al.*, 1996). Wet conditions are more favorable for upland travel but summer rain events seldom occur as metamorphosis is completed and ponds begin to dry. As a result, juveniles may be forced to leave their ponds on rainless nights. The peak emergence of these metamorphs in ponds is typically between mid-June and mid-July (Loredo and Van Vuren, 1996; Trenham *et al.*, 2000).

Dispersal and migration movements made by central California tiger salamanders can be grouped into two main categories: (1) breeding migration; and (2) interpond dispersal. Breeding migration is the movement of salamanders between a pond and the surrounding upland habitat. After metamorphosis, juveniles move away from breeding ponds into the surrounding uplands, where they live continuously for several years. At a study in Monterey County, it was found that most recaptured individuals showed site fidelity, returning to the ponds where they were initially marked; however, overall, an estimated 22 percent dispersed to other ponds (Trenham *et al.*, 2001). After breeding, adult central California tiger salamanders return to upland habitats, where they may live for one or more years before attempting to breed again (Trenham *et al.*, 2000).

Central California tiger salamanders are known to travel long distances between breeding ponds and their upland refugia. Generally it is difficult to establish the maximum distances traveled by any species, but salamanders in Santa Barbara County have been recorded dispersing up to 1.3 miles from their breeding ponds (Sweet, *in litt.*, 1998). As a result of a 5-year capture and relocation study in Contra Costa County, Orloff (2011) estimated that captured central California tiger salamanders were traveling a minimum of 0.5 miles to the nearest breeding pond and that some individuals were likely traveling more than 1.3 miles to and from breeding ponds. Central California tiger salamanders are also known to travel between breeding ponds. One study found that 20 to 25 percent of the individuals captured at one pond were recaptured later at other ponds approximately 1,900 and 2,200 feet away (Trenham *et al.*, 2001). In addition to traveling long distances during juvenile dispersal and adult migration, salamanders may reside in burrows far from their associated breeding ponds.

*Threats:* The central California tiger salamander is imperiled throughout its range due to a variety of human activities (Service, 2004). Current factors associated with declining central California tiger salamander populations include continued habitat loss and degradation due to agriculture and urbanization; hybridization with the non-native eastern tiger salamander (*Ambystoma tigrinum*) (Fitzpatrick and Shaffer, 2004; Riley *et al.*, 2003); and predation by introduced species. Central California tiger salamander populations are likely threatened by multiple factors but continued habitat fragmentation and colonization of non-native salamanders may represent the most significant current threats. Habitat isolation and fragmentation within many watersheds have precluded dispersal between sub-populations and threatened the viability of metapopulations (broadly defined as multiple subpopulations that occasionally exchange individuals through dispersal, and are capable of colonizing or “rescuing” extirpated habitat patches). Other threats include disease, predation, interspecific competition, urbanization and population growth, exposure to contaminants, rodent and mosquito control, road-crossing mortality, and hybridization with non-native salamanders. The central California tiger salamander is also prone to chance environmental or demographic events, to which small populations are particularly vulnerable.

### *Records*

According to the California Natural Diversity Database (CNDDB, 2012), there is one record of the species within the Bachelor Valley United States Geological Survey (USGS) 7.5- minute quadrangle, in which the action area is located. Many individuals were observed here during a study conducted between 1973 and 1988.

## **Environmental Baseline**

Although no vernal pools exist in the action area, the main aquatic feature that is present is a wetland swale. A culvert diverts water in the wetland below SR 4; scouring has occurred as water flows southwards and enters through the existing culvert on the south side of SR 4. During heavy rainfall, the downstream portion of the swale by the culvert becomes inundated with ponded water; it appears that this portion of the swale does not dry out completely and so remains inundated year round, even during below average rain years. During field visits in January and February 2012, over 2 ft. of ponded water was observed at this location. Suitable breeding habitat in the action area for the central California tiger salamander therefore exists in the form of this wetland swale that contains a small perennial pond of approximately 0.005 ac. The action area is further composed of non-native annual grassland habitat located beyond the potential breeding pool that is used for cattle grazing and which supports small mammal populations. Burrows observed in segments of this non-native grassland along the SR 4 road shoulder provide potential upland refugia habitat for the species.

Caltrans did not conduct central California tiger salamander protocol-level surveys for the current project and instead assumed presence of the species based on the existence of documented CNDDDB occurrences in close proximity to the action area (within 1.5 mi) and the presence of potentially suitable breeding and upland habitat for the species.

A primary cause of the decline of the central California tiger salamander is the conversion of natural habitat to modified habitat for urban uses (Service, 2003b, 2004a, 2004b; Shaffer *et al.*, 1993). Road-related activities in particular lead to habitat loss and disturbance stemming from new construction, lane expansions, and realignments. Since SR 4 is an existing piece of roadway infrastructure in the action area, original road construction and past roadway usage have affected the species. It is reasonably likely that previously existing ephemeral water-bodies suitable as habitat for the central California tiger salamander were eliminated and filled when the highway was initially built; that existing upland habitat for the central California tiger salamander was lost due to highway construction; that previously contiguous habitat became bisected by the introduction of the highway, thereby decreasing safe access between neighboring suitable aquatic bodies and associated upland refugia; and that road maintenance and weed control efforts along roadway shoulders have turned portions of grassland into disturbed areas.

## **Effects of the Proposed Action**

The proposed project is likely to result in a number of adverse effects to the central California tiger salamander. Construction work, such as excavation, filling, and paving activities associated with the widening of the SR 4 shoulder, will permanently remove 0.005 ac of aquatic habitat. The wetland swale provides potential breeding habitat for the species and is therefore essential to subsequent larval growth and development for this species. Although construction work is anticipated to begin in June, after the typical major spring rain events have passed, the level of pool inundation will depend on the weather conditions at that time. Project activities also will permanently affect 1.325 ac of suitable central California tiger salamander upland habitat through the acquisition of new ROW for shoulder widening activities, including the excavation, filling, and paving of this ROW. The drainage culvert upgrade and the new driveway

construction both will occur in these newly widened ROW areas. Since the central California tiger salamander spends the majority of its life cycle in burrows in upland areas, the loss of this habitat will adversely affect the species. Caltrans proposes to minimize this loss of both aquatic and upland habitat by purchasing conservation credits at an appropriate Service-approved conservation bank. The proposed preservation of suitable breeding and upland habitat will minimize the effects stemming from the permanent loss of habitat considered in this biological opinion. This compensation measure will help protect and manage suitable habitat for the conservation of the species in perpetuity. The protected land purchased through credits will provide habitat commensurate with or better than habitat lost as a result of the project.

Shoulder widening activities within upland areas also are likely to result in the loss of central California tiger salamanders. The greatest effects to the central California tiger salamander in the form of mortality of, or injury to, juveniles and/or adults likely will come from being crushed or entombed in underground burrows by project-related equipment and vehicles due to activities like excavation and filling.

Because construction is anticipated to occur during the dry season (an approximate April 15 to November 15 window is identified for project purposes), the central California tiger salamander is reasonably likely to be present in upland refugia. In the event that an individual is unearthed during construction activity in upland areas, the central California tiger salamander may need to be salvaged and removed to the closest appropriate burrow site outside the project impact area by an approved biologist; this human contact is reasonably likely to stress the individual and contribute to further harassment.

There is evidence that site fidelity to both breeding habitat and upland refugia is significant for the species. One study in Monterey County found that most central California tiger salamander individuals recaptured during the course of the study returned to the ponds where they were initially marked from season to season (an estimated 78 percent returned to the same ponds compared with an estimated 22 percent that dispersed to other ponds) (Trenham *et al.*, 2001). In one pool in particular, those exhibiting fidelity represented 70 percent of recaptured first-time breeders and 74 percent of recaptured experienced breeders (Trenham *et al.*, 2001). The central California tiger salamander also has been shown to exhibit fidelity to its upland refugia habitat. Although Trenham (2001) reported that most individuals did not always remain in their initial burrow, but made one or more additional moves away from their breeding pond on rainy nights, Orloff's study (2011), which focused on movement patterns and migration distances of an upland population of the central California tiger salamander in Contra Costa County, found that the species exhibited fidelity to upland habitat locations and was present in relatively large numbers farther from breeding ponds than previously reported. It is therefore reasonably likely that individuals attempting to access and return to the 0.005 ac of wetland swale pool that will be eliminated by the project's proposed construction, may not search for other breeding habitat if their original habitat is eliminated and may forego reproduction for one or more years.

### **Cumulative Effects**

Cumulative effects are those impacts of future State, Tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future

Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7(a)(2) of the Act.

The Service is not aware of any future non-Federal actions currently planned in the action area that will further affect the central California tiger salamander or remove or disturb its habitat.

### **Conclusion**

After reviewing the current status of the central California tiger salamander, the environmental baseline for the action area, the project-specific effects of the Rockaway Shoulder Widening and Rumble Strips Project, and the cumulative effects, it is the Service's biological opinion that the project, as proposed, is not likely to jeopardize the continued existence of the species. We base this determination on the fact that although there will be a loss of aquatic and upland habitat, this loss is minimal relative to the range-wide status of central California tiger salamander habitat.

### **INCIDENTAL TAKE STATEMENT**

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are nondiscretionary, and must be undertaken by Caltrans so that they become binding conditions of any grant or permit issued to Caltrans, as appropriate, for the exemption in section 7(o)(2) to apply. Caltrans has a continuing duty to regulate the activity covered by this Incidental Take Statement. If Caltrans (1) fails to assume and implement the terms and conditions, or (2) fails to require any of its contractors to adhere to the terms and conditions of the Incidental Take Statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, Caltrans must report the progress of the action and its impact on the species to the Service as specified in the Incidental Take Statement. [50 CFR §402.14(i)(3)].

### **Amount or Extent of Take**

It is infeasible to quantify an exact number of central California tiger salamanders that will be taken as a result of the proposed action because the number of individuals in the action area is

unknown and estimates of population density in the action area are unavailable. Therefore, in instances when take calculations of individual animals cannot be produced, the Service may quantify take in numbers of acres of permanently lost or degraded habitat; since take is expected to result from these impacts to habitat, the quantification of acreage becomes a direct surrogate for the species that will be taken. The Service therefore anticipates take incidental to the project as the loss of 0.005 ac of aquatic habitat. The Service also anticipates take incidental to the project as the loss of 1.325 ac of upland refugia habitat. Upon implementation of the following *Reasonable and Prudent Measures*, incidental take associated with the project in the forms of harm, harassment, injury to, or mortality of the central California tiger salamander stemming from the filling, grading, excavation, paving, and ultimate loss of its breeding and upland habitat; the risk of entombment and crushing arising from shoulder widening construction activities as well as from equipment and vehicle presence; and from being handled and/or captured by approved biologists, will become exempt from the prohibitions described under section 9 of the Act.

### **Effect of Take**

The Service has determined that this level of anticipated take is not likely to jeopardize the continued existence of the central California tiger salamander.

### **Reasonable and Prudent Measures**

The following Reasonable and Prudent Measure is necessary and appropriate to minimize the effects of the Rockaway Shoulder Widening and Rumble Strips Project on the central California tiger salamander.

1. All of the conservation measures proposed in the BA, the *Project Description*, and as augmented and modified below, must be fully implemented.

### **Terms and Conditions**

In order to be exempt from the prohibitions of section 9 of the Act, Caltrans, as well as any contractor acting on its behalf, must comply with the following Terms and Conditions, which implement the Reasonable and Prudent Measure described above. These Terms and Conditions are nondiscretionary.

The following Terms and Conditions implement Reasonable and Prudent Measure one:

1. Caltrans shall be responsible for implementing all measures described in this biological opinion.
2. In order to monitor whether the amount or extent of incidental take anticipated from implementation of the project is approached or exceeded, Caltrans shall adhere to the following reporting requirements. Should this anticipated amount or extent of incidental take be exceeded, Caltrans must immediately reinitiate formal consultation as per 50 CFR 402.16.

- a. For those components of the action that will result in habitat loss or degradation whereby incidental take in the form of harm is anticipated, Caltrans shall provide weekly updates to the Service with an accounting of the total acreage of habitat impacted. Updates also shall include any information about changes in project implementation that result in habitat disturbance not described in the *Project Description* and not analyzed in this biological opinion.
  - b. Before construction starts on this project, the Service shall be provided with the final documents recording protection of conservation acres through proof of purchase of conservation bank credits.
  - c. A post-construction report detailing compliance with the project design criteria described under the *Description of the Proposed Action* section of this biological opinion shall be provided to the Service within 60 calendar days of completion of the project. The report shall include: (1) dates of project groundbreaking and completion; (2) pertinent information concerning the success of the project in meeting compensation and other conservation measures; (3) an explanation of failure to meet such measures, if any; (4) known project effects on the central California tiger salamander, if any; (5) observed incidences of injury to or mortality of the central California tiger salamander; and (6) any other pertinent information.
3. A Service-approved biologist(s) shall be on-site during site preparation and other ground disturbance activities that remove upland habitat when the species could be unearthed from upland refugia. The qualifications of the biologist(s) shall be presented to the Service for review and approval at least seven calendar days prior to any groundbreaking at the project site.
- a. Qualified individuals for construction and species monitoring shall have completed a course of study in a college or university leading to a Bachelor of Science, or Bachelor of Arts, or equivalent, or higher degree, in a relevant biological field. Individuals shall have demonstrated experience with construction monitoring, habitat assessment, surveying and monitoring for the listed species discussed in this biological opinion, and shall also demonstrate a positive track record of agency coordination and comprehensive reporting practices.
  - b. Only a biologist with qualifications as discussed in Term and Condition 3.a and additional approval from the Service to handle the central California tiger salamander will have the authority to capture and move any individuals found in upland areas.

### **Salvage and Disposition of Individuals**

In the case of an injured and/or dead central California tiger salamander, the Service shall be notified of events within one day and the animal shall be handled only by a Service-approved

biologist. Injured animals shall be cared for by a licensed veterinarian or other Service-approved person. In the case of a dead central California tiger salamander, the animal shall be preserved, as appropriate, and shall be bagged and labeled (i.e. species type; who found or reported the incident; when the report was made; when and where the incident occurred; and if possible, cause of death). Carcasses shall be held in a secure location, such as a freezer or cooler, until instructions are received from the Service regarding the disposition of the specimen or until the Service, or another appropriate agency or Service-approved person, takes custody of the specimen. Caltrans must report to the Service within one calendar day any information about take or suspected take of federally-listed species not exempted in this opinion. Notification must include the date, time, and location of the incident or of the finding of a dead or injured animal. The Service contacts are Daniel Russell, Deputy Assistant Field Supervisor, Endangered Species Program, Sacramento, at (916) 414-6600, and the Service's Law Enforcement Division at (916) 414-6660.

Any contractor or employee who, during routine operations and maintenance activities inadvertently kills or injures a listed species must immediately report the incident to his representative at his contracting/employment firm or to Caltrans. This representative must contact the Service within one calendar day.

### **CONSERVATION RECOMMENDATIONS**

Conservation recommendations are suggestions of the Service regarding discretionary measures to minimize or avoid further adverse effects of a proposed action on listed, proposed, or candidate species or on designated critical habitat, or regarding the development of new information. They may also serve as suggestions on how action agencies can assist species conservation in furtherance of their responsibilities under section 7(a)(1) of the Act, or recommend studies improving an understanding of a species' biology or ecology. Wherever possible, conservation recommendations should be tied to tasks identified in recovery plans. The Service is providing you with the following conservation recommendation:

1. New sightings of the central California tiger salamander or any other listed or sensitive animal species should be reported to the CNDDB. A copy of the reporting form and a topographic map clearly marked with the location in which the animals were observed also should be provided to the Service.

### **REINITIATION—CLOSING STATEMENT**

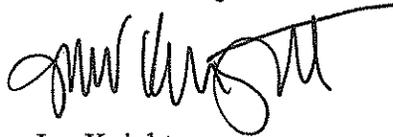
This concludes the Service's review of the Rockaway Shoulder Widening and Rumble Strips Project. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action.

Mr. Frank Meraz

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If you have any questions regarding this biological opinion, please contact Jen Schofield, Fish and Wildlife Biologist, or Thomas Leeman, Chief, San Joaquin Valley Division, at the letterhead address or at (916) 414-6600.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jan Knight', with a long horizontal flourish extending to the right.

