



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

California Endangered Species Act
Incidental Take Permit No. 2081-2021-038-06

HESPERIA COMMERCE CENTER II PROJECT

I. Authority:

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

Permittee:	Covington Development Partners
Principal Officer:	Mark S. Milakovich, President - Covington Realty Advisors, LLC
Contact Person:	Dana Whitmer, (866) 878-1499
Mailing Address:	14180 Dallas Parkway, Suite 730 Dallas, TX 75254
Permittee:	Main 395 Industrial I, LLC
Principal Officer:	Mark S. Milakovich, President - Covington Realty Advisors, LLC
Contact Person:	Dana Whitmer, (866) 878-1499
Mailing Address:	1 Smith Street Norwalk, CT 06851
Permittee:	Main Hesperia, LLC
Principal Officer:	Mark S. Milakovich, President - Covington Realty Advisors, LLC
Contact Person:	Dana Whitmer, (866) 878-1499
Mailing Address:	1 Smith Street Norwalk, CT 06851

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

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

II. Effective Date and Expiration Date of this ITP:

This ITP shall become effective when signed by all parties and received by CDFW as described in the Notices section of this ITP. Unless renewed by CDFW, this ITP and its authorization to take the Covered Species shall expire on **July 15, 2027**.

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 5.7 of this ITP.

III. Project Location:

The Hesperia Commerce Center II Project (Project) is located approximately 1 mile west of Interstate 15 at approximately 34.430527°, -117.408526°, within the City of Hesperia, San Bernardino County (See Figure 1 and Figure 2).

Main Project Site

The main Project site is located at the northwest quadrant of the intersection of U.S. Highway 395 and Phelan Road/Main Street. The main Project site is bounded by Yucca Terrace Drive to the north, U.S. Highway 395 to the east, Phelan Road to the south, and Los Angeles Department of Water and Power Road to the west. The main Project site is the location of the construction of three industrial/warehouse buildings with associated office spaces, surface parking, loading areas, and construction of stormwater drainage. Total acreage of the main Project location is 194.05 acres.

Off-site Utility Alignment and Roadway Improvement Sites

Off-site Utility Alignment and Roadway Improvement Sites are linear segments along Yucca Terrace Drive, U.S. Highway 395, and Phelan Road. These sites collectively total 9.01 acres. The Yucca Terrace Drive segment is located at approximately 34.434041°, -117.401665, and begins at the intersection of Yucca Terrace Drive and U.S. Highway 395 and runs west to the northwestern boundary of the main Project site. The segment width from the roadway centerline to the southern edge of the road's right-of-way is 35 feet and is approximately 3,400 feet in length. Total acreage of this Project location is 4.30 acres. The U.S. Highway 395 segment is along the main Project site's western boundary fronting U.S. Highway 395 at approximately 34.432133°, -117.399602°. The segment width from the roadway centerline to the western edge of the road's right-of-way is 65 feet and is approximately 440 feet in length. Total acreage of this Project location is 0.21 acres. The Phelan Road segment is located at approximately 34.426728°, -117.408348° and runs from the intersection of U.S. Highway 395 and Phelan Road to the main Project site's western boundary. The segment width from the roadway centerline to the northern edge of the road's right-of-way is 60 feet and is approximately 4,950 feet in length. Total acreage of this Project location is 4.50 acres.

Off-site Utility Alignment Only Sites

Off-site Utility Alignment Only Sites include linear segments along Yucca Terrace Drive, and a segment that includes Los Banos Avenue and Sultana Street. These sites are the location of off-site utility alignments (no roadway improvements) and collectively total 4.51 acres. The Yucca Terrace Drive

segment is located at approximately 34.434017°, -117.396256, and traverses east from the intersection of Yucca Terrace Drive and U.S. Highway 395, then pivots at a 45° angle to the southeast towards Oro Grande Wash. The segment excludes the 1,100-foot width of Oro Grande Wash, and continues for a short distance on the other side of the wash. The segment width from the roadway centerline is 15 feet on either side and is approximately 2,340 feet in total length. Total acreage of this Project location is 2.26 acres. The Los Banos Avenue and Sultana Street segment is located at approximately 34.422788°, -117.408122°, and traverses from the intersection of U.S. Highway 395 and Sultana Street to the west along Sultana Street. The segment excludes the 2,100-foot width of Oro Grande Wash, and continues to the intersection with Los Banos Avenue. The segment turns and continues to traverse north on Los Banos Avenue to connect to Phelan Road. The segment width from roadway centerline is 15 feet on either side and is approximately 2,900 feet in total length. Total acreage of this Project location is 2.25 acres.

