

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



STREAMBED ALTERATION AGREEMENT
NOTIFICATION No. 1600-2017-0225-R4
ASH SLOUGH AND BERENDA SLOUGH – MADERA COUNTY

AHMAD ALKHAYYAT
MADERA COUNTY FLOOD CONTROL AND WATER CONSERVATION AGENCY
200 WEST FOURTH STREET
MADERA, CALIFORNIA 93637

ASH SLOUGH AND BERENDA SLOUGH SEDIMENT REMOVAL (PROJECT)

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the Madera County Flood Control and Water Conservation Agency (referred to as Permittee), represented by Ahmad Alkhayyat.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on December 1, 2017, 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 will occur in and adjacent to Ash Slough and Berenda Slough, west and southwest of the City of Chowchilla, Madera County, California; USGS 7.5 Minute Quad Maps Bliss Ranch, Chowchilla, and Firebaugh NE, MDB & M; Ash Slough beginning at Latitude 37°07'22.08"N, Longitude 120°17'00.25"W, continuing 8.6 miles downstream and Berenda Slough beginning at Latitude 37°05'32.06"N, Longitude 120°16'00.80"W, continuing 8.2 miles downstream (Figure 1).

PROJECT DESCRIPTION

The Project includes activities related to the mechanical removal of accumulated silt, sand, and other sediment (sediment), estimated through previous study to be two to three feet in depth, from an 8.6-mile section of Ash Slough and an 8.2-mile section of Berenda Slough to increase flow capacity of the channels. The sediment removal will allow up to approximately 5,000 and 2,000 cubic feet per second stream flow at Ash and Berenda Sloughs, respectively, as initially engineered by the United States Army Corps of Engineers at or around 1976. To complete this, up to three feet of sediment will be removed from the bed of each stream using heavy equipment, in six-inch increments. Excavation depths will vary according to available depths of accumulated sediment above the previously engineered bottom of the channel and the width of the channel within a particular work area. Excavation will not continue past the transition in material type between silty or sandy deposits and native soil. The depth of excavation will be tapered at the downstream end of each work area to meet the existing grade at that location. Material will be excavated only from the streambeds between the toes of each leveed bank. Excavation will occur once in each stream.

Individual work areas within the Project area will be coordinated between Permittee and landowners of the properties where excavation will take place. Landowners are anticipated to complete most of the sediment removal, on their own properties and those of other landowners as needed. Permittee will complete excavation in areas where landowners do not perform the work.

Permittee will have inspectors on site to monitor excavation at all times that excavation is taking place. Inspectors will convey information to Permittee about areas where corrections in depth or slope as described in this Agreement are needed prior to the completion of Project activity in each stream. Permittee will work with landowners to make corrections or will make corrections itself.

Excavation will be completed using heavy equipment such as excavators, scraper, motor grade slopers, dozers, loaders, and dump trucks. All equipment will access the streambeds using existing roads and access points, as shown in Project notification materials provided to CDFW.

The excavated sediment will be removed from the streams and used on the private properties from which it was excavated, for dust control and other agricultural uses. Temporary stockpiles will be created in the streambed near access roads for ease of removal, as excavation operations progress, until the material can be removed permanently. Work will be conducted when the channel is naturally dry. No trees or mature shrubs will be removed.

PROJECT IMPACTS

The Project will result in temporary impacts to 16.8 miles of streambed and the excavation of approximately 176,166 cubic yards of sand, silt, and sediment from within Ash Slough and Berenda Slough.

Potential impacts related to disturbance during Project implementation include but are not limited to those resulting from noise, vibration, trampling/crushing, erosion, sedimentation and turbidity, vegetation removal, altered flow patterns, and removal of breeding, roosting, cover, or foraging habitat for wildlife provided by the vegetation to be removed.