Jan Knight  
Acting Field Supervisor

cc:

Annee Ferranti, California Department of Fish and Wildlife, Fresno, California

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DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

REPLY TO  
ATTENTION OF

January 17, 2014

Regulatory Division (SPK-2012-00508)

State of California  
Department of Transportation, District 6  
Attn: Mr. Mark Mcavoy, Project Manager  
1976 E. Dr. Martin Luther King Jr. Blvd  
Stockton, California 95205

Dear Mr. Mcavoy:

We are responding to your August 29, 2013, request for a Department of the Army Nationwide Permit Verification for the State Route 4 (SR4) Rockaway Shoulder Widening project (EA 10-0S870). On September 25, 2013, we determined that your Pre-construction Notification (PCN) was incomplete, and we requested additional information. On December 12, 2013, we received additional information, but it was not sufficient to complete your PCN. We made a second request for the additional information on December 27, 2013. On January 3, 2013, we received additional information and determined that your PCN was complete.

This approximately 0.14-acre project involves activities, including discharges of dredged or fill material, in waters of the United States to widen the eastbound right shoulder of a segment of SR4 to a standard eight foot width. The project is located on SR4 between postmiles 6.3 and 6.5, in Section 18, Township 1 North, Range 11 East, Mount Diablo Meridian, Latitude 37.937788°, Longitude -120.812196°, Stanislaus County, California.

We understand that Caltrans is the National Environmental Policy Act (NEPA) lead Federal agency for this project, and as such, shall ensure compliance with NEPA and all other applicable Federal Laws. As lead Federal agency, Caltrans must include this office in all future consultation and coordination activities involving compliance with the Endangered Species Act and the National Historic Preservation Act, as they pertain to the activities verified by this letter, so that we may consult as appropriate or designate Caltrans to consult on our behalf.

Based on the information you provided, the proposed activity, resulting in the permanent loss of approximately 0.003 acre of wetland swale, is authorized by Nationwide Permit Number 14, Linear Transportation Projects. However, until Section 401 Water Quality Certification for the activity has been issued or waived, our authorization is denied without prejudice. Once you have provided us evidence of water quality certification, the activity is authorized and the work may proceed subject to the conditions of certification and the Nationwide Permit. Your work must comply with the general terms and conditions listed on the enclosed Nationwide Permit information sheets, the regional Conditions listed on the enclosed *Final Sacramento District Regional Conditions for California, excluding the Lake Tahoe Basin*, and the following special conditions:

### Special Conditions

1. To mitigate for the loss of 0.003 acre of a seasonal wetland swale, you shall debit 0.003 acre of seasonal wetland habitat at Beach Lake Mitigation Bank. Evidence of this shall be provided to the Corps prior to initiation of construction activities within waters of the U.S.

2. This permit is contingent upon you applying for and being issued a Section 401 Water Quality Certification. Evidence of a water quality certification must be submitted to this office, prior to commencing work in potential waters of the U.S. All terms and conditions of the Section 401 Water Quality Certification are expressly incorporated as conditions of this permit.

3. This Corps permit does not authorize you to take an endangered species, in particular California tiger salamander (*Ambystoma californiense*), or designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (e.g., an Endangered Species Act Section 10 permit, or a Biological Opinion under Endangered Species Act Section 7, with "incidental take" provisions with which you must comply). The enclosed Fish and Wildlife Service Biological Opinion (Number 08ESMF00-2012-F-0670-1, dated February 25, 2013) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the Biological Opinion. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental take" of the attached Biological Opinion, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the Biological Opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The U. S. Fish and Wildlife Service is the appropriate authority to determine compliance with the terms and conditions of its Biological Opinion, and with the Endangered Species Act. You must comply with all conditions of this Biological Opinion, including those ascribed to the Corps.

4. You shall follow specifications and standards described in the Storm Water Pollution Prevention Plan (SWPPP) and/or Water Pollution Control Plan (WPCP), to prevent erosion and sedimentation during and after construction. Construction work within waters of the U. S. shall be performed when the flows are at their seasonal low or when they have ceased and the area is dry, typically late summer through early fall.

5. You shall notify this office of any proposed modifications to the project, including revisions to any of the work plans or documents cited in this authorization, for review and approval prior to construction work associated with the proposed modification(s).

6. If any of the above conditions are violated or unauthorized activities occur, you shall stop work immediately and notify this office. You shall provide us with a detailed description of the unauthorized activity(s), photo documentation, and any measures taken to remedy the violation.

You must sign the enclosed Compliance Certification and return it to this office within 30 days after completion of the authorized work.

This verification is valid until March 18, 2017, when the existing Nationwide Permits are scheduled to be modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified, reissued or revoked, you will have twelve (12) months from the date of the modification, reissuance or revocation of the NWP to complete the activity under the present terms and conditions. Failure to comply with the General and Regional Conditions of this Nationwide Permit, or the project-specific Special Conditions of this authorization, may result in the suspension or revocation of your authorization.

We would appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer survey on our website under *Customer Service Survey*.

Please refer to identification number SPK-2012-00508 in any correspondence concerning this project. If you have any questions, please contact Jason Deters at our California South Branch Office, 1325 J Street, Room 1350, Sacramento, California 95814-2922, by email at [Jason.Deters@usace.army.mil](mailto:Jason.Deters@usace.army.mil), or telephone at 916-557-7152. For more information regarding our program, please visit our website at [www.spk.usace.army.mil/Missions/Regulatory.aspx](http://www.spk.usace.army.mil/Missions/Regulatory.aspx).

Sincerely,



Kathleen A. Dadey, Ph.D  
Chief, California South Branch

Enclosures

cc:

State of California, Department of Transportation, District 6, Attn: Mr. Frank Meraz, 2015 East Shields Avenue, Suite A-100, Fresno, California 93726-5428

cc: (w/o encls)

Mr. Thomas Leeman, United States Fish and Wildlife Service, Endangered Species Division, 2800 Cottage Way, Suite W2605, Sacramento, California 95825-3901

Ms. Elizabeth Lee, California Regional Water Quality Control Board, Central Valley Region, Fresno Branch Office, 1985 E Street, Suite 200, Fresno, California 93706

Mr. Jason Brush, Supervisor, Wetland Regulatory Office, U.S. Environmental Protection Agency, Region IX, Wetlands Regulatory Office (WTR-8), 75 Hawthorne Street, San Francisco, California, 94105-3901

**COMPLIANCE CERTIFICATION**

**Permit File Number:** SPK-2012-00508

**Project Name:** State Route 4 Rockaway Shoulder Widening

**Nationwide Permit Number:** 14 – Linear Transportation Projects

**Permittee:** Mr. Mark Mcavoy, Project Manager  
California Department of Transportation  
1976 E. Dr. Martin Luther King Jr Blvd  
Stockton, California 95205

**County:** Stanislaus

**Date of Verification:** January 17, 2014

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers  
Sacramento District  
1325 J Street, Room 1350  
Sacramento, California 95814-2922  
*DLL-CESPK-RD-Compliance@usace.army.mil*

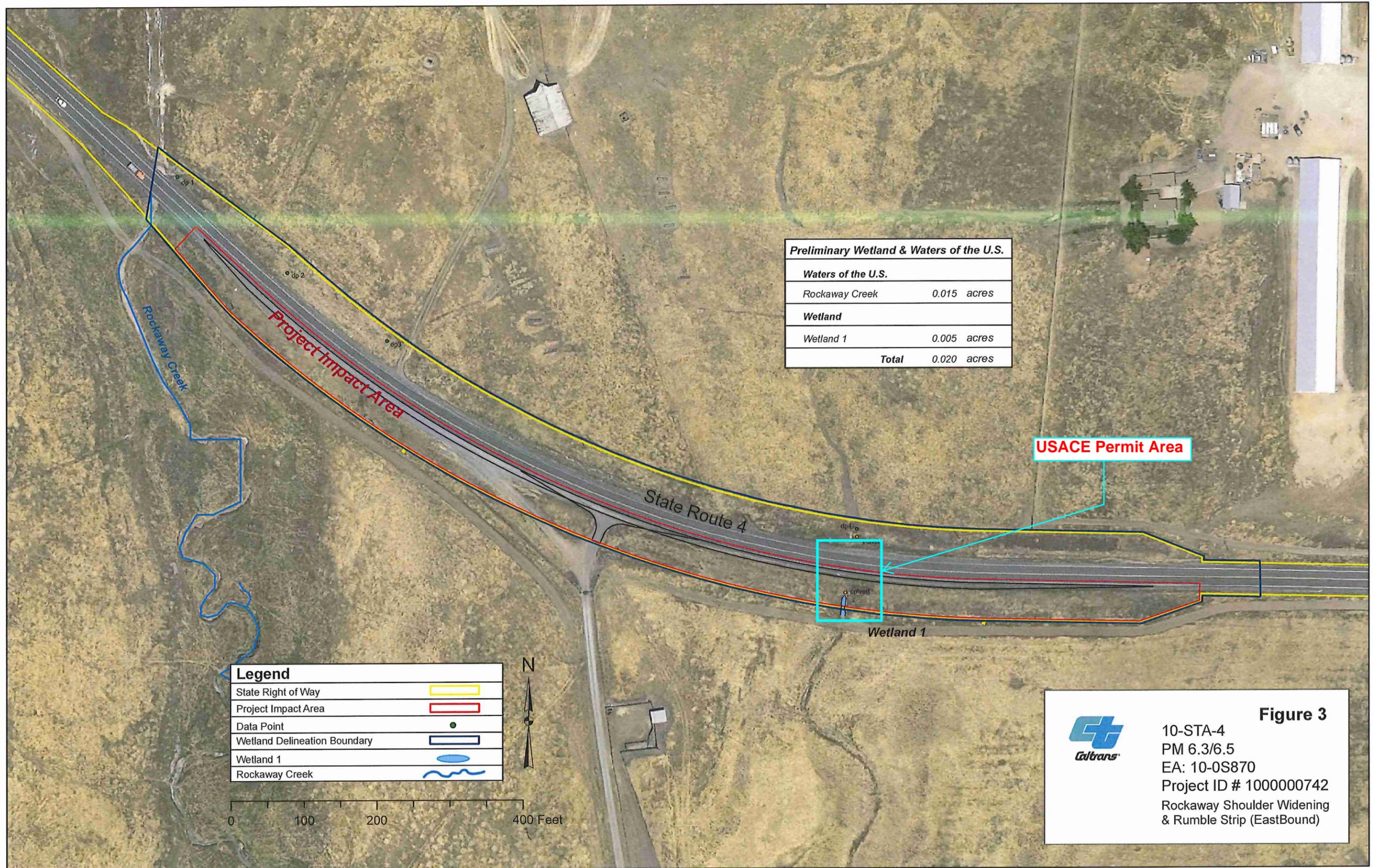
Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the U.S. Army Corps of Engineers.

\*\*\*\*\*

***I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.***

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date



<b>Preliminary Wetland &amp; Waters of the U.S.</b>	
<b>Waters of the U.S.</b>	
Rockaway Creek	0.015 acres
<b>Wetland</b>	
Wetland 1	0.005 acres
<b>Total</b>	<b>0.020 acres</b>

<b>Legend</b>	
State Right of Way	
Project Impact Area	
Data Point	
Wetland Delineation Boundary	
Wetland 1	
Rockaway Creek	

0 100 200 400 Feet

**USACE Permit Area**



**Figure 3**  
 10-STA-4  
 PM 6.3/6.5  
 EA: 10-0S870  
 Project ID # 1000000742  
 Rockaway Shoulder Widening  
 & Rumble Strip (EastBound)



U S Army Corps of  
Engineers  
Sacramento District

# Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide  
Permits – March 19, 2012

**14. Linear Transportation Projects.** Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404)

**Note:** Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

## A. Regional Conditions

### 1. Regional Conditions for California, excluding the Tahoe Basin

<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/nwp/2012-nwps/2012-NWP-RC-CA.pdf>

### 2. Regional Conditions for Nevada, including the Tahoe Basin

<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/nwp/2012-nwps/2012-NWP-RC-NV.pdf>

### 3. Regional Conditions for Utah

<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/nwp/2012-nwps/2012-NWP-RC-UT.pdf>

### 4. Regional Conditions for Colorado.

<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/nwp/2012-nwps/2012-NWP-RC-CO.pdf>

## B. Nationwide Permit General Conditions

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

### 1. Navigation.

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters,

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the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

- 2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
- 3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
- 4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
- 5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
- 6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
- 7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
- 8. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
- 9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
- 10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
- 11. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
- 12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
- 13. **Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
- 14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
- 15. **Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
- 16. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
- 17. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
- 18. **Endangered Species.**
  - (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
  - (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to

demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.

20. **Historic Properties.**

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified

historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**21. Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

**22. Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or

ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**23. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

- (3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).
- (4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.
- (5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.
- (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.
- (e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.
- (f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
- (g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.
- (h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.
- 24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
- 25. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
- 26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.
- 27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

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(Transferee)

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(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

**31. Pre-Construction Notification.**

(a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification

(PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2)..

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property

may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: he standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination:

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where

there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

### C. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10- acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining

whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

### D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWP's do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWP's do not grant any property rights or exclusive privileges.
4. NWP's do not authorize any injury to the property or rights of others.
5. NWP's do not authorize interference with any existing or proposed Federal project.

#### E. Definitions

**Best management practices (BMPs):** Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

**Compensatory mitigation:** The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved. Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

**Direct effects:** Effects that are caused by the activity and occur at the same time and place.

**Discharge:** The term "discharge" means any discharge of dredged or fill material.

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Ephemeral stream:** An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

**Establishment (creation):** The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

**High Tide Line:** The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by

strong winds such as those accompanying a hurricane or other intense storm.

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

**Independent utility:** A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Indirect effects:** Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

**Intermittent stream:** An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

**Open water:** For purposes of the NWP, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

**Ordinary High Water Mark:** An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

**Perennial stream:** A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-construction notification:** A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

**Preservation:** The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

**Riparian areas:** Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

**Shellfish seeding:** The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

**Single and complete linear project:** A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

**Single and complete non-linear project:** For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

**Stormwater management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stormwater management facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

**Stream bed:** The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

**Stream channelization:** The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States. Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

**Tidal wetland:** A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

**Vegetated shallows:** Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

**Waterbody:** For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

**Sacramento District Nationwide Permit Regional Conditions for California,  
excluding the Lake Tahoe Basin**

**1.\*** When pre-construction notification (PCN) is required, the permittee shall notify the U.S. Army Corps of Engineers, Sacramento District (Corps) in accordance with General Condition 31 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. In addition, the PCN shall include:

a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;

b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for activities located within the boundaries of the Los Angeles District shall comply with the September 15, 2010 Special Public Notice: *Map and Drawing Standards for the Los Angeles District Regulatory Division*, (available on the Los Angeles District Regulatory Division website at: [www.spl.usace.army.mil/regulatory/](http://www.spl.usace.army.mil/regulatory/)); and

c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the site, and all waters of the U.S. proposed to be avoided on and immediately adjacent to the activities site. The compass angle and position of each photograph shall be identified on the plan-view drawing(s) required in subpart b of this Regional Condition.

**2.** For all Nationwide Permits (NWP), the permittee shall submit a PCN in accordance with General Condition 31 and Regional Condition 1, in the following circumstances:

a. For all activities that would result in the discharge of fill material into any vernal pool;

b. For any activity in the Primary and Secondary Zones of the Legal Delta, the Sacramento River, the San Joaquin River, and the immediate tributaries of these waters;

c. For all crossings of perennial waters and intermittent waters;

d. For all activities proposed within 100 feet of the point of discharge of a known natural spring source, which is any location where ground water emanates from a point in the ground excluding seeps or other discharges which lack a defined channel; and

e.\* For all activities located in areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092)), in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.

**3.** The permittee shall record the NWP verification with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property for areas (1) designated to be preserved as part of compensatory mitigation for authorized impacts, including any associated covenants or restrictions, or (2) where boat ramps or docks, marinas, piers, and permanently moored vessels will be constructed or placed in or adjacent to navigable waters. The recordation shall also include a map showing the surveyed location of the preserved area or authorized structure.

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**4.** For all waters of the U.S. proposed to be avoided on a site, unless determined to be impracticable by the Corps, the permittee shall:

- a. Establish and maintain, in perpetuity, a preserve containing all avoided waters of the U.S. to ensure that the functions of the aquatic environment are protected;
- b. Place all avoided waters of the U.S. and any upland buffers into a separate parcel prior to discharging dredge or fill material into waters of the U.S., and
- c. Establish permanent legal protection for all preserve parcels, following Corps approval of the legal instrument;

If the Corps determines that it is impracticable to require permanent preservation of the avoided waters, additional mitigation may be required in order to compensate for indirect impacts to the waters of the U.S.