Project locations of the main Project site, off-site utility alignments and roadway improvements sites, and off-site utility alignments only sites are depicted in Figure 3.

IV. Project Description:

The Project includes the construction of three industrial/warehouse buildings with associated office spaces, surface parking, loading areas, and stormwater drainage within the main Project site. The northwesternmost building (Building 1) will be 1,567,317 square feet; the southernmost building (Building 2) will be 2,065,987 square feet; and the northeastern most building (Building 3) will be 112,125 square feet, for a total of 3,745,429 square feet. Off-site utilities (sewer and water lines) and roadway improvements to accommodate the project will also be constructed (See Figure 4).

Project activities will generally occur across four phases: (1) site preparation (2) grading, (3) utility installation and building construction, and (4) paving. The main Project site will also include a fifth phase, (5) architectural coating. Project activities include:

Phase 1: Site Preparation

Site preparation will include the removal of debris, organic materials, trash and deleterious materials, and loose and unusable soils from the Project sites prior to grading. During the site preparation phase, construction crews will use tractors/mowers, loaders, backhoes, and rubber-tired dozers to uproot and remove vegetation. Removed vegetation will be chipped/mulched and loaded into trucks that will transport the organic waste to a disposal facility. These activities will occur throughout the entirety of the main Project site and the half-widths of each right-of way for off-site utility and roadway alignment Project sites where a roadway will be constructed. Off-site utility alignments that do not include roadway improvements are already located within existing dirt roads, therefore, site preparation is limited to clearing overgrown vegetation within the direct path of the utility alignment. Areas of the sending and receiving pits for jack and bore activities may also remove vegetation through excavation of the pits. Additionally, western Joshua trees identified for relocation will be excavated using a front end loader, hydraulic tree spade, or hand tools and manual digging. All

equipment will be sterilized, and exposed roots will be kept wet. Damaged roots and exposed roots will be cleaned and dusted with sulfur or fungicide to decrease likelihood of root pathogens. The western Joshua trees will be stockpiled in a storage area for later transplantation for landscaping.

Phase 2: Grading

Following the site preparation phase, grading will occur. All grading activities will occur within the footprint of areas that have already been disturbed as part of the site preparation phase. Grading will include the process of using heavy machinery to alter the surface of the Project sites to obtain a specified slope, including bulldozers, track-hoe excavators, front-end loaders, dump trucks, motor graders, water trucks, and rollers for compaction. All grading will be done in accordance with a formal Stormwater Pollution Prevention Plan to control stormwater runoff during construction. For the sites where off-site utility alignments and roadway improvements will be constructed, the same grading activities will occur directly within the footprint of the proposed roadway improvements. Grading will not be necessary for off-site utility alignments only Project sites, as these areas will not be covered by a roadway.

Phase 3: Utility Installation and Building Construction

After the Project sites has been graded, underground utility lines will be installed. Installation of lateral utility lines involve trenching using a backhoe, the placement of pipelines using a crane or tractors/loaders/backhoes, and the backfilling of the trenches. All off-site utilities will be installed in this manner, with the exception of the portion of the water and sewer lines that will be installed via jack-and-bore method underneath Oro Grande Wash.

An engineered stormwater drainage system will be constructed on the main Project site to collect and treat on-site stormwater. Two below-grade, open, earthen basins will be constructed within the northeastern portion of the main Project site. Grouted rip-rap will be placed at the outlets of the in-flow pipes within each basin. An underground infiltration basin will also be constructed between Buildings 1 and 2.