This Agreement is intended to avoid, minimize, and mitigate adverse impacts to the fish and wildlife resources that occupy the Project area and the adjacent habitat. Absent implementation of the Protective Measures required by this Agreement, the following species could potentially be impacted: the Federal endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern burrowing owl (*Athene cunicularia*) and American badger (*Taxidea taxus*), as well as other birds, mammals, fish, reptiles, amphibians, invertebrates, and plants that compose the local ecosystem.

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, all 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 all 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.
 - (a) This Agreement does not authorize the "take" (defined in Fish and Game Code §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. All such take shall require separate permitting. Liability for any take of such listed species remains the separate responsibility of Permittee for the duration of the Project.

- (b) Permittee shall take prudent measures to ensure that all take of threatened and endangered species is avoided. Permittee acknowledges and fully understands that it does not have State incidental take authority. Permittee shall immediately notify CDFW of the discovery of any such threatened or endangered species prior to and during Project implementation.

1.7 **Property Not Owned by Permittee**. To the extent that the Protective Measures of this Agreement provide for activities on another owner's property, they are agreed to with the understanding that Permittee shall first acquire the legal right to enter.

1.8 **Work Schedule**. Permittee shall submit a work schedule to CDFW prior to beginning activities covered by this Agreement. Permittee shall also notify CDFW upon the completion of the activities covered by this Agreement.

1.9 **Training**. Prior to starting activity within the stream bed or bank, all employees, contractors, landowners, 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 noncompliance. Permittee shall provide to CDFW a training sign-in sheet that includes the printed names and signatures of attendees, the name and qualifications of the individual(s) providing training, and the date(s) of the training. Materials shall be provided to CDFW within one week of each training.

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 **Work Hours**. All work activities shall be confined to daylight hours. For purposes of this Agreement, "daylight hours" are defined as that daytime period between sunrise and sunset.

2.2 **Flagging**. Prior to any activity within the stream, Permittee shall identify the limits of the required access routes and encroachment, including construction-related areas and the fencing alignment. These "work area" limits shall be identified with brightly-colored flagging. Work completed under this Agreement shall be limited to this defined area only. Flagging shall be maintained for the duration of the Project. All stream areas beyond the identified work area limits shall be considered Environmentally Sensitive Areas and shall not be disturbed.

2.3 Listed and Other Special Status Species.

- (a) Pre-activity surveys for potential rare, listed, or other sensitive status species shall be conducted by a qualified biologist within 30 days prior to commencement of Project activities. Surveys shall be conducted within the work area and all access routes to avoid and minimize incidental take, confirm previous observations, identify any areas occupied by listed or sensitive species, and clearly mark all resources to be avoided by Project activities. If any State- or Federally-listed threatened or endangered species are found or could be impacted by the work proposed, Permittee shall notify CDFW of the discovery immediately. An amended Agreement may be warranted.
- (b) San Joaquin Kit Fox: Within 30 days prior to the start of Project activity, a qualified wildlife biologist shall perform transect surveys of the Project work area and a 500-foot buffer, to identify potential dens and other kit fox sign. Permittee shall submit survey results to CDFW. If sign of kit fox is detected, a qualified wildlife biologist shall be available on-site during all Project-related activities that could impact the species. If kit fox are found on or within 500 feet of the Project work area, all activity shall cease until a qualified wildlife biologist confirms that the individual(s) has left of its own volition.

If San Joaquin kit fox dens are found, they shall be avoided by appropriate distances (potential or atypical den = 50 feet; known den = 100 feet; pupping den = 500 feet). During reconnaissance-level surveys the den will be treated as a known den unless sign associated with natal/pupping activity is observed. If any occupied San Joaquin kit fox pupping dens are subsequently discovered, Permittee shall stop work and contact CDFW for further guidance. Absolutely no disturbance to known San Joaquin kit fox dens shall occur and no work shall occur within the above buffers without contacting CDFW and obtaining written authorization to do so. Permittee is advised that an Incidental Take Permit for San Joaquin kit fox may first be required for such activities.