**5.** For all temporary fills, the PCN shall include a description of the proposed temporary fill, including the type and amount of material to be placed, the area proposed to be impacted, and the proposed plan for restoration of the temporary fill area to pre-activities contours and conditions, including a plan for the re-vegetation of the temporary fill area, if necessary. In addition, the PCN shall include the reason(s) why avoidance of temporary impacts is not practicable.

In addition, for all activities resulting in temporary fill within waters of the U.S., the permittee shall:

- a. Utilize material consisting of clean and washed gravel. For temporary fills within waters of the U.S. supporting anadromous fisheries, spawning quality gravel shall be used, where practicable, as determined by the Corps, after consultation with appropriate Federal and state fish and wildlife agencies;
- b. Place a horizontal marker (e.g. fabric, certified weed free straw, etc.) to delineate the existing ground elevation of the waters temporarily filled during construction; and
- c. Remove all temporary fill within 30 days following completion of construction activities.

**6.** In addition to the requirements of General Condition 2, unless determined to be impracticable by the Corps, the following criteria shall apply to all road crossings:

a.\* For all activities in waters of the U.S. that are suitable habitat for Federally-listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed;

b. Road crossings shall be designed to ensure that no more than minor impacts would occur to fish and wildlife passage or expected high flows, following the criteria listed in Regional Condition 6(a). Culverted crossings that do not utilize a bottomless arch culvert with a natural stream bed may be authorized for waters that do not contain suitable habitat for Federally listed fish species, if it can be demonstrated and is specifically determined by the Corps, that such crossing will result in no more than minor impacts to fish and wildlife passage or expected high flows;

c. No construction activities shall occur within standing or flowing waters. For ephemeral or intermittent streams, this may be accomplished through construction during the dry season. In perennial

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streams, this may be accomplished through dewatering of the work area. Any proposed dewatering plans must be approved, in writing, by the Corps prior to commencement of construction activities; and

d. All bank stabilization activities associated with a road crossing shall comply with Regional Condition 19.

In no case shall stream crossings result in a reduction in the pre-construction bankfull width or depth of perennial streams or negatively alter the flood control capacity of perennial streams.

**7.\*** For activities in which the Corps designates another Federal agency as the lead for compliance with Section 7 of the Endangered Species Act (ESA) of 1973 as amended, pursuant to 50 CFR Part 402.07, Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (EFH), pursuant to 50 CFR 600.920(b) and/or Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, pursuant to 36 CFR 800.2(a)(2), the lead Federal agency shall provide all relevant documentation to the Corps demonstrating any previous consultation efforts, as it pertains to the Corps Regulatory permit area (for Section 7 and EFH compliance) and the Corps Regulatory area of potential effect (APE) (for Section 106 compliance). For activities requiring a PCN, this information shall be submitted with the PCN. If the Corps does not designate another Federal agency as the lead for ESA, EFH and/or NHPA, the Corps will initiate consultation for compliance, as appropriate.

**8.** For all NWP's which require a PCN, the permittee shall submit the following additional information with the compliance certificate required under General Condition 30:

a. As-built drawings of the work conducted on the project site and any on-site and/or off-site compensatory mitigation, preservation, and/or avoidance area(s). The as-builts shall include a plan-view drawing of the location of the authorized work footprint (as shown on the permit drawings), with an overlay of the work as constructed in the same scale as the permit drawings. The drawing shall show all areas of ground disturbance, wetland impacts, structures, and the boundaries of any on-site and/or off-site mitigation or avoidance areas. Please note that any deviations from the work as authorized, which result in additional impacts to waters of the U.S., must be coordinated with the appropriate Corps office prior to impacts; and

b. Numbered and dated post-construction color photographs of the work conducted within a representative sample of the impacted waters of the U.S., and within all avoided waters of the U.S. on and immediately adjacent to the proposed activities area. The compass angle and position of all photographs shall be similar to the pre-construction color photographs required in Regional Condition 1(c) and shall be identified on the plan-view drawing(s) required in subpart a of this Regional Condition.

**9.** For all activities requiring permittee responsible mitigation, the permittee shall develop and submit to the Corps for review and approval, a final comprehensive mitigation and monitoring plan for all permittee responsible mitigation prior to commencement of construction activities within waters of the U.S. The plan shall include the mitigation location and design drawings, vegetation plans, including target species to be planted, and final success criteria, presented in the format of the *Sacramento District's Habitat Mitigation and Monitoring Proposal Guidelines*, dated December 30, 2004, and in compliance with the requirements of 33 CFR 332.

**10.\*** The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

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- 11.** The permittee is responsible for all authorized work and ensuring that all contractors and workers are made aware and adhere to the terms and conditions of the permit authorization. The permittee shall ensure that a copy of the permit authorization and associated drawings are available and visible for quick reference at the site until all construction activities are completed.
- 12.** The permittee shall clearly identify the limits of disturbance in the field with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.) prior to commencement of construction activities within waters of the U.S. The permittee shall maintain such identification properly until construction is completed and the soils have been stabilized. The permittee is prohibited from any activity (e.g. equipment usage or materials storage) that impacts waters of the U.S. outside of the permit limits (as shown on the permit drawings).
- 13.** For all activities in which a PCN is required, the permittee shall notify the appropriate district office of the start date for the authorized work within 10 days prior to initiation of construction activities.
- 14.** The permittee shall allow Corps representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified in advance of an inspection.
- 15.** For all activities located in the Mather Core Recovery Area in Sacramento County, as identified in the U.S. Fish and Wildlife Service's *Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon* dated December 15, 2005, NWPs 14, 18, 23, 29, 39, 40, 42, 43 and 44 are revoked from use in vernal pools that may contain habitat for Federally-listed threatened and/or endangered vernal pool species.
- 16.** For activities located in the Primary or Secondary Zone of the Legal Delta, NWPs 29 and 39 are revoked.
- 17.** For all activities within the Secondary Zone of the Legal Delta, the permittee shall conduct compensatory mitigation for unavoidable impacts within the Secondary Zone of the Legal Delta.
- 18.** For NWP 12: Permittees shall ensure the construction of utility lines does not result in the draining of any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material (as approved by the Corps) to seal the trench. For utility line trenches, during construction, the permittee shall remove and stockpile, separately, the top 6 – 12 inches of topsoil. Following installation of the utility line(s), the permittee shall replace the stockpiled topsoil on top and seed the area with native vegetation. The permittee shall submit a PCN for utility line activities in the following circumstances:
  - a. The utility line crossing would result in a discharge of dredged and/or fill material into perennial waters, intermittent waters, wetlands, mudflats, vegetated shallows, riffle and pool complexes, sanctuaries and refuges or coral reefs;
  - b. The utility line activity would result in a discharge of dredged and/or fill material into greater than 100 linear feet of ephemeral waters of the U.S.;
  - c. The utility line installation would include the construction of a temporary or permanent access road, substation or foundation within waters of the U.S.; or

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d. The proposed activity would not involve the restoration of all utility line trenches to pre-project contours and conditions within 30 days following completion of construction activities.

**19.** For NWP 13 and 14: All bank stabilization activities shall involve either the sole use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.), or a combination of hard-armoring (e.g. rip-rap) and native vegetation or bioengineered design techniques, unless specifically determined to be impracticable by the Corps. The permittee shall submit a PCN for any bank stabilization activity that involves hard-armoring or the placement of any non-vegetated or non-bioengineered technique below the ordinary high water mark or, if tidal waters, the high tide line of waters of the U.S. The request to utilize non-vegetated techniques must include information on why the sole use of vegetated techniques is not practicable.

**20.** For NWP 23: The permittee shall submit a PCN for all activities proposed for this NWP, in accordance with General Condition 31 and Regional Condition 1. The PCN shall include a copy of the signed Categorical Exclusion document and final agency determinations regarding compliance with ESA, EFH and NHPA, in accordance with General Conditions 18 and 20 and Regional Condition 7.

**21.** For NWP 27: The permittee shall submit a PCN for aquatic habitat restoration, establishment, and enhancement activities in the following circumstances:

a. The restoration, establishment or enhancement activity would result in a discharge of dredged and/or fill material into perennial waters, intermittent waters, wetlands, mudflats, vegetated shallows, riffle and pool complexes, sanctuaries and refuges or coral reefs; or

b. The restoration, establishment or enhancement activity would result in a discharge of dredged and/or fill material into greater than 100 linear feet of ephemeral waters of the U.S.

**22.** For NWPs 29 and 39: The channelization or relocation of intermittent or perennial drainages is not authorized, except when, as determined by the Corps, the relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.

**23.\*** Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51 and 52, or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:

a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the adjacent areas (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information;

b. An analysis of the proposed impacts to the waterbody, in accordance with General Condition 31 and Regional Condition 1;

c. Measures taken to avoid and minimize losses to waters of the U.S., including other methods of constructing the proposed activity(s); and

d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be offset, in accordance with 33 CFR 332.

**Sacramento District Nationwide Permit Regional Conditions for California,  
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**24.** For NWPs 29, 39, 40, 42, and 43: The permittee shall establish and maintain upland vegetated buffers in perpetuity, unless specifically determined to be impracticable by the Corps, next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 23(f). Except in unusual circumstances, as determined by the Corps, vegetated buffers shall be at least 50 feet in width.

**25.** For NWP 46: The discharge shall not cause the loss of greater than 0.5 acres of waters of the United States or the loss of more than 300 linear feet of ditch, unless specifically waived in writing by the Corps.

**26.** All NWPs except 3, 6, 20, 27, 32, and 38 are revoked for activities in histosols, fens, bogs and peatlands and in wetlands contiguous with fens. Fens are defined as slope wetlands with a histic epipedon that are hydrologically supported by groundwater. Fens are normally saturated throughout the growing season, although they may not be during drought conditions. For NWPs 3, 6, 20, 27, 32, and 38, the permittee shall submit a PCN to the Corps in accordance with General Condition 31 and Regional Condition 1. This condition does not apply to NWPs 1, 2, 8, 9, 10, 11, 24, 28, 35 or 36, as these NWPs either apply to Section 10 only activities or do not authorize impacts to special aquatic sites.



California Department of Fish and Wildlife  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710

California Endangered Species Act  
Incidental Take Permit No. 2081-2013-060-04

**ROCKAWAY SHOULDER WIDENING AND RUMBLE STRIP PROJECT**

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

**Permittee:** California Department of Transportation (Caltrans)  
**Principal Officer:** Frank Meraz, Branch Chief  
**Contact Person:** Christine Lafayette, (209) 942-6011  
**Mailing Address:** 1976 East Dr. Martin Luther King Jr. Boulevard  
Stockton, California 95205

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

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **October 31, 2015**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.8 of this ITP.

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

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

Incidental Take Permit  
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CALIFORNIA DEPARTMENT OF TRANSPORTATION  
ROCKAWAY SHOULDER WIDENING AND RUMBLE STRIP

**Project Location:**

The Rockaway Shoulder Widening and Rumble Strip (Project) is located on State Route (SR) 4 approximately 2.6 miles east of Rock Creek and just west of the intersection of SR 4 and Dunton Road in Stanislaus County, California. Project construction will occur between Post Mile (PM) 6.3 and PM 6.5, which are located within portions of Sections 13 and 18, Township 1 North, Range 11 East of the Mt. Diablo Meridian (Figure 1).

**Project Description:**

The Project involves widening the eastbound right shoulder (shoulder widening) of a segment of SR 4 between PM 6.3 to 6.5 to a standard eight foot width in order to meet current federal standards. Caltrans will also install rumble strips within the widened eastbound shoulder due to a higher than statewide average of Run-Off-Road accidents. A new driveway will also be constructed at approximately PM 6.4. The driveway is 38 feet in length and varies in width from 20 feet to 83 feet where it joins SR 4. This new driveway covers a total of 1,287 square feet. The shoulder widening will require approximately 1,600 cubic yards of borrow material for use as fill on the southern edge of the pavement. Fill placement will extend out between 10 to 20 feet in width to achieve the required slope down from the edge of the new shoulder. Borrow material used for the Project will be obtained from a mine already permitted through the State Mining and Reclamation Act (SMARA).

Caltrans will also extend one drainage culvert within the shoulder widening area for the tributary to Rockaway Creek at approximately PM 6.48 and upgrade the drainage facility to conform to hydraulic recommendations. This will require the removal of 1 foot of existing 24-inch diameter Reinforced Concrete Pipe (RCP) and the subsequent placement of 6.4 feet of RCP for an extension of 5.4 feet beyond the existing end of the pipe culvert. Backfill around the pipe will be native (clean) material approximately 4 cubic yards in volume. A precast Concrete Flared End Section will be connected to the end of the culvert with cement. Total linear feet of disturbance would be approximately 20 to 23 feet including 6.4 feet for the RCP and 13.6 to 16.6 feet for Flared End Section and Rock Slope Protection (RSP). The RSP type No. 2 will be approximately 8.5 feet wide, 12 feet long and 2.25 feet thick for a total volume of 8.4 cubic yards. All work within the stream will occur during naturally dry conditions, and no trees will be removed as a result of the Project.

The Project will result in the permanent development of 0.94 acres of upland habitat and 0.005 acres of aquatic habitat, as well as temporary impacts to 0.75 acres of upland habitat associated with staging area development, resulting in a total habitat disturbance of 1.695 acres.

All of the above will require grubbing and grading of the entire Project site, equipment storage staging and laydown within the Caltrans Right-of-Way, cut and fill of the embankment slopes, and ground compaction.

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Incidental Take Permit  
No. 2081-2013-060-04  
CALIFORNIA DEPARTMENT OF TRANSPORTATION  
ROCKAWAY SHOULDER WIDENING AND RUMBLE STRIP

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

This ITP covers the following species:

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

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

**Impacts of the Taking on Covered Species:**

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include habitat clearing, grubbing, grading, excavation, fill, compaction, heavy equipment operations, road construction, culvert work, and development and use of equipment staging and storage areas (Covered Activities).

Incidental take of individuals of the Covered Species may occur from the Covered Activities in the form of mortality (“kill”) associated with heavy equipment use; this may cause burrow collapse resulting in crushing or suffocation of individual Covered Species residing below ground. Covered Species moving through the Project Area during construction could be run over by vehicles or equipment, resulting in mortality. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursuit, catch, capture or attempt to do so via entrapment in equipment or in holes, as well as during burrow excavation and relocation (salvage) activity required by this ITP as a mechanism to minimize mortality of the Covered Species. The areas where authorized take of the Covered Species is expected to occur include: permanent impact area (shoulder and culvert widening and the new driveway footprint) and the temporary staging area (where equipment and materials will be stored during construction) (see Figure 2) (collectively, the Project Area).

The Project is expected to cause the permanent loss of 0.94 acres and the temporary loss of 0.75 acres of Covered Species upland habitat, and in the permanent loss of 0.005 acres of Covered Species aquatic habitat. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project’s incremental contribution to cumulative impacts (indirect impacts). These indirect impacts include: stress resulting from noise and vibrations from construction, burrow excavation, and salvage, and long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

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

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

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

### **Conditions of Approval:**

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

1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Mitigated Negative Declaration and Initial Study (SCH No.: 2012122051) adopted by State of California Department of Transportation on February 28, 2013, as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No. 1600-2013-0152-R4 for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Biological Opinion for Rockaway Shoulder Widening and Rumble Strips Project, Stanislaus County, California (08ESMF00-2012-F-0670-1) for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
5. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the

Incidental Take Permit  
No. 2081-2013-060-04  
CALIFORNIA DEPARTMENT OF TRANSPORTATION  
ROCKAWAY SHOULDER WIDENING AND RUMBLE STRIP

Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.

## 6. General Provisions:

- 6.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
- 6.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed. The Designated Biologist(s) may be assisted by approved biologists that do not have a Scientific Collecting Permit; these biologists shall be identified as Designated Monitors.
- 6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist and Designated Monitors shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.
- 6.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the

Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.

- 6.5. Construction Monitoring Notebook. The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.
- 6.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 6.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.
- 6.8. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 6.9. Delineation of Property Boundaries. Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities.
- 6.10. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 6.11. Project Access. Project-related personnel shall access the Project Area using existing routes, and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. If Permittee determines construction

of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.

- 6.12. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.11 of this ITP.
- 6.13. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 6.14. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.15. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

## **7. Monitoring, Notification and Reporting Provisions:**

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.