A sanitary sewer service will be provided via a new connection with a 12-inch-diameter sewer line located within an easement held by the City of Hesperia. The entirety of the proposed sewer alignment is outside of the main Project site and within utility alignment segments. The new sewer alignment will exit the main Project site in an easterly direction along Yucca Terrace Drive. The alignment traverses to the east, crosses under U.S. Highway 395, and continues approximately 2,200 feet along Yucca Terrace Drive before turning in a 45° angle to the southeast and extending roughly 1,100 feet across Oro Grande Wash. Within the Oro Grande Wash, the sewer line will be located under the existing grade of the wash and installed via jack-and-bore.

Domestic, irrigation, and fire protection water services will be made via new connections to existing Hesperia Water District Company facilities within the immediate Project vicinity. Existing 6-inch-diameter, 8-inch-diameter, and 12-inch-diameter water lines are located within U.S. Highway 395,

Phelan Road, and the portions of Yucca Terrace Road. A segment of the pipeline within Phelan Road (along the main Project site's southern boundary) will need to be upsized as part of the project. Also, a new 12-inch-diameter water line will be installed within part of Yucca Terrace Road that is not currently served by water. In addition to the aforementioned water pipelines that will be located outside of the main Project site but immediately fronting it, the Project will also involve the installation of a new 16-inch-diameter transmission water pipeline from the main Project site to a connection approximately 0.9 mile southwest of the site near the intersection of U.S. Highway 395 and Poplar Street. This new 16-inch-diameter transmission water pipeline will begin at the intersection of U.S. Highway 395 and Sultana Street (which is a planned roadway) and traverse west along Sultana Street, then cross underneath Oro Grande Wash via jack-and-bore and then continue to Los Banos Avenue. Along Los Banos Avenue, the pipeline installation will continue north and connect to a new 12-inch-diameter water main along Phelan Road.

The jack-and-bore method involves the use of a horizontal boring machine or auger to drill a hole and a hydraulic jack to push a casing through the hole. As the boring proceeds, a steel casing pipe is jacked into the hole; the pipeline then is installed in the casing. The casing is jacked using a large hydraulic jack in a pit located at one end of the crossing. The jacking pit is typically approximately 50 feet deep by 20 feet wide—temporary pits typically will be excavated to a depth of 50 feet. At the receiving end of the underground pipes, underground lifting/pumping stations will be installed to maintain pressure across the underground gradients.

Subsequently, the building foundations will be poured and the buildings will be constructed with a tilt-up construction method within the main Project site. Slabs of concrete, which comprise load-bearing sections of a building envelope or elevation, will be cast horizontally on a concrete slab-on-ground. The slabs will then be lifted (tilted) with a crane after the concrete has reached sufficient strength. The crane will set the panels on prepared foundations, forming the desired wall line from a series of consecutive panels standing next to each other. Roof structures and other internal features will subsequently be installed.

Phase 4: Paving

Following building construction, roadways and pavement surfaces will be constructed using pavers, paving equipment, and rollers. Lanes and parking spaces will be striped within the main Project site. Paving the street improvements along the frontage of the project on Yucca Terrace Drive, along Phelan Road and a portion of U.S. Highway 395 will also occur. For Yucca Terrace Drive, the Project will construct and pave the half-width of Yucca Terrace Drive from the intersection of Yucca Terrace Drive and U.S. Highway 395 to the Project site's northwestern boundary. For Phelan Road, the Project will construct and pave an additional westbound lane from the intersection of U.S. Highway 395 and Phelan Road to the main Project site's western boundary. Then, for U.S. Highway 395, the Project will construct and pave the portion of the roadway west of the centerline to its ultimate width. Traffic control devices will be installed, including signals at the intersection of U.S. Highway 395 and Yucca

Terrace Drive, as well as at the intersection of a planned driveway into the site and Phelan Road. Existing roadways will be restriped.