- (c) Swainson's Hawk. No Project-related activities shall be completed from March 1 through August 31 unless a qualified biologist conducts Swainson's hawk nesting surveys within the work area and a ½-mile buffer, following the survey methodology developed by the Swainson's Hawk Technical Advisory Committee (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>) prior to commencing Project-related activities and continuing until the entire survey protocol is completed. Permittee shall submit survey reporting to CDFW, including in-progress reporting prior to the start of Project activity. A minimum no-disturbance buffer of ½ mile shall be delineated around active nests, regardless of when they were found, until the breeding season has ended or until a qualified biologist has determined and CDFW has confirmed in writing that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

- (d) Burrowing Owl: A qualified biologist shall survey for burrowing owl within a 500-foot radius of the Project area, within 30 days prior to Project commencement. Surveys shall be conducted at appropriate times to maximize detection. If any active burrowing owl burrows are observed, these burrows shall be protected and monitored by the qualified biologist during Project 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. Permittee shall provide survey results to CDFW prior to the start of Project activities.
- (e) American Badger: Any American badger detected during pre-activity surveys or at any time during Project activity within the work area and a 50-foot buffer shall be allowed to move out of the area of its own volition. Permittee shall establish a 50-foot no-disturbance buffer around badger dens during Project implementation. If a badger is denning on or within 50 feet of the Project work area and avoidance is infeasible, Permittee shall consult with CDFW to determine whether the buffer may be reduced. Proposals to reduce buffers shall be provided to CDFW in writing, and no work within a buffer shall occur until after CDFW provides written authorization.

2.4 Fish and Wildlife.

- (a) If any fish or wildlife is encountered during the course of Project activities, said fish or wildlife shall be allowed to leave the Project work area unharmed.
- (b) To protect nesting birds, no Project activity shall begin during the nesting season from February 15 through August 31 unless the following Avian Nesting Surveys are completed by a qualified biologist.

Birds of Prey: Survey for nesting activity of birds of prey within the Project area and a 500-foot radius within 30 days prior to commencing Project activities. Surveys shall be conducted at appropriate nesting times and concentrate on trees with the potential to support nests. If any active nests are observed, these nests and nest trees shall be protected with a minimum 500-foot buffer until young have fledged and are no longer reliant on the nest site or parental care.

Other Avian Species: Survey for nesting activity within the Project work area and a 250-foot radius within 30 days prior to commencing Project activities. If any nesting activity is found, these nests shall be protected with a minimum 250-foot buffer until 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 a 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) No trees or mature shrubs (shrubs measuring four inches in diameter in breast height or larger) shall be removed as part of the Project.
- (b) The disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations and shall only occur within the defined work area. Precautions shall be taken to avoid other damage to vegetation by people or equipment.
- (c) Invasive vegetation that is removed as part of 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.
- (d) All invasive, exotic plant species that are disturbed during Project activity shall be removed from the Project site. Periwinkle (*Vinca* sp.), Cape or German ivy (*Delairea odorata*), Castor bean (*Ricinus communis*), giant reed (*Arundo donax*), water hyacinth (*Eichhornia crassipes*), and other exotic plant species shall be bagged and appropriately disposed of offsite. Exotic species shall not be used in mulching, composting, or otherwise placed in or around the Project site. Permittee shall not stockpile cut invasive plant material within any stream at any time.

2.6 Vehicles and Equipment.

- (a) Vehicles shall only be operated in the Project work area during naturally dry soil conditions.
- (b) Vehicle and equipment access to the Project area shall be limited to predetermined ingress and egress corridors on existing roads. All other stream areas adjacent to the work area shall remain off-limits to vehicles and equipment.
- (c) All equipment and 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.
- (d) Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be located outside of the stream. Stationary equipment such as motors, pumps, generators, compressors and welders, located adjacent to the stream or where fluids or other material may enter the stream, shall be positioned over drip-pans. Vehicles shall be moved away from the stream prior to refueling and lubrication.
- (e) Vehicles shall not be driven where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed, except as otherwise provided for in this Agreement, and as necessary to complete the authorized work.