- 7.3. California Tiger Salamander Relocation Plan. The Designated Biologist shall prepare a California tiger salamander relocation plan (Relocation Plan) and submit it to CDFW for approval prior to beginning Covered Activities. Covered Activities may not proceed until CDFW approves the relocation plan in writing.
- 7.4. Compliance Monitoring. The Designated Biologist shall be on-site daily during all initial surface-disturbing activities and shall conduct compliance inspections a minimum of once per week during periods of inactivity and after clearing, grubbing, and grading are completed. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.
- 7.5. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.4 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to CDFW's Regional Office at the office listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative. At the time of this ITP's approval, the CDFW Regional Representative is Laura Peterson-Diaz ([laura.peterson-diaz@wildlife.ca.gov](mailto:laura.peterson-diaz@wildlife.ca.gov)). CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.
- 7.6. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 7.5; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all

available information about Project-related incidental take of the Covered Species; and (6) information about other Project impacts on the Covered Species.

- 7.7. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 7.8. Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 7.9. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (559) 243-4005. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

## **8. Take Minimization Measures:**

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

- 8.1. Survey and Flag Burrows. Prior to any ground disturbance within the Project Area, the Designated Biologist(s) shall examine the portions of the Project Area to be

disturbed for small mammal burrows and Covered Species. The survey shall provide 100 percent coverage of the Project limits. All small mammal burrows shall be marked with flagging. Any Covered Species detected within the Project Area shall be relocated as per an approved Relocation Plan prepared pursuant to Condition of Approval 7.3.

- 8.2. Burrow Excavation. After conducting the burrow survey required by Condition of Approval 8.1, all small mammal burrows present within the portion of the Project area to be disturbed shall be fully excavated by hand by the Designated Biologist(s), then collapsed. Any live Covered Species salvaged during burrow excavation shall be relocated as per an approved Relocation Plan prepared pursuant to Condition of Approval 7.3.
- 8.3. Covered Species Observation and Relocation. If any Covered Species are found in the Project Area during construction, all work that could potentially harm the Covered Species shall stop immediately until the Designated Biologist(s) can relocate the Covered Species as per an approved Relocation Plan prepared pursuant to Condition of Approval 7.3.
- 8.4. Record of Handling. All Covered Species captures and sightings confirmed by the Designated Biologist(s) shall include the following documented information: the date, time, and location of each occurrence using Global Positioning System (GPS) technology, the name of the party that actually identified the animal, circumstances of the incident, the general condition and health of each individual, any diagnostic markings, sex, age (juvenile or adult), and actions undertaken and habitat description. Permittee shall submit this information to the CNDDDB as per Condition of Approval 7.7. This information shall also be included in the Monthly Compliance Report.
- 8.5. Dry Season Work. Fill or other ground-disturbing activities within or immediately adjacent to the Covered Species' potential breeding habitat within the Project Area, consisting of 0.005 acres located within the unnamed tributary to Rockaway creek, shall be confined to the dry season (from June 15 to October 31).
- 8.6. Precipitation. Covered Activities shall be restricted to periods of low rainfall (less than 1/2 inch precipitation per 24-hour period). Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the Project area.
  - 8.6.1. If a 70 percent or greater chance of rainfall is predicted within 24 hours of Project activity, a Designated Biologist shall survey the Project site before construction begins EACH day rain is forecast. If Permittee uses a Designated Monitor to conduct surveys, a Designated Biologist must still be available to capture and relocate any Covered Species discovered during the surveys.

- 8.6.2. If precipitation begins, then a Designated Biologist shall be at the Project site for the duration of the rain event in order for work to continue. If a Designated Monitor is used, then a Designated Biologist must still be on call and available to relocate any Covered Species discovered.
- 8.6.3. If rain exceeds 1/2 inch during a 24-hour period, all covered work activities shall cease until it is no longer raining and no further rain is forecast.
- 8.7. Night Work. All Covered Activities shall terminate 30 minutes before sunset and shall not resume until 30 minutes after sunrise during the migration/active season from November 1 to June 14. Permittee shall use sunrise and sunset times established by the United States Naval Observatory Astronomical Applications Department for the geographic area where the Project is located. If night work cannot be avoided during this time period, a Designated Biologist shall survey the Project site before construction begins each night. If Permittee uses a Designated Monitor to conduct surveys, a Designated Biologist must still be available to capture and relocate any Covered Species discovered during the surveys. Permittee shall prohibit all night work within potential Covered Species upland habitat when a 70 percent or greater chance of rainfall is predicted within 24 hours of Project activity, until no further rain is forecast.
- 8.8. Stockpiles. Permittee shall place soil stockpiles where soil shall not pass into potential Covered Species breeding pools; nor shall it pass into any other "Waters of the State," in accordance with Fish and Game Code 5650. Permittee shall appropriately protect stockpiles to prevent soil erosion.
- 8.9. Entrapment Inspections. Designated Biologists shall inspect all open trenches, auger holes, and other excavations that may trap Covered Species prior to any work in or around them and immediately prior to being backfilled. Designated Biologists shall safely remove and relocate any Covered Species they find in accordance with this ITP.
- 8.10. Covered Species Injury. If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately by telephone and e-mail followed by a written incident report as described in Condition of Approval 7.9. Notification shall include the name of the facility where the animal was taken.

## 9. Habitat Management Land Acquisition:

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall provide for the permanent protection and management of 3.65 acres of upland and 0.02 acres of aquatic Covered Species habitat through the purchase of credits from the CDFW-approved Mountain House Conservation Bank pursuant to Condition of Approval 9.1 below prior to initiating Covered Activities. The Mountain House Conservation Bank is located in eastern Alameda County. The bank consists of 147 acres of grassland, seasonal alkali wetland, perennial wetlands and pond habitat. The property is adjacent to Byron Conservation Bank and is just north of the Bethany Reservoir, a State-managed facility. The CTS service area includes Alameda, Contra Costa, San Joaquin, Stanislaus, Madera, Mariposa, Merced, Calaveras, and Tuolumne Counties or portions thereof. The northern border of this Service Area is State Highway 4. The Permittee shall also restore on site 0.75 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.2 below.

A mitigation ratio of 3:1 (replaced:impacted) was determined to fully mitigate permanent Project impacts and a mitigation ratio of 1.1:1 was determined to fully mitigate temporary Project impacts, when considering a the specific mitigation property and its habitat values, while also considering the values of the habitat being impacted by the Project. Thus, compensatory mitigation for temporary impacts will be  $0.75 \text{ acres} \times 1.1 = 0.825 \text{ acres}$ ; compensatory mitigation for permanent impacts to upland habitat will be  $0.94 \text{ acres} \times 3 = 2.82 \text{ acres}$ ; and permanent impacts to aquatic habitat will be  $0.005 \text{ acres} \times 3 = 0.015 \text{ acres}$ , which will be rounded to .02 aquatic credits since the Mountain House Conservation Bank only sells credits in 0.01 acre increments. Similarly, the total compensatory mitigation required for upland impacts is  $2.82 + 0.825 = 3.645 \text{ acres}$ , which rounds up to 3.65 upland credits.

- 9.1. Covered Species Credits. Permittee shall purchase 3.65 upland and 0.02 aquatic Covered Species credits from the CDFW-approved Mountain House Conservation Bank prior to initiating Covered Activities.
- 9.2. Habitat Restoration. Permittee shall restore on-site the 0.75 acres of Covered Species upland habitat that will be temporarily disturbed during construction to pre-Project or better conditions. Within six months of issuance of this ITP, the Permittee shall prepare a Vegetation Restoration Plan to facilitate

revegetation of the 0.75 acres of temporary construction disturbance on-site, and shall ensure that the Plan is successfully implemented by the contractor. The Plan shall include detailed specifications for restoring all temporarily disturbed areas, such as seed mixes and application methods including measures to be implemented (i.e., irrigation methods, weed management, maintenance and replanting if necessary). The Plan shall also indicate the best time of year for seeding to occur and the dates when regular watering would be required to ensure adequate growth. The Plan shall be implemented no later than November 15 of the year construction ends.

9.2.1. For seeding and mulching exposed slopes, the seed blend shall include a minimum of three (3) locally native grass species. Locally native wildflower and/or shrub seeds may also be included in the mix. One or two sterile non-native perennial grass species may be added to the seed mix provided that amount does not exceed 25 percent of the total seed mix by count. Seeding shall be completed as soon as possible, but no later than November 15 of the year construction ends.

9.2.2. At the discretion of CDFW, all exposed areas where seeding is considered unsuccessful after 90 days shall receive appropriate soil preparation and a second application of seeding, straw, or mulch as soon as is practical on a mutually agreed upon date.

**Amendment:**

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

**Stop-Work Order:**

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 days to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 25 additional days. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and any other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

**Compliance with Other Laws:**

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

**Notices:**

The Permittee shall deliver a fully executed duplicate original ITP by registered first class mail or overnight delivery to the following address:

Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program  
1416 Ninth Street, Suite 1260  
Sacramento, California 95814

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2013-060-04) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Jeffrey R. Single, Ph.D., Regional Manager  
California Department of Fish and Wildlife  
Region 4 - Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
Phone: (559) 243-4005  
Fax: (559) 243-4022

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

Laura Peterson-Diaz  
California Department of Fish and Wildlife  
Region 4 - Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
Phone: (559) 243-4017, extension 225  
Fax: (559) 243-4020  
Laura.Peterson-Diaz@wildlife.ca.gov

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**Compliance with CEQA:**

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, California Department of Transportation. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Mitigated Negative Declaration and Initial Study (State Clearinghouse No.: 2012122051) dated February 2013 that the California Department of Transportation adopted for Rockaway Shoulder Widening and Rumble Strips Project on February 28, 2013. At the time the lead agency adopted the Mitigated Negative Declaration and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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

**Findings Pursuant to CESA:**

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

CDFW finds based on substantial evidence in the ITP application, Mitigated Negative Declaration, LSA agreement notification number 1600-2013-0152-R4, Biological Opinion (08ESMF00-2012-F-0670-1), the results of site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent protection of 3.65 acres of upland and 0.02 acres of aquatic Covered Species habitat at a mitigation bank that supports high quality Covered Species habitat; (2) establishment of avoidance zones; (3) worker

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education; and (4) Monthly and Annual Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 3.67 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

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

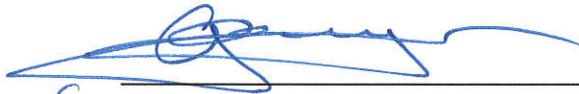
**Attachments:**

FIGURE 1	Location Map
FIGURE 2	Project Map
ATTACHMENT 1	Mitigation Monitoring and Reporting Program

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ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 1/9/14



for Jeffrey R. Single, Ph.D.  
Regional Manager  
CENTRAL REGION

**ACKNOWLEDGMENT**

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of this ITP, and (3) agrees on behalf of the Permittee to comply with all terms and conditions

By: Frank Merz

Date: 1/14/2014

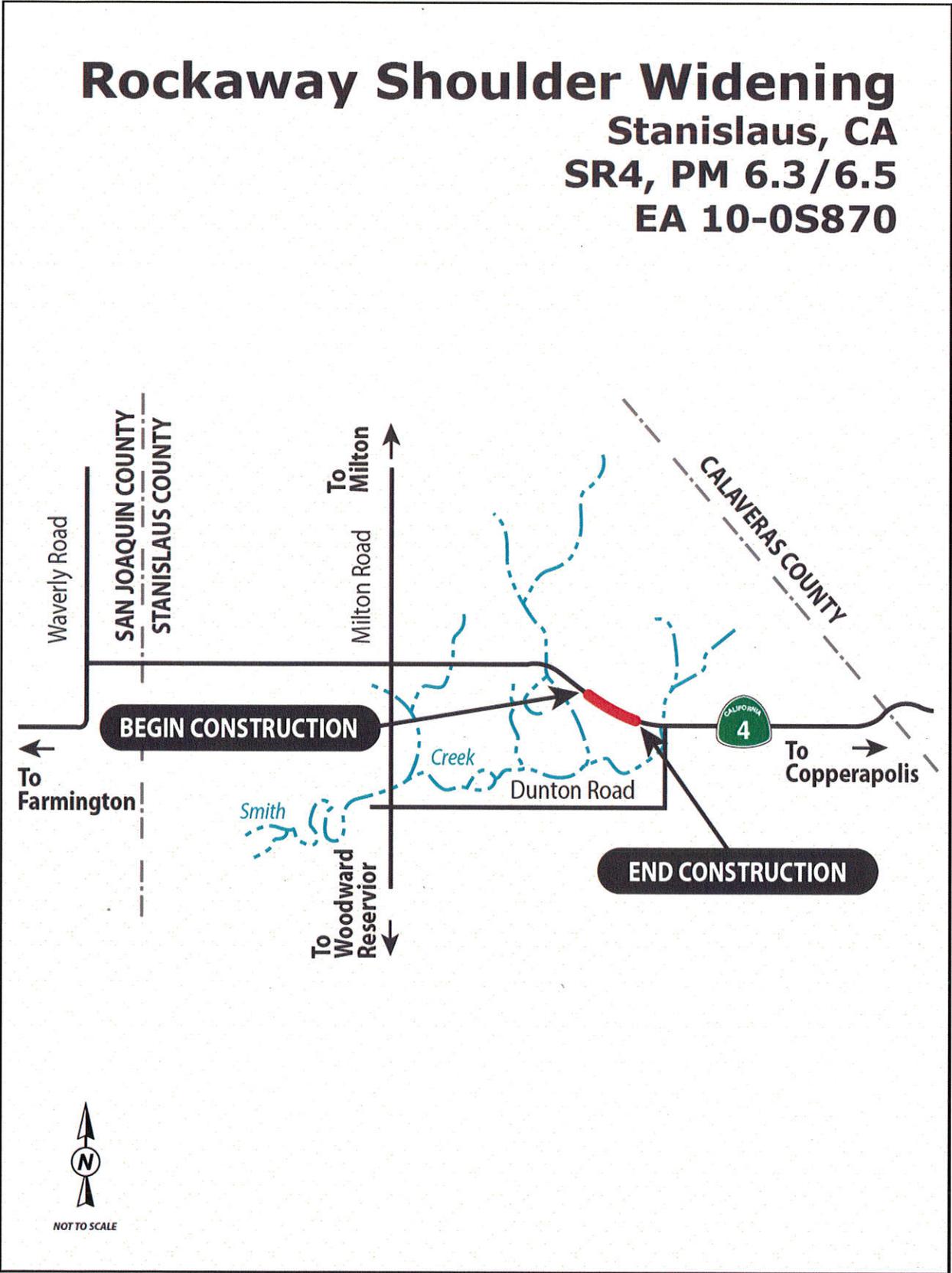
Printed Name: FRANK MERZ

Title: SENIOR ENVIRONMENTAL PLANNER

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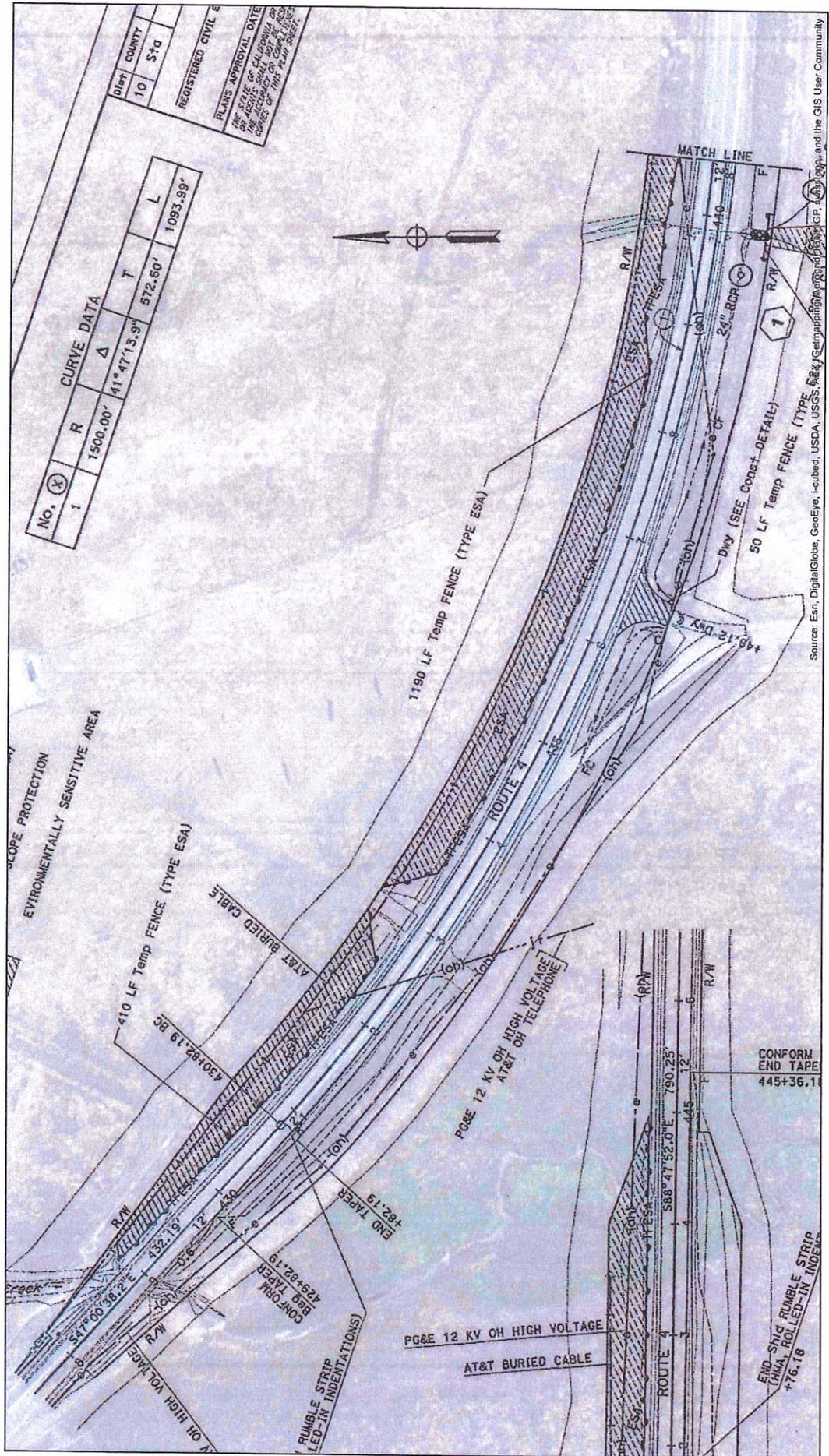
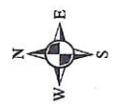
Figure 1. Location Map