Phase 5: Architectural Coating

Architectural coatings will be applied to the main Project site buildings using paint sprayers powered by air compressors. Coatings will be applied manually by construction crews. Landscaping will also be installed during this phase, including planting native grasses and erosion control vegetaton on the side banks of the earthen detention basins, and other activities.

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

This ITP covers the following species:

<u>Name</u>	<u>CESA/Status³</u>
1. Western Joshua tree (<i>Yucca brevifolia</i>)	Candidate ⁴

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

VI. Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include use of vehicles and equipment in the Project sites; installation of materials into the ground for delineation; removal with mechanical equipment or hand tools for stockpiling and relocation; removal and chipping/mulching of vegetation; disposal of vegetation; excavation, grading, and compaction of soil using earth moving equipment; use of water trucks for dust control; trenching and use of trenching equipment; jack-and-boring activities including digging of pits and use of equipment; placement of rip-rap; pouring of concrete for building foundation and grouting; construction of buildings with use of heavy machinery; and cpnstruction and paving of roadways and surfaces (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality (“kill”) may occur as a result of Covered Activities such as removal of individuals with mechanical equipment or handheld tools; chipping/mulching removed individuals; unsuccessful relocation and replanting; decline and death resulting from damaged root systems; removal, destruction and/or damage to seedbank and germinating seeds through use of equipment; crushing and/or burying living seeds in the soil; rendering living seeds inviable and/or causing them to be killed; entombment of seedbank from building of permanent structures and paving; and eliminating and modifying habitat. Incidental take of individuals of the Covered Species may also occur from the Covered Activities removing emergent individuals, and deleterious materials contaminating the soil incidental to Project activities. The areas

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

⁴The species status may change following the decision of the Fish and Game Commission to designate the species as threatened or endangered but if there is such a designation, the species will remain a Covered Species. See 2020 Cal. Reg. Notice Register, No. 41-Z, pp. 1349 (October 9, 2020).

where authorized take of the Covered Species is expected to occur include: the collective 207.57 acres of impact associated with Project activities in Project sites depicted in Figure 3 containing the habitat of at least 1,367 individuals and associated seedbank identified for removal, and the habitat containing the seedbank and rootballs of at least 55 individuals that will be impacted by Project activities (collectively, the Project Area).

The Project is expected to cause the permanent loss of 202.14 acres of habitat for the Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: destruction or modification of Covered Species habitat that may lead to mortality of the Covered Species' obligate pollinating moth (*Tegeticula synthetica*), during its dormancy within the soil or in its flight phase, leading to compromised sexual recruitment of new Covered Species individuals; mortality or disruption to the behavior of seed dispersing rodents leading to compromised germination success; loss of nurse plants compromising seedling emergence and survival; elimination or reduction of photosynthesis and evapotranspiration efficiency due to accumulated fugitive dust from proposed Covered Activities; destruction of macro- and micro-vegetation elements; introduction and invasion of non-native plant species due to disturbance of habitat conditions that leads to invasive species outcompeting native annual plant community establishment; invasive species colonization resulting in increased anthropogenic wildfire risk with increased frequency and intensity for remaining individuals and adjacent habitat; increased erosion to individuals located near widened roadways or hardscapes due to concentrated runoff; increased storm water sedimentation; compacting of soils resulting in decreased seedling survival and infiltration rates; stress or damage to individuals; long-term effects due to loss of suitable habitat and decline of local population; severe soil impacts such as leaving subsoil on the surface and disturbance to stabilized soil crusts and biotic components leading to reduced germination due to loss of organic material and soil nutrients, and moisture retention; and vandalism of individuals located in public areas due to increased facilitation of human access.