- (f) Vehicles, equipment, and other machinery shall be inspected for the presence of undesirable species and steam cleaned prior to entering the work area to reduce the risk of introducing exotic plant or animal species.

2.7 Spoils.

- (a) Long-term spoil storage sites shall not be located within the stream, or where spoil could be washed into the stream.
- (b) All excavated material shall only be temporarily stockpiled within the stream.
- (c) Permittee shall cover stockpiles with plastic sheeting or visquine when rainy or windy conditions could erode loose soils.

2.8 Excavation Operations.

- (a) Sediment shall be removed in successive six-inch layers over the length of the Project areas. Permittee shall only remove sediment that has deposited in the streambeds and shall not widen or deepen the streambed topography.
- (b) No excavation shall occur when water is present in the excavation area. This includes, but is not limited to, standing or flowing water or saturated soils. No extraction shall occur within 20 feet of surface water.
- (c) A transition slope of 3:1 (horizontal to vertical) or flatter shall be maintained at the upstream end of each extraction area.
- (d) Excavation in each stream shall not be deeper at any point than the grade of the downstream end of each excavation prior to excavation. Excavations shall taper to the downstream end. Excavations shall not be deeper than the transition in material type from accumulated sandy or silty material to native soil.
- (e) The entire 8.6-mile section of Ash Slough and an 8.2-mile section of Berenda Slough shall be excavated as proposed. The only authorized variation to the Project is for a truncated, single excavation that is less than the total proposed length of a stream. Permittee shall notify CDFW within one week of a changed work plan that results in the excavation of a shorter length of either stream.
- (f) In areas where landowners do not perform the excavation, Permittee shall complete the excavation. Permittee shall ensure, through the use of qualified inspectors (see below), that Agreement provisions are adhered to, and shall make necessary corrections during or at the end of regular excavation as necessary following Permittee or landowner excavation activity.
- (g) Permittee shall use inspectors who are qualified (e.g., the areas of hydrology, geology, engineered surveying) to monitor instream sediment extraction

activities. Inspectors shall visit the locations of excavation each day to monitor compliance with the provisions of this Agreement. Inspectors shall maintain notes of locations where corrections are needed to meet Agreement compliance at end of the Project term, and shall note whether landowners or Permittee made the necessary corrections. Inspectors shall document when segments within each excavation are have been completed according to the Agreement provisions (e.g., signed off).

- (h) Following excavation activity, Permittee shall ensure that no pits or holes have been created in the stream bed. The stream beds shall be left smooth with no potholes or depressions. Permittee shall not backfill natural features.

2.9 Erosion.

- (a) Project activity shall occur when the stream is naturally dry.
- (b) No work shall occur during or within 24 hours following significant rainfall events, defined as ¼ inch or more of rain in a 24-hour period.
- (c) Disturbed soils on the stream banks shall be stabilized to reduce erosion potential, both during and following Project implementation. Temporary erosion control devices, such as straw bales, silt fencing, and sand bags, may be used, as appropriate, to prevent siltation of the stream. To minimize the risk of ensnaring and strangling wildlife, coir rolls, erosion control mats or blankets, straw or fiber wattles, or similar erosion control products shall be composed entirely of natural-fiber, biodegradable materials. Permittee shall not use "photodegradable" or other plastic erosion control materials.
- (d) If exposed areas created on the stream banks they shall be seeded (with weed-free straw or mulch) with a blend of a minimum of three (3) locally native grass species approved in advance by CDFW. 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 construction ends or as otherwise approved in writing by CDFW.

2.10 Pollution.

- (a) Permittee and all contractors shall be subject to the water pollution regulations found in Fish and Game Code sections 5650 and 12015.
- (b) Raw cement, concrete or washings thereof, asphalt, drilling fluids or lubricants, paint or other coating material, oil or other petroleum products, or any other substances that could be hazardous to fish or wildlife resulting from or disturbed by Project-related activities, shall be prevented from contaminating the soil and/or entering the "Waters of the State".