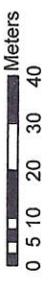


# Rockaway Creek Project Location Map Caltrans EA 10-0S870

Figure 2. Project Map



No.	(X)	1					
R	1500.00'	Δ	41° 47' 13.9"	T	572.60'	L	1093.99'
CURVE DATA							
DIFF COUNTY 10 Sta							
REGISTERED CIVIL E							
PLANS APPROVAL DATE							
THE STATE OF CALIFORNIA							
THE ARCHITECTURE OF CALIFORNIA							
REGISTERED ARCHITECT							
NO. OF THIS PLAN SHEET							



Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AeroGRID, IGN, and the GIS User Community



## Attachment 1

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

**INCIDENTAL TAKE PERMIT NO. 2081-2013-060-04**

**PERMITTEE: California Department of Transportation (Caltrans)**

**PROJECT: Rockaway Shoulder Widening and Rumble Strip**

#### **PURPOSE OF THE MMRP**

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

#### **OBLIGATIONS OF PERMITTEE**

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

#### **VERIFICATION OF COMPLIANCE, EFFECTIVENESS**

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

#### **TABLE OF MITIGATION MEASURES**

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



	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
<b>BEFORE DISTURBING SOIL OR VEGETATION</b>					
1	<p><u>Designated Representative.</u> Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with the ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of the ITP.</p>	ITP Condition # 6.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	<p><u>Designated Biologist.</u> Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed. The Designated Biologist(s) may be assisted by approved biologists that do not have a Scientific Collecting Permit; these biologists shall be identified as Designated Monitors.</p>	ITP Condition # 6.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
3	<p><u>Education Program.</u> Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in the ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.</p>	ITP Condition # 6.4	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
4	<p><u>Trash Abatement.</u> Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.</p>	ITP Condition # 6.6	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
5	<p><u>Dust Control.</u> Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.</p>	ITP Condition # 6.7	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
6	<u>Delineation of Property Boundaries.</u> Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities.	ITP Condition # 6.9	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
7	<u>Delineation of Habitat.</u> Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.	ITP Condition # 6.10	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
8	<u>Project Access.</u> Project-related personnel shall access the Project Area using existing routes, and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to the ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.	ITP Condition # 6.11	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
9	<u>Notification Before Commencement.</u> The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.	ITP Condition # 7.1	Before commencing ground- or vegetation-disturbing activities	Permittee	
10	<u>California Tiger Salamander Relocation Plan.</u> The Designated Biologist shall prepare a California tiger salamander relocation plan (Relocation Plan) and submit it to CDFW for approval prior to beginning Covered Activities. Covered Activities may not proceed until CDFW approves the relocation plan in writing.	ITP Condition # 7.3	Before commencing ground- or vegetation-disturbing activities	Permittee	
11	<u>Covered Species Credits.</u> Permittee shall purchase 3.65 upland and 0.02 aquatic Covered Species credits from the CDFW-approved Mountain House Conservation Bank prior to initiating Covered Activities.	ITP Condition # 9.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
<b>DURING CONSTRUCTION</b>					
12	Designated Biologist Authority. To ensure compliance with the Conditions of Approval of the ITP, the Designated Biologist and Designated Monitors shall have authority to immediately stop any activity that does not comply with the ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.	ITP Condition # 6.3	Entire Project	CDFW	
13	<u>Construction Monitoring Notebook.</u> The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of the ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.	ITP Condition # 6.5	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
14	Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.	ITP Condition # 6.8	Entire Project	Permittee	
15	Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.11 of the ITP.	ITP Condition # 6.12	Entire Project	Permittee	
16	Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.	ITP Condition # 6.13	Entire Project	Permittee	
17	CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in the ITP.	ITP Condition # 6.14	Entire Project	Permittee	
18	Notification of Non-compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of the ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in the ITP and/or this MMRP. The Designated Representative shall report any non-compliance with the ITP to CDFW within 24 hours.	ITP Condition # 7.2	Entire Project	Permittee	
19	Compliance Monitoring. The Designated Biologist shall be on-site daily during all initial surface-disturbing activities and shall conduct compliance inspections a minimum of once per week during periods of inactivity and after clearing, grubbing, and grading are completed. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of the ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by the ITP.	ITP Condition # 7.4	Entire Project	Permittee	
20	Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.4 into a Monthly Compliance Report and submit it to CDFW along with a copy of this MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to CDFW's Regional Office at the office listed in the Notices section of the ITP and via e-mail to CDFW's Regional Representative. At the time of the ITP's approval, the CDFW Regional Representative is Laura Peterson-Diaz (laura.peterson-diaz@wildlife.ca.gov). CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.	ITP Condition # 7.5	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
21	<b>Annual Status Report.</b> Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of the ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 7.5; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in this MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; and (6) information about other Project impacts on the Covered Species.	ITP Condition # 7.6	Entire Project	Permittee	
22	<b>CNDDB Observations.</b> The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.	ITP Condition # 7.7	Entire Project	Permittee	
23	<b>Notification of Take or Injury.</b> Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (559) 243-4005. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.	ITP Condition # 7.9	Entire Project	Permittee	
24	<b>Survey and Flag Burrows.</b> Prior to any ground disturbance within the Project Area, the Designated Biologist(s) shall examine the portions of the Project Area to be disturbed for small mammal burrows and Covered Species. The survey shall provide 100 percent coverage of the Project limits. All small mammal burrows shall be marked with flagging. Any Covered Species detected within the Project Area shall be relocated as per an approved Relocation Plan prepared pursuant to Condition of Approval 7.3.	ITP Condition # 8.1	Entire Project	Permittee	
25	<b>Burrow Excavation.</b> After conducting the burrow survey required by Condition of Approval 8.1, all small mammal burrows present within the portion of the Project area to be disturbed shall be fully excavated by hand by the Designated Biologist(s), then collapsed. Any live Covered Species salvaged during burrow excavation shall be relocated as per an approved Relocation Plan prepared pursuant to Condition of Approval 7.3.	ITP Condition # 8.2	Entire Project	Permittee	
26	<b>Covered Species Observation and Relocation.</b> If any Covered Species are found in the Project Area during construction, all work that could potentially harm the Covered Species shall stop immediately until the Designated Biologist(s) can relocate the Covered Species as per an approved Relocation Plan prepared pursuant to Condition of Approval 7.3.	ITP Condition # 8.3	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
27	Record of Handling. All Covered Species captures and sightings confirmed by the Designated Biologist(s) shall include the following documented information: the date, time, and location of each occurrence using Global Positioning System (GPS) technology, the name of the party that actually identified the animal, circumstances of the incident, the general condition and health of each individual, any diagnostic markings, sex, age (juvenile or adult), and actions undertaken and habitat description. Permittee shall submit this information to the CNDDDB as per Condition of Approval 7.7. This information shall also be included in the Monthly Compliance Report.	ITP Condition # 8.4	Entire Project	Permittee	
28	Dry Season Work. Fill or other ground-disturbing activities within or immediately adjacent to the Covered Species' potential breeding habitat within the Project Area, consisting of 0.005 acres located within the unnamed tributary to Rockaway creek, shall be confined to the dry season (from June 15 to October 31).	ITP Condition # 8.5	Entire Project	Permittee	
29	Precipitation. Covered Activities shall be restricted to periods of low rainfall (less than 1/2 inch precipitation per 24-hour period). Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the Project area. 8.6.1 If a 70 percent or greater chance of rainfall is predicted within 24 hours of Project activity, a Designated Biologist shall survey the Project site before construction begins EACH day rain is forecast. If Permittee uses a Designated Monitor to conduct surveys, a Designated Biologist must still be available to capture and relocate any Covered Species discovered during the surveys. 8.6.2 If precipitation begins, then a Designated Biologist shall be at the Project site for the duration of the rain event in order for work to continue. If a Designated Monitor is used, then a Designated Biologist must still be on call and available to relocate any Covered Species discovered. 8.6.3 If rain exceeds 1/2 inch during a 24-hour period, all covered work activities shall cease until it is no longer raining and no further rain is forecast.	ITP Condition # 8.6. - # 8.6.3	Entire Project	Permittee	
30	Night Work. All Covered Activities shall terminate 30 minutes before sunset and shall not resume until 30 minutes after sunrise during the migration/active season from November 1 to June 14. Permittee shall use sunrise and sunset times established by the United States Naval Observatory Astronomical Applications Department for the geographic area where the Project is located. If night work cannot be avoided during this time period, a Designated Biologist shall survey the Project site before construction begins each night. If Permittee uses a Designated Monitor to conduct surveys, a Designated Biologist must still be available to capture and relocate any Covered Species discovered during the surveys. Permittee shall prohibit all night work within potential Covered Species upland habitat when a 70 percent or greater chance of rainfall is predicted within 24 hours of Project activity, until no further rain is forecast.	ITP Condition # 8.7	Entire Project	Permittee	
31	Stockpiles. Permittee shall place soil stockpiles where soil shall not pass into potential Covered Species breeding pools; nor shall it pass into any other "Waters of the State," in accordance with Fish and Game Code 5650. Permittee shall appropriately protect stockpiles to prevent soil erosion.	ITP Condition # 8.8	Entire Project	Permittee	

Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
32 Entrapment Inspections. Designated Biologists shall inspect all open trenches, auger holes, and other excavations that may trap Covered Species prior to any work in or around them and immediately prior to being backfilled. Designated Biologists shall safely remove and relocate any Covered Species they find in accordance with the ITP.	ITP Condition # 8.9	Entire Project	Permittee	
33 Covered Species Injury. If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately by telephone and e-mail followed by a written incident report as described in Condition of Approval 7.9. Notification shall include the name of the facility where the animal was taken.	ITP Condition # 8.10	Entire Project	Permittee	
<b>POST-CONSTRUCTION</b>				
34 Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.	ITP Condition # 6.15	Post-construction	Permittee	
35 Habitat Restoration. Permittee shall restore on-site the 0.75 acres of Covered Species upland habitat that will be temporarily disturbed during construction to pre Project or better conditions. Within six months of issuance of the ITP, the Permittee shall prepare a Vegetation Restoration Plan to facilitate revegetation of the 0.75 acres of temporary construction disturbance on-site, and shall ensure that the Plan is successfully implemented by the contractor. The Plan shall include detailed specifications for restoring all temporarily disturbed areas, such as seed mixes and application methods including measures to be implemented (i.e., irrigation methods, weed management, maintenance and replanting if necessary). The Plan shall also indicate the best time of year for seeding to occur and the dates when regular watering would be required to ensure adequate growth. The Plan shall be implemented no later than November 15 of the year construction ends.	ITP Condition # 9.2	Post-construction	Permittee	
36 Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in this MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of the ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.	ITP Condition # 7.8	Post-construction and after completion of mitigation	Permittee	



## Central Valley Regional Water Quality Control Board

15 January 2014

Mark Mcavoy  
California Department of Transportation  
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***CLEAN WATER ACT §401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION; CALIFORNIA DEPARTMENT OF TRANSPORTATION, ROCKAWAY SHOULDER WIDENING AND RUMBLE STRIPS PROJECT (WDID#5B50CR00064), STANISLAUS COUNTY***

This Order responds to the 3 September 2013 application submitted by California Department of Transportation (Applicant) for the Water Quality Certification of a road widening project permanently impacting 0.005 acre of waters of the United States.

This Order serves as certification of the United States Army Corps of Engineers' Nationwide Permit# 14 (SPK# 2012-00508) under § 401 of the Clean Water Act, and a Waste Discharge Requirement under the Porter-Cologne Water Quality Control Act and State Water Board Order 2003-0017-DWQ.

### **WATER QUALITY CERTIFICATION STANDARD CONDITIONS:**

1. This Order serves as a Water Quality Certification (Certification) action that is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to § 13330 of the California Water Code and § 3867 of the California Code of Regulations.
2. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to § 3855(b) of the California Code of Regulations, and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial Certification action shall be conditioned upon total payment of the full fee required under § 3860(c) of the California Code of Regulations.

4. This Certification is no longer valid if the project (as described) is modified, or coverage under § 404 of the Clean Water Act has expired.
5. All reports, notices, or other documents required by this Certification or requested by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) shall be signed by a person described below or by a duly authorized representative of that person.
  - (a) For a corporation: by a responsible corporate officer such as (1) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function; (2) any other person who performs similar policy or decision-making functions for the corporation; or (3) the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - (b) For a partnership or sole proprietorship: by a general partner or the proprietor.
  - (c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.
6. Any person signing a document under Standard Condition number 5 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### **TECHNICAL CERTIFICATION CONDITIONS:**

In addition to the above standard conditions, the Applicant shall satisfy the following:

1. The Applicant shall notify the Central Valley Water Board in writing seven (7) days in advance of the start of any work within waters of the United States. The notification shall include the name of the project and the WDID number, and shall be sent to the Central Valley Water Board Contact indicated in this Certification.
2. Except for activities permitted by the United States Army Corps of Engineers under § 404 of the Clean Water Act, soil, silt, or other organic materials shall not be placed where such materials could pass into surface water or surface water drainage courses.

3. The Applicant shall maintain a copy of this Certification and supporting documentation (Project Information Sheet) at the Project site during construction for review by site personnel and agencies. All personnel (employees, contractors, and subcontractors) performing work on the proposed project shall be adequately informed and trained regarding the conditions of this Certification.
4. The Applicant shall perform surface water sampling:
  - a) when performing any in-water work;
  - b) in the event that project activities result in any materials reaching surface waters; or
  - c) when any activities result in the creation of a visible plume in surface waters.

The monitoring requirements in Table 1 shall be conducted upstream out of the influence of the project, and 300 feet downstream of the work area. The sampling frequency may be modified for certain projects with written approval from Central Valley Water Board staff.

**Table 1:**

Parameter	Unit	Type of Sample	Minimum Sampling Frequency	Required Analytical Test Method
Turbidity	NTU	Grab <sup>(1)</sup>	Every 4 hours during in-water work	(2, 4)
Settleable Material	mL/L	Grab <sup>(1)</sup>	Every 4 hours during in-water work	(2)
Visible construction related pollutants <sup>(3)</sup>	Observations	Visual Inspections	Continuous throughout the construction period	—

<sup>(1)</sup> Grab samples shall not be collected at the same time each day to get a complete representation of variations in the receiving water.