VII. Incidental Take Authorization of Covered Species:

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

VIII. Conditions of Approval:

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular ingress and egress, and staging and parking. 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:

Incidental Take Permit
No. 2081-2021-038-06

**COVINGTON DEVELOPMENT PARTNERS, MAIN 395 INDUSTRIAL I, LLC, AND MAIN HESPERIA, LLC
HESPERIA COMMERCE CENTER II PROJECT**

- 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 Initial Study/Environmental Impact Report (SCH No.: 2019110418) certified by City of Hesperia on June 7, 2022 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
- 3. ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
- 4. General Provisions:**
 - 4.1. Designated Representative.** Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
 - 4.2. Designated Biologist(s) and Biological Monitor(s).** Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) and Biological Monitor(s) using the Biologist Resume Form (Attachment 2) or another format containing the same information at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist(s) and Biological Monitor(s) are knowledgeable and experienced in the biology, natural history, and collecting and handling of the Covered Species. The Designated Biologist(s) and Biological Monitor(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist(s) and Biological Monitor(s) in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist(s) or Biological Monitor(s) must be changed.
 - 4.3. Designated Biologist Authority.** To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Site and otherwise facilitate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist

shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.

- 4.4. Education Program.** Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.
- 4.5. Construction Monitoring Documentation.** The Designated Biologist(s) and Biological Monitor(s) shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project site upon request by CDFW.
- 4.6. Trash Abatement.** Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed, ideally at daily intervals but at least once a week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 4.7. 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.

- 4.8. 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.
- 4.9. 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 in that area.
- 4.10. Delineation of Habitat.** Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 4.11. Project Access.** Project-related personnel shall access the Project Area using existing routes, 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.
- 4.12. Staging Areas.** Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 4.11 of this ITP.
- 4.13. 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.
- 4.14. CDFW Access.** Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.

4.15. 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.

5. Monitoring, Notification and Reporting Provisions:

5.1. 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.

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

5.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections a minimum of once a 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.

5.4. Quarterly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 5.3 into a Quarterly 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. Quarterly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters

CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Ashley Rosales (Ashley.Rosales@Wildlife.ca.gov) and Headquarters CESA Program email is CESA@Wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

- 5.5. Annual Status Report.** Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports for that year identified in Condition of Approval 5.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to disturbance, for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.
- 5.6. CNDDDB Observations.** The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 5.7. Final Mitigation Report.** No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 5.8. Notification of Take or Damage.** Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or damaged by a Project-related activity, or if a Covered

Species is otherwise found dead or damaged within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by email to Ashley Rosales (Ashley.Rosales@Wildlife.ca.gov) and as described in the Notices section of this ITP. The initial notification to CDFW shall include information regarding the location, species, and number of plants taken or damaged 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 plant or carcass, and if possible, provide a photograph, explanation as to cause of take or damage, and any other pertinent information.

5.9. Relocated Covered Species Report. Permittee shall provide a Relocated Covered Species Report following the relocation of all Covered Species used in the Project's landscaping areas. The report shall be received no later than 45 days after completion of all mitigation measures. In the report, the Permittee shall provide a written documentation that includes the project information, tag number, location (latitude/longitude) of the relocated Covered Species, the height of the relocated Covered Species, date of relocation, and color photographs of the relocated Covered Species. Geographic Information Systems (GIS) data shall also be provided to supplement the report as outlined in Attachment 3. Take authorization shall apply to these Covered Species and does not extend to any subsequent recruitment and/or establishment of seedbank in the landscaping areas surrounding these Covered Species following Covered Activities and the expiration of this ITP.

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

6.1. Covered Species Avoidance. The Covered Species authorized for take are located within the Project Area. Additional Covered Species adjacent to the Project area that may be impacted by Covered Activities are not authorized for take. CDFW may require an amendment to this ITP if additional take of Covered Species will occur as a result of Project modification or additional impacts to the Covered Species.

6.2. Fencing. To allow the passage of wildlife serving as seed dispersal agents for the Covered Species, Permittee shall provide an opening at grade 6 inches high by 12 inches wide every 100 feet along any fencing installed within the Project Area.