- (c) All Project-generated debris and rubbish shall be removed from the stream and from areas where such materials could be washed into the stream.
- (d) 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 all spills and shall be consulted regarding cleanup procedures.

3 Reporting Measures

Permittee shall meet each reporting requirement described below.

3.1 Obligations of Permittee.

- (a) Permittee shall have primary responsibility for monitoring compliance with all Protective Measures in this Agreement. Protective Measures shall be implemented within the time periods indicated in this Agreement and the reporting 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.

3.2 Reports. Permittee shall submit the following Reports to CDFW:

- Work schedule, submitted to CDFW prior to Project commencement (Administrative Measure 1.8).
- Worker Training materials, submitted to CDFW within one week of each training (Administrative Measure 1.8).
- Results of pre-activity surveys, submitted to CDFW at least one (1) week prior to the start of Project activity on each property (Avoidance and Minimization Measure 2.3(a)).
- Results of surveys for San Joaquin kit fox, submitted to CDFW at least one (1) week prior to commencement of Project activities on each property (Avoidance and Minimization Measure 2.3(b)).
- Results of nesting Swainson's hawk surveys, if extraction activity will commence on a new property during their nesting season, with in-progress results submitted to CDFW at least one (1) week prior to the start of Project activities, and final surveys, if completed after Project activity has commenced, submitted to CDFW within two (2) weeks of survey completion (Avoidance and Minimization Measure 2.3(c)).

- Results of surveys for burrowing owls, submitted to CDFW at least one (1) week prior to commencement of Project activities on each property (Avoidance and Minimization Measure 2.3(d)).
- Results of surveys for nesting birds, if Project activity will commence on a new property during the avian nesting season, submitted to CDFW at least one (1) week prior to the start of Project activities (Avoidance and Minimization Measure 2.4(b)).
- Notice of a reduction in the length of either excavated stream area, provided in writing to CDFW within one week of the change in work plan (Avoidance and Minimization Measure 2.8(e)).
- A Final Project Report to be submitted within 30 days after the Project is completed, including the following:
 1. A summary of Project activity, documenting sediment removal as compared to the excavation plans provided to CDFW in Permittee's notification materials, and clearly describing the slopes at the upstream end of each excavated area and the tapered excavation at the downstream end of each excavation.
 2. Copies of the inspectors' monitoring notes, including areas and land ownership where excavation activity required correction, notation of whether the landowner or Permittee made necessary corrections, and the date of sign-off of individual excavated segments of each stream (i.e., according to land ownership or other convention).
 3. A description of the implementation of each Protective Measure included in this Agreement.
 4. Before, during, and after photo documentation of the Project excavation areas.

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. Permittee shall submit all schedules, survey results, reports, and/or plans required by this Agreement in hard copy to the address below; Permittee may additionally submit those materials electronically by email to the CDFW contact identified below (or subsequent contact) and to R4LSA@wildlife.ca.gov.

To Permittee:

Ahmad Alkhayyat
Madera County Flood Control and Water Conservation Agency
200 West Fourth Street
Madera, California 93637
Phone: (559) 675-7811
ahmad@madera-county.com

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 – Bonna Newell
Notification No. 1600-2017-0225-R4
Phone: (559) 243-4014 extension 259
Fax: (559) 243-4594
Bonna.Newell@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 complying with, 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. For example, if the project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

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

Nothing in 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

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 fee schedule at the time of the request (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 fee schedule at the time of the request (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 fee schedule at the time of the request (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, § 1605, subd. (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.

TERM

This Agreement shall remain in effect for five (5) years, unless it is terminated or extended before then. All provisions in this Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing all provisions 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.

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 Initial Study with Mitigated Negative Declaration (IS/MND) prepared by the Madera County Engineering Department as the Lead Agency for the Arundo Eradication and Sand Removal Project (State Clearinghouse No. 2011111059), approved on January 31, 2012. CDFW 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.

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 provisions 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 provisions of this Agreement.