<sup>(2)</sup> Pollutants shall be analyzed using the analytical methods described in 40 Code of Federal Regulations Part 136; where no methods are specified for a given pollutant, the method shall be approved by Central Valley Water Board staff.

<sup>(3)</sup> Visible construction-related pollutants include oil, grease, foam, fuel, petroleum products, and construction-related, excavated, organic or earthen materials.

<sup>(4)</sup> A hand-held field meter may be used, provided the meter utilizes a USEPA-approved algorithm/method and is calibrated and maintained in accordance with the manufacturer's instructions. A calibration and maintenance log for each meter used for monitoring shall be maintained onsite.

Surface water monitoring shall occur at mid-depth. A surface water monitoring report shall be submitted to the Central Valley Water Board Contact indicated in this Certification within two weeks of initiation of sampling and every two weeks thereafter. In reporting the monitoring data, the Applicant shall arrange the data in tabular form so that the sampling locations, date, constituents, and concentrations are readily discernible. The data shall be summarized in such a manner to illustrate clearly whether the project complies with Certification requirements. The report shall include surface water sampling results, visual observations, and identification of the turbidity increase in the receiving water applicable to the natural turbidity conditions specified in the turbidity criteria below.

If no monitoring is conducted, the Applicant shall submit a written statement to the Central Valley Water Board Contact indicated in the Certification stating, "No monitoring was required." with the Notice of Completion.

5. The Central Valley Water Board adopted a *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised October 2011 (Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Turbidity and settleable matter limits are based on water quality objectives contained in the Basin Plan and are part of this Certification as follows:

- a) Activities shall not cause turbidity increases in surface water to exceed:
  - i. where natural turbidity is less than 1 Nephelometric Turbidity Units (NTUs), controllable factors shall not cause downstream turbidity to exceed 2 NTUs;
  - ii. where natural turbidity is between 1 and 5 NTUs, increases shall not exceed 1 NTU;
  - iii. where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent;
  - iv. where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs; and
  - v. where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

Except that these limits will be eased during in-water working periods to allow a turbidity increase of 15 NTUs over background turbidity. In determining compliance with the above limits, appropriate averaging periods may be applied provided that beneficial uses will be fully protected. Averaging periods may only be used with prior approval of the Central Valley Water Board staff.

- b) Activities shall not cause settleable matter to exceed 0.1 mL/L in surface waters.
6. The Applicant shall notify the Central Valley Water Board immediately if the above criteria for turbidity and settleable matter, or other water quality objectives are exceeded.
  7. In-water work shall occur during periods of no flow and no precipitation. The Applicant shall preform surface water sampling in accordance with Technical Certification Condition No. 4, if any of the following conditions occur: unanticipated flow is present and in-water work is conducted; project activities result in any materials reaching surface waters; or project activities result in the creation of a visible plume in surface waters.

8. Refueling of equipment within the floodplain or within 300 feet of the waterway is prohibited. If critical equipment must be refueled within 300 feet of the waterway, spill prevention and countermeasures must be implemented to avoid spills. Refueling areas shall be provided with secondary containment including drip pans and/or placement of absorbent material. No hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, or other construction-related potentially hazardous substances should be stored within a floodplain or within 300 feet of a waterway. The Applicant must perform frequent inspections of construction equipment prior to utilizing it near surface waters to ensure leaks from the equipment are not occurring and are not a threat to water quality.
9. The Applicant shall develop and maintain onsite a project-specific Spill Prevention, Containment and Cleanup Plan outlining the practices to prevent, minimize, and/or clean up potential spills during construction of the project. The Plan must detail the project elements, construction equipment types and location, access and staging and construction sequence. The Plan must also address spill response and prevention measures for potential spills that may occur within the project site.
10. Silt fencing, straw wattles, or other effective management practices must be used along the construction zone to minimize soil or sediment along the embankments from migrating into the waters of the United States through the entire duration of the project.
11. The use of netting material (e.g., monofilament-based erosion blankets) that could trap aquatic dependent wildlife is prohibited within the project area, as indicated in the attached map (Figure 1).
12. All areas disturbed by project activities shall be protected from washout or erosion.
13. All temporarily affected areas shall be restored to pre-construction contours and conditions upon completion of construction activities.
14. All materials resulting from the project shall be removed from the site and disposed of properly.
15. The discharge of petroleum products, any construction materials, hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, raw cement, concrete, asphalt, paint, coating material, drilling fluids, or other construction-related potentially hazardous substances to surface water and/or soil is prohibited. In the event of a prohibited discharge, the Applicant shall notify the Central Valley Water Board Contact within 24-hours of the discharge. Activities shall not cause visible oil, grease, or foam in the receiving water.
16. The Applicant shall comply with all California Department of Fish and Wildlife requirements, including but not limited to those requirements described in Lake or Streambed Alteration Agreement No. 1600-2013-0152-R4.

17. The Applicant shall comply with all United States Fish and Wildlife Service requirements, including but not limited to those requirements described in the Biological Opinion (08ESMF00-2012-F-0670-1), provided to the California Department of Transportation, dated 25 February 2013.
18. The Applicant shall obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ for discharges to surface waters comprised of storm water associated with construction activity, including, but not limited to, demolition, clearing, grading, excavation, and other land disturbance activities of one or more acres, or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres.
19. The Conditions in this Certification are based on the information in the attached "Project Information Sheet." If the actual project, as described in the attached Project Information Sheet, is modified or changed, this Certification is no longer valid until amended by the Central Valley Water Board.
20. The Applicant shall implement each of the mitigation measures specified in the approved Mitigated Negative Declaration for the project, as they pertain to biology, hydrology and water quality impacts as required by § 21081.6 of the Public Resource Code and § 15097 of the California Code of Regulations.
21. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law. The applicability of any state law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to ensure compliance with this Certification.
  - (a) If the Applicant or a duly authorized representative of the project fails or refuses to furnish technical or monitoring reports, as required under this Certification, or falsifies any information provided in the monitoring reports, the applicant is subject to civil liability, for each day of violation, and/or criminal liability.
  - (b) In response to a suspected violation of any condition of this Certification, the Central Valley Water Board may require the Applicant to furnish, under penalty of perjury, any technical or monitoring reports the Central Valley Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

- (c) The Applicant shall allow the staff of the Central Valley Water Board, or an authorized representative(s), upon the presentation of credentials and other documents, as may be required by law, to enter the project premises for inspection, including taking photographs and securing copies of project-related records, for the purpose of assuring compliance with this Certification and determining the ecological success of the project.
22. The Applicant shall provide a Notice of Completion (NOC) no later than 30 days after the project completion. The NOC shall demonstrate that the project has been carried out in accordance with the project description in the Certification and in any approved amendments. The NOC shall include a map of the project location(s), including final boundaries of any on-site restoration area(s), if appropriate, and representative pre and post construction photographs. Each photograph shall include a descriptive title, date taken, photographic site, and photographic orientation.
23. The Applicant shall provide evidence of all on-site and off-site compensatory mitigation, including, but not limited to, the purchase of mitigation credits as required by the United States Army Corps of Engineers prior to commencing construction to the Central Valley Water Board.

Compensatory mitigation must comply with the effective policy at the time of Certification, which ensures no overall net loss of wetlands for impacts to waters of the State.

Evidence of compliance with compensatory mitigation requirements include providing a letter from the approved compensatory mitigation bank. The letter must: (a) be on the compensatory mitigation bank's letterhead; (b) be signed by an authorized representative of the compensatory mitigation bank; (c) indicate the United States Army Corps of Engineers' SPK number; (d) describe the project name and location; and (e) detail the type of compensatory mitigation credits purchased for the project's impacts.

**CENTRAL VALLEY WATER BOARD CONTACT:**

Trevor Cleak, Environmental Scientist  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-8114  
trevor.cleak@waterboards.ca.gov  
(916) 464-4684

**CALIFORNIA ENVIRONMENTAL QUALITY ACT:**

The California Department of Transportation is the Lead Agency responsible for compliance with the California Environmental Quality Act for the Rockaway Shoulder Widening Project pursuant to § 21000 et seq. of the Public Resources Code. The California Department of Transportation approved the Mitigated Negative Declaration on 28 March 2013. California

Department of Transportation filed a Notice of Determination with the State Clearinghouse on 3 April 2013 (State Clearinghouse Number 2012122051).

The Central Valley Water Board is a responsible agency for the project. The Central Valley Water Board has determined that the Mitigated Negative Declaration is in accordance with the requirements of the California Environmental Quality Act.

The Central Valley Water Board has reviewed and evaluated the impacts to water quality identified in the Mitigated Negative Declaration. The mitigation measures discussed in the Mitigated Negative Declaration to minimize project impacts to State waters are required by this Certification.

With regard to the remaining impacts identified in the Mitigated Negative Declaration the corresponding mitigation measures proposed are within the responsibility and jurisdiction of other public agencies.

#### **WATER QUALITY CERTIFICATION:**

I hereby issue an Order certifying that any discharge from the California Department of Transportation, Rockaway Shoulder Widening Project (WDID#5B50CR00064) will comply with the applicable provisions of § 301 ("Effluent Limitations"), § 302 ("Water Quality Related Effluent Limitations"), § 303 ("Water Quality Standards and Implementation Plans"), § 306 ("National Standards of Performance"), and § 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Resources Control Board Water Quality Order No. 2003-0017 DWQ "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification (General WDRs)".

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in compliance with the conditions of this Certification, the California Department of Transportation's application package, and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised October 2011.



for Pamela C. Creedon  
Executive Officer

Enclosure: Project Information Sheet

Attachment: Figure 1 – Project Location Map

cc: Distribution List, page 12

## PROJECT INFORMATION SHEET

**Application Date:** 3 September 2013

**Applicant:** Mark Mcavoy  
California Department of Transportation  
1976 E. Dr. Martin Luther King Jr. Boulevard  
Stockton, CA 95205

**Project Name:** Rockaway Shoulder Widening Project

**Application Number:** WDID#5B50CR00064

**Date Application Deemed Complete:** 25 October 2013

**Type of Project:** Road widening project

**Timeframe of Project Implementation:** 15 June through 15 October

**Project Location:** Section 18, Township 1 North, Range 11 East, MDB&M.  
Latitude: 37°56 '15.6876 "N and Longitude: 120°48 '45.4572" W

**County:** Stanislaus

**Receiving Water(s) (hydrologic unit):** Unnamed wetland, San Joaquin Hydrologic Basin,  
North Valley Floor Hydrologic Unit #531.40, Duck-Littlejohns HA

**Water Body Type:** Wetland

**Designated Beneficial Uses:** The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised October 2011 (Basin Plan) has designated beneficial uses for surface and ground waters within the region. Beneficial uses that could be impacted by the project include, but are not limited to: Municipal and Domestic Water Supply (MUN); Agricultural Supply (AGR); Industrial Supply (IND); Hydropower Generation (POW); Groundwater Recharge (GWR); Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Preservation of Biological Habitats of Special Significance (BIOL); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); and Wildlife Habitat (WILD). A comprehensive and specific list of the beneficial uses applicable for the project area can be found at [http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/index.shtml).

**303(d) List of Water Quality Limited Segments:** An unnamed wetland is the receiving waters for the Rockaway Shoulder Widening Project. The unnamed wetland is not listed on the 303(d) list; therefore, this project will not impact an impaired water body. The most recent list of approved water quality limited segments is found at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2010.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml)

**Project Description:** The Rockaway Shoulder Widening Project (Project) consists of widening the eastbound right shoulder of a segment of State Route 4. The project is located approximately 0.5 miles west of the intersection of Dunton Road and State Route 4 in Stanislaus County.

The widening of the road will require removing approximately 1-foot of the existing 68-foot long, 24-inch diameter concrete culvert and extending the existing culvert an additional 6.4 feet at the outlet. The Project will also include installation of a precast concrete flared end section, approximately 3.6-feet long by 4.5-feet wide, and approximately 8.4 cubic yards of rock slope protection.

Other project activities such as placing rumble strips, and a temporary staging area will not impact waters of the United States. No dewatering will occur within the project area. No wet concrete will be placed within waters of the United States.

The project will permanently impact 0.005 acre of waters of the United States.

**Preliminary Water Quality Concerns:** Construction activities may impact surface waters with increased turbidity and settleable matter.

**Proposed Mitigation to Address Concerns:** The Applicant will implement Best Management Practices to control sedimentation and erosion. All temporary affected areas will be restored to pre-construction contours and conditions upon completion of construction activities to provide 1:1 mitigation for temporary impacts.

This Certification requires all work to be conducted during periods of no flow. In the event that project activities result in any materials reaching surface waters or unanticipated in-water work is conducted, the Applicant will conduct turbidity and settleable matter testing. During this testing, the Applicant will stop work if Basin Plan criteria are exceeded or observations indicate an exceedance of a water quality objective.

**Excavation/Fill Area:** Approximately 0.03 cubic yards of concrete will be excavated from 0.005 acre of waters of the United States.

Approximately 4.6 cubic yards of precast concrete and 8.4 cubic yards of rock slope protection will be placed into 0.005 acre of waters of the United States.

**Dredge Volume:** None

**California Integrated Water Quality System Impact Data:** The Project will permanently impact 0.005 acre of wetlands from fill and excavation activities.

**Table 2: Impacts from Fill and Excavation Activities**

Water Feature Type	Permanent			Temporary		
	Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
Wetlands						
unnamed wetlands	0.005	-	13.03	-	-	-
<b>Total Impacts</b>	<b>0.005</b>	<b>-</b>	<b>13.03</b>	<b>-</b>	<b>-</b>	<b>-</b>

**United States Army Corps of Engineers File Number:** SPK #2012-00508

**United States Army Corps of Engineers Permit Type:** Nationwide Permit #14

**California Department of Fish and Wildlife Lake or Streambed Alteration Agreement:**  
 1600-2013-0152-R4

**Possible Listed Species:** California tiger salamander

**Status of CEQA Compliance:** The California Department of Transportation approved the Mitigated Negative Declaration on 28 March 2013. California Department of Transportation filed a Notice of Determination with the State Clearinghouse on 3 April 2013 (State Clearinghouse Number 2012122051).

The Central Valley Water Board will file a Notice of Determination with the State Clearinghouse as a responsible agency within five (5) days of the date of this Certification.

**Compensatory Mitigation:** Prior to commencing construction, the Applicant shall provide evidence of the purchase of mitigation credits as required by the United States Army Corps of Engineers to the Central Valley Water Board.

**Application Fee Provided:** Total fees of \$1,025.00 have been submitted to the Central Valley Water Board as required by § 3833(b)(3)(A) and § 2200(a)(3) of the California Code of Regulations.