6.3. Trenching. Permittee shall not perform trenching activities during a storm event as soils around the root zone of individuals of the Covered Species may be more susceptible to erosion. Permittee shall only work during periods of dry weather (with less than a 40 percent chance of rain). No work shall occur during a precipitation event. Within at least 12 hours prior to the onset of precipitation, Permittee shall cease all trenching activities, all

associated erosion control measures shall be in place, and all motorized equipment and fueling materials shall be removed from areas where runoff from these items can be reasonably foreseen to come into contact with Covered Species. Trenching halted due to precipitation may resume when precipitation ceases and after a dry-out period of 48 hours for rain events. Permittee shall monitor the National Weather Service 72-hour forecast for the Project Area. Weather forecasts shall be documented and provided upon request by CDFW. Permittee in consultation with the Designated Biologist shall place trenching/excavation spoils and materials an appropriate distance away from Covered Species habitat so direct and indirect impacts to the Covered Species do not occur.

- 6.4. Check Equipment for Leaks.** Permittee shall ensure that construction equipment and vehicles operated in the Project Area are checked and maintained daily to prevent leaks of fuel, lubricants, solvents or other fluids that could contaminate soils of Covered Species in adjacent habitat.
- 6.5. Spill Cleanup.** Permittee shall begin the cleanup of all spills per Condition of Approval 4.13. CDFW shall be notified immediately by the Permittee if any spills that may have contaminated the root system of a Covered Species (within 20 feet of an individual) within adjacent habitat. The Permittee shall have all spill clean-up equipment on site during construction.
- 6.6. Hazardous Substances.** Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances resulting from Covered Activities, shall be prevented from contaminating soils within 50 feet of Covered Species and/or entering Covered Species habitat. Any of these materials, placed within or where they may impact individuals of the Covered Species, by any party working under the Permittee, or with the permission of Permittee, shall be removed immediately.
- 6.7. Concrete Wash Out.** When pouring or working with wet concrete and washing materials/equipment that came in contact with concrete, Permittee shall ensure that concrete is contained locally in the wash out and does not contaminate soils within 50 feet of Covered Species individuals or Covered Species habitat.
- 6.8. Fire Prevention.** To avoid impacts on the Covered Species as a result of fire, workers conducting Covered Activities with the potential to inadvertently cause a fire (e.g., excavating, welding, and other hot work) shall be equipped with an appropriate level of fire prevention and suppression equipment, such as fire extinguishers, backpack pumps filled with water, shovels, welding tents, shields, and/or fire-resistant mats.
- 6.9. Rodenticides and Insecticides.** Permittee shall not use rodenticides and/or insecticides on the Project Area without providing an explanation for why these chemicals are required to complete Covered Activities and receiving written permission from CDFW. If approved,

Permittee shall not use any second-generation anticoagulant rodenticide (brodifacoum, bromadiolone, difethialone, and difenacoum) on the Project Area. Permittee shall not use any first-generation anticoagulant rodenticide (diphacinone, chlorophacinone, and warfarin) on the Project area without prior written permission from CDFW

6.10. Invasive Species. Permittee shall conduct Covered Activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), to the Project Area and adjacent Covered Species habitat. Prevention best management practices and guidelines for invasive plants can be found on the California Invasive Plant Council's website at: [Prevention – California Invasive Plant Council \(cal-ipc.org\)](https://www.cal-ipc.org).

6.11. Herbicides. Permittee shall limit herbicide use for invasive non-native plant species only and shall use herbicides only if has been determined that hand or mechanical efforts are infeasible. To prevent drift, Permittee shall apply herbicides only when wind speeds are less than 7 miles per hour. All herbicide application shall be performed by a licensed applicator and in accordance with all applicable federal, state, and local laws and regulations.

6.12. Fugitive Dust Control. Permittee shall reduce fugitive dust by (1) implementing additional watering when sustained wind conditions exceed 25 mph, and (2) prohibiting ground disturbing Covered Activities when wind speed exceeds 30 mph; and limiting vehicle speeds on unpaved roads to 15 mph.

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

To meet this requirement, the Permittee shall either purchase 585.90 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 7.2 below OR shall provide for both the permanent protection and management of 585.90 acres of Habitat Management (HM) lands pursuant to Condition of Approval 7.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.4 below. Purchase of Covered Species credits OR permanent protection and funding for perpetual management of HM lands must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 8 below for all uncompleted obligations.