FOR MADERA COUNTY FLOOD CONTROL AND WATER CONSERVATION AGENCY

Ahmad Alkhayyat

3/2/2018

Date

FOR CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Julie A. Vance

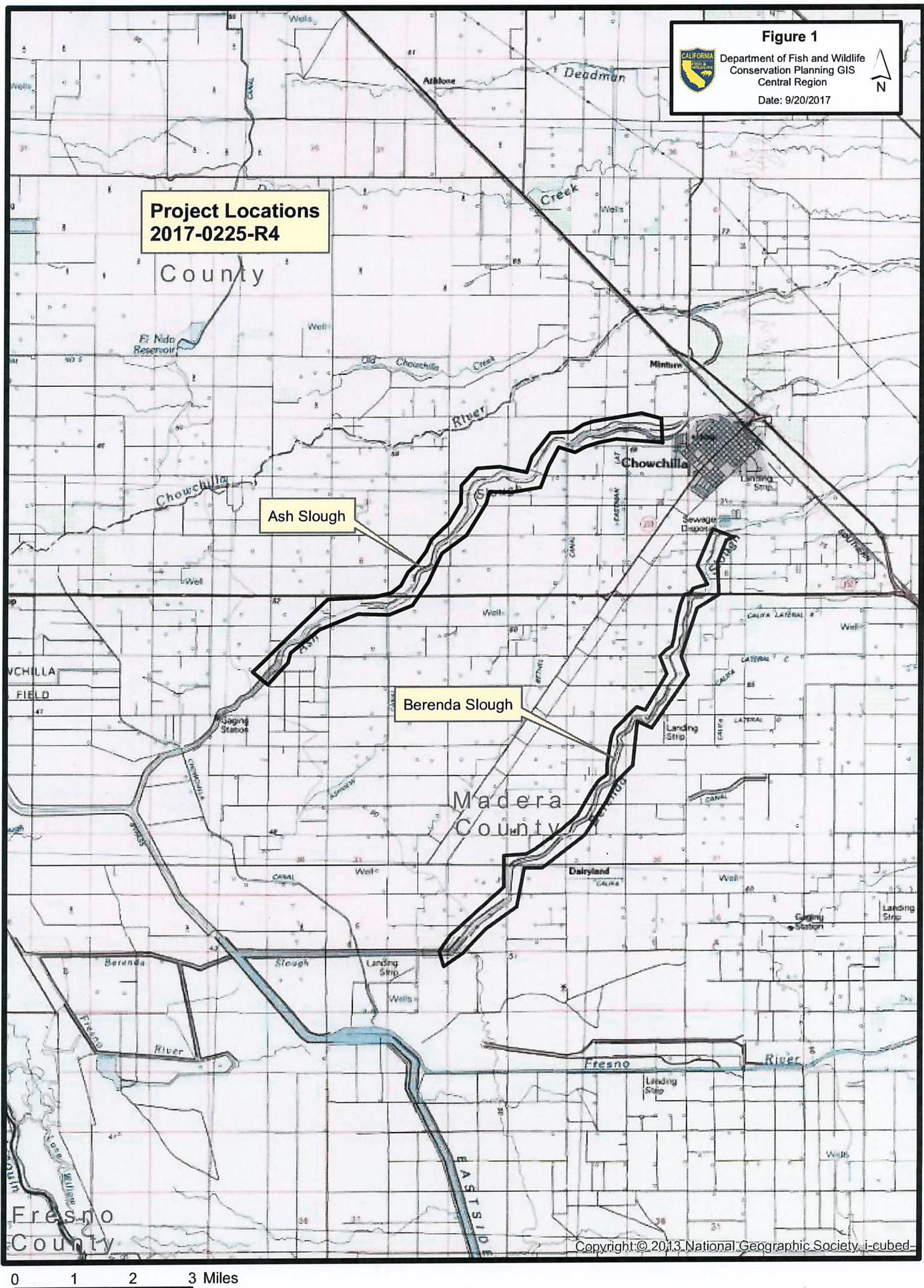
Regional Manager – Central Region

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Date

Figure 1

Exhibit A



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