**DISTRIBUTION LIST**

Jason Deters  
United States Army Corps of Engineers  
Sacramento District Office  
Regulatory Division  
1325 J Street, Suite 1350  
Sacramento, CA 95814-2922

Thomas Leeman  
United States Fish & Wildlife Service  
Sacramento Fish & Wildlife Office  
855 M Street, Suite 200  
Fresno, CA 93721

Laura Peterson Diaz  
Department of Fish and Wildlife  
1234 E. Shaw Avenue  
Fresno, CA 93710

Bill Jennings  
CA Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, CA 95204

Bill Orme (Electronic copy only)  
401 Certification and Wetlands Unit Chief  
State Water Resources Control Board

Jason A. Brush (Electronic copy only)  
Wetlands Office Supervisor (WTR-8)  
United States Environmental Protection Agency

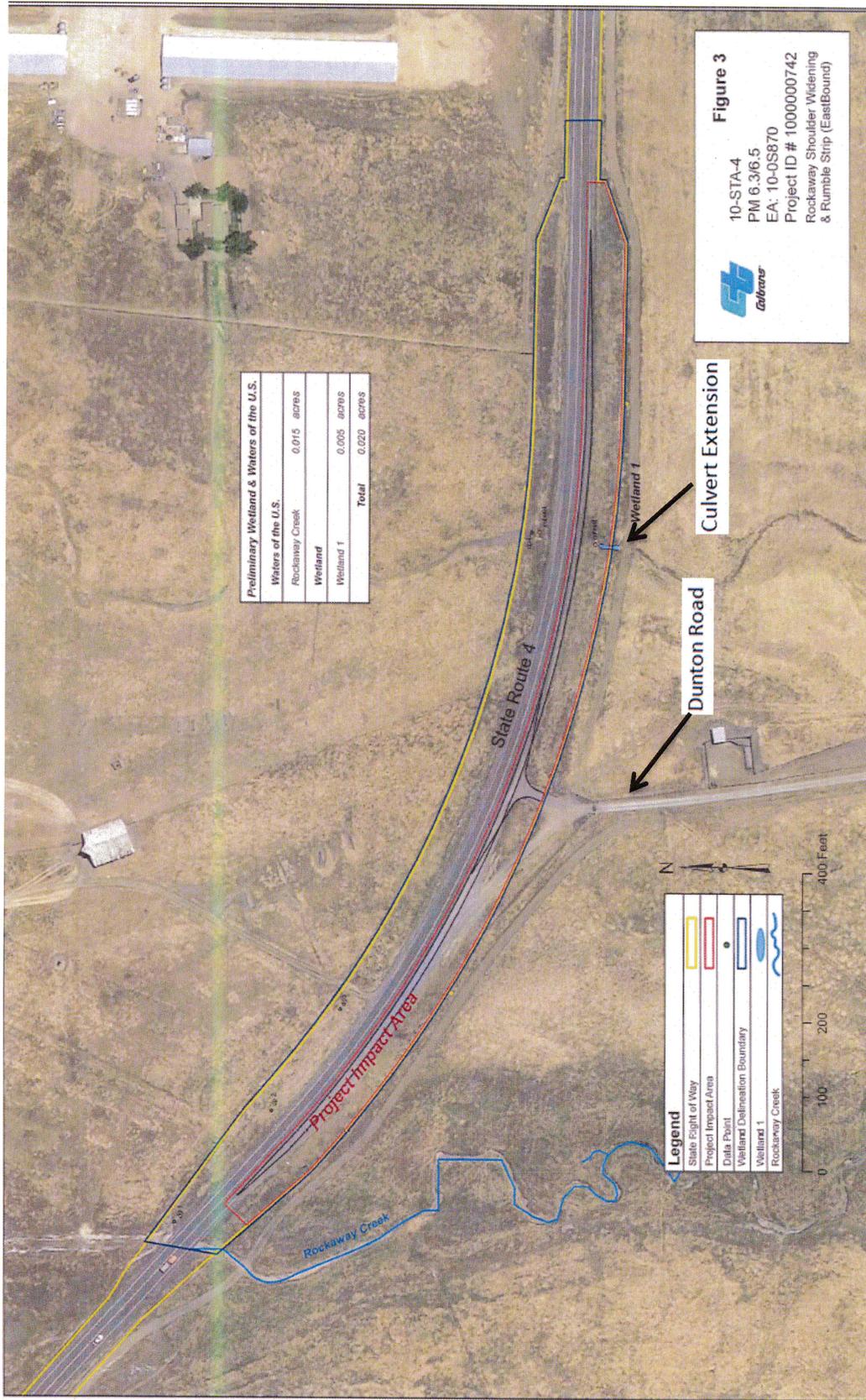


Figure 1 –Project Location Map



California Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4593  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

EDMUND G. BROWN, Jr., Governor  
Charlton H. Bonham, Director



2014 JAN 6 AM 11 29

December 27, 2013

Christy Lafayette  
California Department of Transportation  
1976 East Martin Luther King Jr. Boulevard  
Stockton, California 95202

Subject: Final Lake or Streambed Alteration Agreement  
Notification No. 1600-2013-0152-R4  
Unnamed Tributary to Rockaway Creek - Stanislaus County

Dear Ms. Lafayette:

Enclosed is the final Stream Alteration Agreement (Agreement) for the Rockway Shoulder Widening and Rumble Strips Project (Project). Before the Department of Fish and Wildlife (Department) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, the Department, acting as a Responsible Agency, filed a Notice of Determination (NOD) on the same date it signed the Agreement. The NOD was based on information contained in the Mitigated Negative Declaration the Lead Agency prepared for the Project.

Pursuant to CEQA Guidelines sections 15075(g) and 15094(g), filing of a NOD starts a 30-day statute of limitations during which a party may challenge the filing agency's approval of the Project. You may begin your Project before the 30-day period expires if you have obtained all necessary local, State, and Federal permits or other authorizations; however, if you elect to do so it will be at your own risk.

If you have any questions regarding this matter, please contact Laura Peterson-Diaz, Environmental Scientist, at (559) 243-4014, extension 225 or [laura.peterson-diaz@wildlife.ca.gov](mailto:laura.peterson-diaz@wildlife.ca.gov).

Sincerely,

Jeffrey R. Single, Ph.D.  
Regional Manager

Enclosure

cc: Laura Peterson-Diaz, Environmental Scientist

## NOTICE OF DETERMINATION

**TO:** Office of Planning and Research  
Post Office Box 3044  
Sacramento, California 95814

**FROM:** California Department of Fish and Wildlife  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710

**SUBJECT:** Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

**PROJECT TITLE:** Rockaway Shoulder Widening Project; Agreement 1600-2013-0152-R4.

**STATE CLEARINGHOUSE NUMBER:** 2012122051

**LEAD AGENCY:** California Department of Transportation (Caltrans)

**CONTACT:** Christy Lafayette (209) 942-6011

**RESPONSIBLE AGENCY:** California Department of Fish and Wildlife

**CONTACT:** Laura Peterson-Diaz (559) 243-4017, extension 225

**PROJECT LOCATION:** The Project is located on the tributary to Rockaway Creek along State Route (SR) 4 at Post Mile (PM) 6.48, just west of Dunton Road and 10 miles west of the City of Copperopolis, Stanislaus County, State of California; Township 1 North, Range 11 East, Section 18 United States Geological Survey map Bachelor Valley, MDB&M; Latitude 37.93741, Longitude -120.81287 Decimal Degrees.

**PROJECT DESCRIPTION:** The California Department of Fish and Wildlife is executing a Lake and Streambed Alteration Agreement pursuant to Section 1602 of the Fish and Game Code to the Project applicant, Caltrans. Activity includes extending a culvert at PM 6.48 and related the installation of a concrete Flared End Section and Rock Slope Protection. All work within the stream will occur during naturally dry conditions. No trees will be removed.

This is to advise that the California Department of Fish and Wildlife as a Responsible Agency approved the Project described above on 1/2/14 and has made the following determinations regarding the above described Project.

1. The Project will not have a significant effect on the environment.
2. A Mitigated Negative Declaration (MND) was prepared for this Project pursuant to the provisions of CEQA.
3. Mitigation measures were made a condition of the approval of the Project.
4. A Statement of Overriding Considerations was not adopted for this Project.

This is to certify that a copy of the MND prepared for this Project is available to the general public and may be reviewed at: Caltrans - District 6 Environmental Planning, 855 M Street, Suite 200, Fresno, California 93721. Please contact the person specified above.

Date: 1/2/14

  
Jeffrey R. Single, Ph.D.  
Regional Manager, Central Region  
California Department of Fish and Wildlife

Date received for filing at OPR: \_\_\_\_\_

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
REGION 4—CENTRAL REGION  
1234 EAST SHAW AVENUE  
FRESNO, CALIFORNIA 93710



**STREAMBED ALTERATION AGREEMENT**  
NOTIFICATION No. 1600-2013-0152-R4  
UNNAMED TRIBUTARY TO ROCKAWAY CREEK - STANISLAUS COUNTY

MARK MCAVOY  
**CALIFORNIA DEPARTMENT OF TRANSPORTATION**  
**CALTRANS DISTRICT 10**  
1976 EAST MARTIN LUTHER KING JR. BOULEVARD  
STOCKTON, CALIFORNIA 95205

**STA-4 ROCKAWAY SHOULDER WIDENING EA 10-0S870 (PROJECT)**

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and California Department of Transportation (referred to as Permittee), represented by Mark Mcavoy.

**RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on September 3, 2013 that Permittee intends to complete the Project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the Project could substantially adversely affect existing fish or wildlife resources and has included Protective Measures in this Agreement necessary to protect those resources.

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

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

**PROJECT LOCATION**

The Project is located on a tributary to Rockaway Creek along State Route (SR) 4 at Post Mile (PM) 6.48, just west of Dunton Road and 10 miles west of the City of Copperopolis, Stanislaus County, State of California; Township 1 North, Range 11 East, Section 18 United States Geological Survey map Bachelor Valley, MDB&M; Latitude 37.93741, Longitude -120.81287 Decimal Degrees (Exhibit A).

## PROJECT DESCRIPTION

As part of a larger Project to widen the shoulder of State Route (SR 4) between PM 6.3 to 6.5 to a standard 8-foot width, Caltrans will extend the culvert at PM 6.48 and upgrade the drainage facility to conform to hydraulic recommendations. Additional work outside 1600 jurisdiction will include the installation of rumble strips on the eastbound shoulder and the installation of a new driveway at PM 6.4.

The culvert extension will require the removal of 1-foot of existing 24-inch diameter Reinforced Concrete Pipe (RCP) and then the addition of 6.4 feet of RCP for an extension of 5.4 feet beyond the existing end of the pipe culvert. The joint between the two (2) pipes will be sealed either with cement mortar composed of Portland cement and sand, or rubber gasket joints. A precast concrete Flared End Section that is approximately 3.5 feet long and broadens to a width of 4 feet will be connected to the end of the RCP with a Portland Cement Concrete (PCC) cutoff wall. Approximately 4 cubic yards of clean, native material will be used as backfill.

Approximately 8.4 cubic yards of rock slope protection (RSP) will be placed over an area approximately 8.5 feet by 12 feet and to a depth of approximately 2.25 feet, by a process that consists of excavation and backfilling the footing trench, laying down geotextile fabric, placement of smaller-sized rocks onto the RSP fabric, and placement of larger rocks over the smaller rock. The thickness of each rock layer will be at least 1.5 times the diameter of the median-sized rock. The rock slope protection will consist of rocks 0-5 percent larger than 75 pounds, 25-75 percent larger than 25 pounds, and 90-100 percent larger than 5 pounds.

All work within the stream will occur during naturally dry conditions during daylight hours between June 15 and October 15. No trees will be removed. All Notification materials including design plans are incorporated into the Project description.

Equipment that will be used during this Project includes a grader, loader, water truck, and a tractor.

## PROJECT IMPACTS

The Project will result in impacts to annual grassland habitat between and above the banks of the stream. The total linear disturbance to the stream will be approximately 22 feet.

This Agreement is intended to avoid, minimize, and mitigate adverse impacts to the fish and wildlife resources that occupy the area of the tributary to Rockaway Creek within the Project area, and the immediate adjacent habitat. Absent implementation of the Protective Measures required by this Agreement, the following species and habitat types could potentially be impacted within the area covered by this Agreement: the State and Federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened Swainson's hawk (*Buteo swainsoni*), and State species of special

concern burrowing owl (*Athene cunicularia*) and tricolor blackbird (*Agelaius tricolor*), as well as other birds, mammals, fish, reptiles, amphibians, invertebrates, and plants that comprise the local ecosystem. The California Natural Diversity Data Base (CNDDDB) and other CDFW files and references contain information on species that could be subject to potential impacts generated from this Project.

## MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

### 1. Administrative Measures

Permittee shall meet each administrative Protective Measure described below.

- 1.1 Documentation at Project Site. Permittee shall make this Agreement, any extensions and amendments to this 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.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of this Agreement and any extensions and amendments to this 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.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a Protective Measure in this 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.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the Project site at any time to verify compliance with this Agreement.
- 1.5 Legal Obligations. This Agreement does not exempt Permittee from complying with all other applicable local, State, and Federal law, or other legal obligations.
- 1.6 Unauthorized Take. This Agreement does not authorize the "take" ("take" defined in FGC Section 86 as to hunt, pursue, catch, capture, or kill; or attempt to hunt, pursue, catch, capture, or kill) of State- or Federally-listed threatened or endangered species. Any such "take" shall require separate permitting as may be required.
- 1.7 Trespass. To the extent that the Protective Measures of this Agreement provide for activities that require Permittee to trespass on another owner's property, they are agreed to with the understanding that Permittee possesses the legal right to so trespass.

- 1.8 Work Schedule. Permittee shall submit a work schedule to CDFW by mail or email to [Laura.Peterson-Diaz@wildlife.ca.gov](mailto:Laura.Peterson-Diaz@wildlife.ca.gov), with reference to Agreement 1600-2013-0152-R4, prior to beginning any activities covered by this Agreement. Permittee shall also notify CDFW within 30 days upon the completion of the activities covered by this Agreement.
- 1.9 Training. Prior to starting any activity within the stream bed or bank, all employees, contractors, and visitors who will be present during Project activities shall receive training from a qualified individual on the contents of this Agreement, the resources at stake, and the legal consequences of non-compliance.

## **2. Avoidance and Minimization Measures**

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

- 2.1 Construction/Work Hours. All non-emergency work activities shall be confined to daylight hours. For purposes of this Agreement, "daylight hours" are defined as that daytime period between sunrise and sunset.
- 2.2 Flagging/Fencing. Prior to any activity within the stream, Permittee shall identify the limits of the required access routes and encroachment into the stream. These "work area" limits shall be identified with brightly-colored flagging/fencing. Work completed under this Agreement shall be limited to this defined area only. Flagging/fencing shall be maintained in good repair for the duration of the Project. All CDFW jurisdictional areas beyond the identified work area limits shall be considered Environmentally Sensitive Areas (ESA) and shall not be disturbed.
- 2.3 Listed and Other Special Status Species.
  - (a) This Agreement does not authorize "take," or "incidental take," of any State- or Federally-listed threatened or endangered, or fully-protected species. Liability for any "take," or "incidental take," of such listed species remains the responsibility of Permittee for the duration of the Project.
  - (b) An Incidental Take Permit (No. 2081-2013-060-04) authorizing "take" of California tiger salamander for the Project has been applied for, but at the time of issuance of this Agreement, it has not been issued. Permittee affirms that absent issuance of the Incidental Take Permit, no "take" of California tiger salamander may occur, and that upon Incidental Take Permit issuance, no "take" of listed species beyond that described in Incidental Take Permit No. 2081-2013-060-04 for California tiger salamander shall occur as a result of this Project. Permittee shall take prudent measures to ensure that all unpermitted "take" is avoided. Permittee is responsible for obtaining and complying with required State and Federally threatened and endangered

- species permits or other written authorization before proceeding with this Project.
- (c) Permittee shall immediately notify CDFW of the discovery of any such rare, threatened, or endangered species prior to and/or during Project implementation.
- (d) Prior to Project initiation, a qualified biologist shall conduct training sessions to familiarize all workers with identification of the species listed in this Agreement, their habitat, general measures and protections afforded by the Federal Endangered Species Act, measures implemented to protect these species, and a review of the Project boundaries. Documentation of such training shall be submitted to CDFW.
- (e) California Tiger Salamander (CTS): Permittee has applied for an Incidental Take Permit (No. 2081-2013-060-04) to authorize "take" of CTS during Project implementation. If the Incidental Take Permit for CTS has not been issued for Project activities authorized by this Agreement prior to initiating the Project, the following avoidance measures shall be implemented: Within all Project areas, a qualified biologist shall flag all rodent burrows, and Project activity shall avoid these burrows by a minimum 50-foot no-disturbance buffer. Permittee shall provide a map of all flagged rodent burrows to CDFW prior to commencing Project activity. A qualified biologist shall be present during all ground disturbing activities during the active season of the species define. In the event that CTS is detected on or adjacent to the Project site by the qualified biologist or any Project worker, Project activity shall cease immediately and Permittee shall notify CDFW immediately of the detection. Project activity shall not resume until the Incidental Take Permit for the Project has been issued. Upon issuance of an Incidental Take Permit for CTS, Permittee shall comply with the terms and conditions of the Incidental Take Permit; unauthorized "take" of CTS would result in violation and potential revocation of this Agreement.
- (f) Swainson's Hawk: No Project-related activities shall be completed from March 1 through August 31 unless a qualified biologist surveys for nesting activity of Swainson's hawk following the survey methodology developed by the Swainson's Hawk Technical Advisory Committee ([http://www.dfg.ca.gov/wildlife/nongame/docs/swain\\_proto.pdf](http://www.dfg.ca.gov/wildlife/nongame/docs/swain_proto.pdf)) prior to commencing Project-related activities. If any active Swainson's hawk nests are observed, these nests shall be designated an ESA, protected, and monitored by a qualified biologist. A minimum 0.5-mile avoidance buffer shall be established and maintained around each nest or nest tree unless CDFW determines that a smaller buffer distance is warranted and authorizes a smaller buffer in writing. Avoidance buffers shall be maintained until a

qualified biologist has determined and CDFW has confirmed in writing that the young have fledged or are no longer dependent upon parental care.