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

- 7.1.1. Land acquisition costs for HM lands identified in Condition of Approval 7.3 below, estimated at \$5,000.00/acre for 585.90 acres: **\$2,929,500.00**. Land acquisitions costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements;
- 7.1.2. All other costs necessary to review and acquire the land in fee title and record a conservation easement as described in Condition of Approval 7.3.1 and 7.3.2 below: **\$17,440.00**;
- 7.1.3. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 7.3.5 below, estimated at **\$1,171,800.00**;
- 7.1.4. Interim management period funding as described in Condition of Approval 7.3.6 below, estimated at **\$351,540.00**;
- 7.1.5. Long-term management funding as described in Condition of Approval 7.4 below, estimated at \$3,000.00/acre for 585.90 acres: **\$1,757,700.00**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 7.1.6. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 7.5, estimated at **\$6,000.00**.
- 7.1.7. All costs associated with CDFW engaging an outside contractor to complete the mitigation tasks, including but not limited to acquisition, protection, and perpetual funding and management of the HM lands and restoration of temporarily disturbed habitat. These costs include but are not limited to the cost of issuing a request for proposals, transaction costs, contract administration costs, and costs associated with monitoring the contractor's work **\$75,000.00**.

7.2. Covered Species Credits. If the Permittee elects to purchase Covered Species credits to complete compensatory mitigation obligations, then Permittee shall purchase 391.06 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 8 below. Prior to purchase of Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or

conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities or within 18 months from issuance of this ITP if Security is provided.

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

- 7.3.1. **Fee Title.** Transfer fee title of the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended.
- 7.3.2. **Conservation Easement.** If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW elects not to be named as the grantee for the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Civil Code sections 815-816, as amended, and Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e). Because the “doctrine of merger” could invalidate the conservation interest, under no circumstances can the fee title owner of the HM lands serve as grantee for the conservation easement.
- 7.3.3. **HM Lands Approval.** Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, documentation identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project’s impacts on Covered Species;
- 7.3.4. **HM Lands Documentation.** Provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents (please contact CDFW for document list). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;

- 7.3.5. Land Manager. Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified. The grantee for the conservation easement cannot serve as the interim or long-term manager without the express written authorization of CDFW in its sole discretion.
- 7.3.6. Start-up Activities. Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see [A Guide and Annotated Outline for Writing Land Management Plans \(ca.gov\)](#)) (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;
- 7.3.7. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management, signage replacement, if necessary, vertical mulching and visual minimization, and monitoring the population of the Covered Species.

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

- 7.4. Endowment Fund. If the Permittee elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation

obligations, then the Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that is permanently restricted to paying the costs of long-term management and stewardship of the mitigation property for which the funds were set aside, which costs include the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with this ITP, the conservation easement, and the management plan required by Condition of Approval 7.3.6. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

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

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

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

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

- 7.4.2. Calculate the Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare an endowment assessment (equivalent to a Property Analysis Record (PAR)) to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). Note that the endowment for the easement holder should not be included in this calculation. The Permittee shall submit to CDFW for review and approval the results of the endowment assessment before transferring funds to the Endowment Manager.
- 7.4.2.1. Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the endowment assessment and adjust for any additional administrative, periodic, or annual fees.
- 7.4.2.2. Endowment Buffers/Assumptions. Permittee shall include in the endowment assessment assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:
- 7.4.2.2.1. 10 Percent Contingency. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.
- 7.4.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
- 7.4.2.2.3. Non-annualized Expenses. For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.
- 7.4.3. Transfer Long-term Endowment Funds. Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above.
- 7.4.4. Management of the Endowment. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

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

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

7.5. Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable costs incurred by CDFW related to issuance and monitoring of this ITP, including, but not limited to transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, costs incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.

8. Security: The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 7 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

8.1. Security Amount. The Security shall be in the amount of **\$6,308,980.00** or in the amount identified in 9.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 7.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.

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

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

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

8.5. Security Transmittal. Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 5) or by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other.

8.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.

8.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:

Credit Purchase

- Copy of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer Agreement for the purchase of Covered Species credits; and
- Timely submission of all required reports.

Habitat Management Land Acquisition (HMLA)

- Written documentation of the acquisition of the HM lands;
- Copies of all executed and recorded conservation easements;
- Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and
- Timely submission of all required reports.

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

IX. Amendment:

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

X. Stop-Work Order:

If CDFW determines the Permittee has violated any term or condition of this ITP or has engaged in unlawful take, CDFW may issue Permittee a written stop-work order instructing the Permittee to

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

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

XI. Liability:

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

XII. Compliance with Other Laws:

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

XIII. Notices:

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

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

Incidental Take Permit
No. 2081-2021-038-06
COVINGTON DEVELOPMENT PARTNERS, MAIN 395 INDUSTRIAL I, LLC, AND MAIN HESPERIA, LLC
HESPERIA COMMERCE CENTER II PROJECT

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email or registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2021-038-06) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Heidi Calvert, Regional Manager
California Department of Fish and Wildlife
Inland Deserts Region
3602 Inland Empire Blvd, Suite C-220
Ontario, CA 91764
Telephone (909) 484-0523
Heidi.Calvert@Wildlife.ca.gov

and a copy to:

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

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

Ashley Rosales, Senior Environmental Scientist (Specialist)
California Department of Fish and Wildlife
Inland Deserts Region
3602 Inland Empire Blvd, Suite C-220
Ontario, CA 91764
Telephone (760) 219-9452
Ashley.Rosales@Wildlife.ca.gov

XIV. Compliance with the California Environmental Quality Act:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, City of Hesperia. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Hesperia Commerce Center II Project Environmental Impact (SCH No.: 2019110418) dated February 2022 that the City of Hesperia certified

Incidental Take Permit
No. 2081-2021-038-06
COVINGTON DEVELOPMENT PARTNERS, MAIN 395 INDUSTRIAL I, LLC, AND MAIN HESPERIA, LLC
HESPERIA COMMERCE CENTER II PROJECT

for Hesperia Commerce Center II Project on June 7, 2022. At the time the lead agency certified the EIR and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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

XV. Findings Pursuant to CESA:

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

CDFW finds based on substantial evidence in the ITP application, Hesperia Commerce Center II, the results of site visits, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Quarterly 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 585.90 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;
- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP


and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;

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

XVI. Attachments:

FIGURE 1	Vicinity Map
FIGURE 2	Project Site Aerial
FIGURE 3	Project Construction Work Areas
FIGURE 4	Site Plan
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Biologist Resume Form
ATTACHMENT 3	GIS Data Collection Requirements
ATTACHMENT 4	Letter of Credit Form
ATTACHMENT 5	Mitigation Payment Transmittal Form

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE ON 09/12/2022

DocuSigned by:

CAEE4779B09E4A3...

Heidi Calvert, Regional Manager

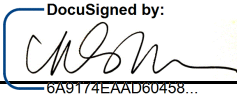
Incidental Take Permit
 No. 2081-2021-038-06
**COVINGTON DEVELOPMENT PARTNERS, MAIN 395 INDUSTRIAL I, LLC, AND MAIN HESPERIA, LLC
 HESPERIA COMMERCE CENTER II PROJECT**

Inland Deserts 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.

COVINGTON DEVELOPMENT PARTNERS

By:  Date: 9/19/2022

Printed Name: Mark Milakovich Title: Manager

MAIN 395 INDUSTRIAL I, LLC

By:  Date: 9/19/2022

Printed Name: Mark Milakovich Title: Manager

MAIN HESPERIA, LLC

By:  Date: 9/19/2022

Printed Name: Mark Milakovich Title: Manager

Incidental Take Permit
No. 2081-2021-038-06
COVINGTON DEVELOPMENT PARTNERS, MAIN 395 INDUSTRIAL I, LLC, AND MAIN HESPERIA, LLC
HESPERIA COMMERCE CENTER II PROJECT