- (g) Burrowing Owl: A qualified biologist shall survey for burrowing owl within a 500-foot radius of the Project site, within 30 days prior to initiating Project activities. If any active burrowing owl burrows are observed, these burrows shall be designated an ESA, protected, and monitored by a qualified biologist (while occupied) during Project-related activities. A minimum 500-foot avoidance buffer shall be established and maintained around each owl burrow during the nesting season (February 1 through August 31). If active burrowing owl burrows are observed outside of the nesting season, a minimum 150-foot no disturbance buffer shall be established around each burrow. Implementation of passive relocation with one-way doors is not authorized by CDFW in this Agreement.
- (h) All trash shall be removed from the site daily to avoid attracting potential predators to the site. No pets shall be permitted to be at the site during Project activity.

#### 2.4 Fish and Wildlife.

- (a) If any fish or wildlife is encountered during the course of Project activities, said wildlife shall be allowed to leave the Project site unharmed.
- (b) Pursuant to FGC Sections 3503 and 3503.5, it is unlawful to "take," possess, or destroy the nest or eggs of any bird or bird-of-prey. To protect nesting birds, no Project activity shall be completed from March 1 through August 31 unless the following surveys are completed by a qualified biologist within 30 days prior to commencing Project activities.

Raptors: Survey for nesting activity of raptors within a 500-foot radius of the Project site. Surveys shall be conducted at appropriate nesting times and concentrate on mature trees. If any active nests are observed, these nests and nest trees shall be designated an ESA and protected by a 500-foot radius until the young have fledged and are no longer reliant on the nest tree or parental care.

Other Avian Species: Survey for nesting activity within a 250-foot radius of the Project boundaries. If any active nests are observed, these nests shall be designated an ESA and protected with a minimum 250-foot buffer until the young have fledged and are no longer reliant on the nest site or parental care.

CDFW may consider variances from these buffers when there is compelling biological or ecological reason to do so, such as when the Project work area would be concealed from a nest site by topography.

## 2.5 Vegetation.

- (a) Trimming and removal of vegetation shall be limited to the minimal amount necessary to complete the Project.
- (b) Vegetation or material removed from the Project site shall be disposed of at an appropriate and legal off-site location where the material cannot enter the stream channel. No such material shall be stockpiled in the streambed, banks, or channel, except that native vegetation removed from the channel may be chipped and the chips used as mulch for disturbed soil sites in or near the Project area.
- (c) All invasive, exotic plant species disturbed by Project activities shall be bagged, removed from the Project site, and appropriately disposed of. Non-native species shall not be used in mulching, composting, or otherwise placed in or around the Project site.
- (d) Heavy equipment and other machinery shall be inspected for the presence of undesirable species and cleaned prior to on-site use to reduce the risk of introducing exotic plant species into the Project site.

## 2.6 Vehicles and Equipment.

- (a) Vehicles shall not operate in the wetted portion of the channel at any time.
- (b) Any equipment or vehicles driven and/or operated in or adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that, if introduced to water, could be deleterious to aquatic and terrestrial life.
- (c) Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be located outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream, shall be positioned over drip-pans. Vehicles shall be moved away from the stream prior to refueling and lubrication.

- 2.7 Structures. Permittee confirms that all constructed features shall be properly aligned and otherwise engineered, installed, and maintained, to assure resistance to washout, and to erosion of the stream bed, stream banks, and/or fill and that they will not cause long-term changes in water flows that adversely modify the existing upstream or downstream stream bed/bank contours or increase sediment deposition. If design plans included with the Notification change materially prior to Project implementation, Permittee shall submit the revised design plans to CDFW for approval prior to commencing work. An amendment to this Agreement may be necessary prior to implementing a changed Project description.

## 2.8 Fill/Spoil.

- (a) Spoil storage sites shall not be located within the stream, or where spoil will be washed into the stream. Rock, gravel, and/or other materials shall not be imported into or moved within the bed or banks of the stream, except as otherwise addressed in this Agreement.
- (b) Fill shall be limited to the minimal amount necessary to accomplish the agreed activities. Excess fill material shall be moved off-site at Project completion.

## 2.9 Erosion.

- (a) No work within the banks of the stream shall be conducted during or within 24 hours following significant rainfall events (one quarter of 1-inch of rain in any 24-hour period).
- (b) All disturbed soils within the Project site shall be stabilized to reduce erosion potential, both during and following Project activity. Temporary erosion control devices, such as straw bales, silt fencing, and sand bags, may be used, as appropriate, to prevent siltation of the stream. Any installation of non-erodible materials not described in the original Project description shall be coordinated with CDFW.
- (c) If it is determined that silt levels resulting from Project-related activities constitute a threat to aquatic life, activities associated with the siltation shall be halted until effective CDFW-approved control devices are installed, or abatement procedures are initiated.

## 2.10 Pollution.

- (a) During Project implementation, Permittee shall not dump any litter or debris within the stream. All such debris and waste shall be picked up daily and properly disposed of at an appropriate site.
- (b) Raw cement, concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances that could be hazardous to fish or wildlife resulting from Project-related activities, shall be prevented from contaminating the soil and/or entering the "Waters of the State".
- (c) Permittee shall install the necessary containment structures to control the placement of any wet concrete/cement and to prevent it from entering into the channel outside of those structures. No concrete/cement shall be poured or applied below the top of bank if the 10-day weather forecast indicates any

- chance of rain. At all times when the Permittee is pouring or working with wet concrete/cement there shall be a designated monitor to inspect the containment structures and ensure that no concrete or other debris enters into the channel outside of those structures. Poured concrete/cement shall remain isolated from surface waters and soils that could become saturated, and allowed to cure for a minimum of 30 days. CDFW may approve a variance to this measure if Permittee proposes a plan to collect surface water (including rain) that comes in contact with concrete/cement and dispose of the water in a lawful manner at an off-site location. No variance shall be implemented unless CDFW has provided approval in writing and in advance.
- (d) Permittee and all contractors shall be subject to the water pollution regulations found in FGC Sections 5650 and 12015.
  - (e) In the event that a spill occurs, all Project activities shall immediately cease until cleanup of the spilled materials is completed. CDFW shall be notified immediately by Permittee of any spills and shall be consulted regarding cleanup procedures.
  - (f) All Project-generated debris, building materials, and rubbish shall be removed from the stream bed and banks, and from areas where such materials could be washed into the stream bed and banks.

### 3. Compensatory Measures

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each Protective Measure listed below.

#### 3.1 Revegetation/Restoration.

- (a) If the Project causes any exposed slopes or exposed areas on the stream banks, these areas shall be seeded (with weed-free straw or mulch) with a blend of a minimum of three (3) locally native grass species. One (1) or two (2) sterile non-native perennial grass species may be added to the seed mix provided that amount does not exceed 25 percent of the total seed mix by count. Locally native wildflower and/or shrub seeds may also be included in the seed mix. The seeding shall be completed as soon as possible, but no later than November 15 of the year Project activity ends. A seed mixture shall be submitted to CDFW for approval prior to application. At the discretion of CDFW, all exposed areas where seeding is considered unsuccessful after 90 days shall receive appropriate soil preparation and a second application of seeding, straw, or mulch as soon as is practical on a date mutually agreed upon.

- (b) Where suitable vegetation cannot be reasonably expected to become established, non-erodible materials shall be used for such stabilization. Any installation of non-erodible materials not described in the original Project description shall be coordinated with CDFW. Coordination may include the negotiation of additional Protective Measures for this activity.

#### 4. Reporting Measures

Permittee shall meet each reporting requirement described below.

##### 4.1 Obligations of Permittee.

- (a) Permittee shall have primary responsibility for monitoring compliance with all Protective Measures in this Agreement. Protective Measures must be implemented within the time periods indicated in this Agreement and the reporting program described below.
- (b) Permittee (or Permittee's designee) shall ensure the implementation of the Protective Measures of this Agreement, and shall monitor the effectiveness of the Protective Measures.

##### 4.2 Reports. Permittee shall submit the following Reports to CDFW:

- Construction/work schedule, submitted to CDFW prior to commencing ground-disturbing activity (Administrative Measure 1.8).
- Documentation of worker training relating to sensitive and listed species, submitted to CDFW within one (1) week of completion (Avoidance and Minimization Measure 2.3(d)).
- Results of surveys for Swainson's hawks, if Project activity will occur during the nesting season for the species, submitted to CDFW at least one (1) week prior to commencing Project activities (Avoidance and Minimization Measure 2.3(f)).
- Results of burrowing owl surveys, submitted to CDFW at least one (1) week prior to commencing Project activities (Avoidance and Minimization Measure 2.3(g)).
- Results of surveys for nesting birds if Project activity is scheduled during the avian nesting season, submitted to CDFW at least one (1) week prior to commencing Project activities (Avoidance and Minimization Measure 2.4(b)).

- Seed mixture, if the Project causes any exposed areas on the stream bank, submitted to CDFW for approval prior to application (Compensatory Measure 3.1(a)).
- A Final Project Report to be submitted within 30 days after the Project is completed. The final report shall summarize the Project and describe the implementation of each Protective Measure of this Agreement. "Before and after" photo documentation of the Project site shall be included in the report.

## CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

### To Permittee:

California Department of Transportation (Caltrans)  
Christy Lafayette  
1976 East Martin Luther King Jr. Boulevard  
Stockton, California 95202  
(209) 942-6011  
[christy.lafayette@dot.ca.gov](mailto:christy.lafayette@dot.ca.gov)

### To CDFW:

California Department of Fish and Wildlife  
Region 4 - Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
Attn: Lake and Streambed Alteration Program – Laura Peterson-Diaz  
Notification No. 1600-2013-0152-R4  
Phone: (559) 243-4017, extension 225  
Fax: (559) 243-4020  
[Laura.Peterson-Diaz@wildlife.ca.gov](mailto:Laura.Peterson-Diaz@wildlife.ca.gov)

## LIABILITY

Permittee shall be solely liable for any violations of this 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 this 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 this 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 this Agreement.

Before CDFW suspends or revokes this 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 this 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 this Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking this Agreement.

Nothing in this 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 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.

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

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

## **AMENDMENT**

- o CDFW may amend this 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 this 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 submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., Title 14, § 699.5).

## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of this 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 this Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., Title 14, § 699.5).

## **EXTENSIONS**

In accordance with FGC section 1605(b), Permittee may request one (1) extension of this Agreement, provided the request is made prior to the expiration of this Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., Title 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend this Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the Project this Agreement covers (FGC section 1605(f)).

## **EFFECTIVE DATE**

This 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 FGC section 711.4 filing fee listed at  
[http://www.wildlife.ca.gov/habcon/ceqa/ceqa\\_changes.html](http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html).

## **TERM**

This Agreement shall remain in effect for two (2) years from the date it is signed by CDFW, unless it is terminated or extended before then. All Protective Measures in this Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any Protective Measures specified herein to protect fish and wildlife resources after this Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE**

In approving this Agreement, CDFW is independently required to assess the applicability of CEQA. The features of this Agreement shall be considered as part of the overall Project description. The Permittee's concurrence signature on this Agreement serves as confirmation to CDFW that the activities conducted under the terms of this Agreement are consistent with the Project as described in the CEQA Mitigated Negative Declaration prepared by California Department of Transportation as the Lead Agency for the Rockaway Shoulder Widening and Rumble Strips project (State Clearinghouse no. 2012122051), approved on April 2, 2013. A copy of the Mitigated Negative Declaration was provided to CDFW by the Permittee.

CDFW, as a CEQA Responsible Agency, shall submit a Notice of Determination to the State Clearinghouse upon signing this Agreement.

## **EXHIBITS**

The document listed below is included as an exhibit to this Agreement and is incorporated herein by reference.

- A. Figure 1. Project Location USGS Quad Map.

## **AUTHORITY**

If the person signing this 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 terms herein.

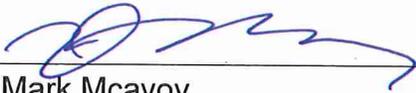
**AUTHORIZATION**

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

**CONCURRENCE**

The undersigned accepts and agrees to comply with all the terms of this Agreement.

**FOR CALIFORNIA DEPARTMENT OF  
TRANSPORTATION**



Mark Mcavoy  
Project Manager

12/12/13

Date

**FOR CALIFORNIA DEPARTMENT OF FISH AND  
WILDLIFE**



Jeffrey R. Single, Ph.D.  
Regional Manager—Central Region

1/2/14

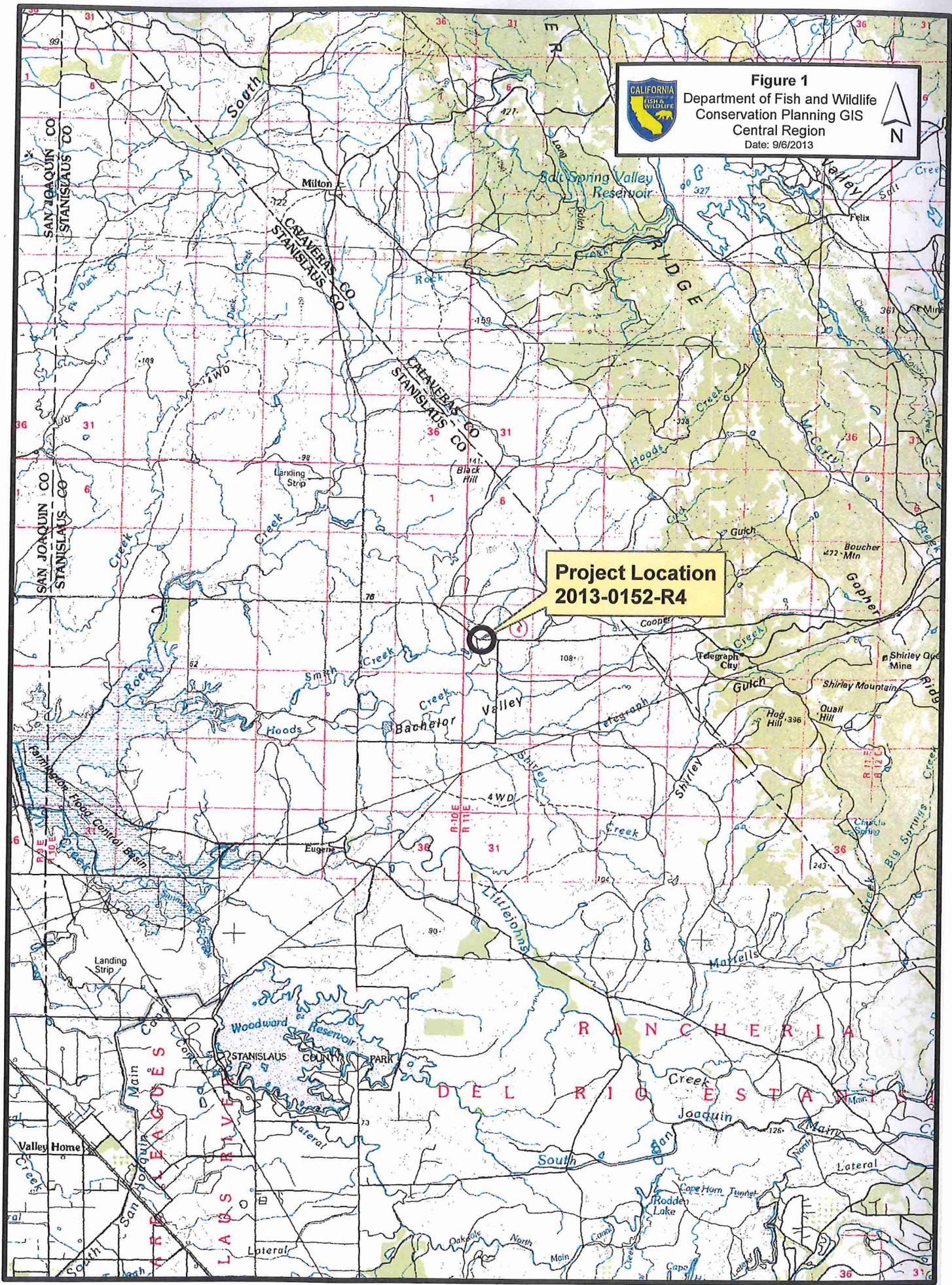
Date

Prepared by: Laura Peterson-Diaz  
Environmental Scientist

**Figure 1**

**Exhibit A**

**Figure 1**  
 Department of Fish and Wildlife  
 Conservation Planning GIS  
 Central Region  
 Date: 9/6/2013



**Project Location**  
**2013-0152-R4**

0 1 2 Miles