

## **PARTICIPATING SPECIAL ENTITY AGREEMENT**

**Between**

**THE SANTA CLARA VALLEY HABITAT AGENCY**

**and**

**PACIFIC GAS AND ELECTRIC COMPANY**

### **1.0 PARTIES**

This Agreement, for reference dated September 17, 2015, is made and entered into by the Santa Clara Valley Habitat Agency, a California joint exercise of powers agency (“Agency”), and Pacific Gas & Electric Company, a California public corporation (“Participating Special Entity” or “PSE”).

### **2.0 RECITALS**

The Parties have entered into this Agreement in consideration of the following facts:

**2.1** The Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (“SCVHP” or “Plan”) is intended to provide a comprehensive framework to protect natural resources within Santa Clara County, specifically in portions of the Santa Clara Valley bounded on the east by the Diablo Range, on the west by the Santa Cruz Mountains, and on the North by the San Francisco Bay shoreline (the Plan Area), while improving and streamlining the environmental permitting process for certain projects that would cause impacts on endangered and threatened species. The primary policy priority of the Plan is to provide comprehensive species, wetlands, and ecosystem conservation and contribute to recovery of endangered and threatened species within the Plan Area while balancing open space, habitat, agriculture, and urban development. To that end, the Plan describes how to avoid, minimize, and mitigate, to the maximum extent practicable, impacts on Covered Species and their habitats while allowing for certain development and other activities in selected regions of the County of Santa Clara and the Cities of San Jose, Morgan Hill, and Gilroy.

**2.2** The Agency is a joint powers authority formed by its members, the County of Santa Clara (“County”), the City of San Jose (“San

Jose”), the City of Morgan Hill (“Morgan Hill”), and the City of Gilroy (“Gilroy”), to implement the SCVHP.

- 2.3** The SCVHP covers almost two-thirds (62%) of the County, or 519,506 acres, all in Santa Clara Valley, in which impacts from certain development and other activities are evaluated, and in which conservation will occur.
- 2.4** The area covered by the SCVHP has been determined to provide, or potentially provide, habitat for eighteen (18) species that are listed as endangered or threatened, that could in the future be listed as endangered or threatened, or that have some other special status under federal or state laws.
- 2.5** The Agency has received authorization from the United States Fish and Wildlife Service (“USFWS”) under incidental take permit TE 94345A-0, and the California Department of Fish and Wildlife (“CDFW”), under incidental take permit 2835-2012-002-03, for the Take of the eighteen (18) special-status species and certain other species, as take is defined respectively under federal and state law, while carrying out certain development and other activities.
- 2.6** The Agency may enter into agreements with participating special entities that allow certain activities of theirs to be covered by the Federal Permit and the State Permit, subject to the conditions in the Implementing Agreement (“IA”), the SCVHP and the Permits.
- 2.7** PSE proposes to implement the PG&E T-1065 Hydrotest Project and seeks extension of the Agency’s permit coverage for all activities associated with conducting hydrotesting along approximately 0.98 mile of gas pipeline L-300B between Anderson Lake and the Kirby Canyon landfill along Coyote Ridge in Santa Clara County, CA. This work will result in 4.5 acres of temporary impacts and 1.8 acres of permanent impacts. In order to conduct this hydrotesting, five work locations (A-E) have been identified as the necessary access points where the pipeline must be excavated, as described in the PSE’s completed Application.
- 2.8** The Agency has concluded, based on the terms of this Agreement including the location/site map attached hereto and incorporated herein by reference as Exhibit 1, and the Conditions of Approval attached hereto and incorporated by reference as Exhibit 2, that PSE has provided adequate assurances that it will comply with all applicable terms and conditions of the IA, the SCVHP, and the Permits.

### **3.0 DEFINITIONS**

The following terms as used in this Agreement will have the meanings set forth below. Terms specifically defined in FESA, CESA or NCCPA or the regulations adopted by USFWS and CDFW under those statutes shall have the same meaning when used in this Agreement. Definitions used in this Agreement may elaborate on, but are not intended to conflict with, such statutory or regulatory definitions.

- 3.1 “Application”** means the relevant application submitted by the PSE in accordance with Chapter 8.4 of the SCVHP. The Application contains a cover sheet, a location/site map of the project, the results of required planning surveys, the PSE’s proposed avoidance, minimization and mitigation measures, and the proposed conditions under Chapter 6 of the SCVHP, for inclusion as conditions of the PSE using Agency’s Permits.
- 3.2 “Authorized Take”** means the extent of incidental Take of Covered Species authorized by the USFWS in the Federal Permit issued to the Agency pursuant to Section 10(a)(1)(B) of FESA, and the extent of Take of Covered Species authorized by CDFW in the State Permit issued to the Agency pursuant to California Fish and Game Code section 2835.
- 3.3 “CDFW”** means the California Department of Fish and Wildlife, a department of the California Resources Agency.
- 3.4 “CESA”** means the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.5 “Changed Circumstances”** means changes in circumstances affecting a Covered Species or the geographic area covered by the SCVHP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the SCVHP. Changed Circumstances and planned responses to Changed Circumstances are more particularly defined in Sections 3.7, 11.3, and 11.3.1 of the IA and in Chapter 10.2.1 and Exhibit A of the SCVHP. Changed Circumstances do not include Unforeseen Circumstances.
- 3.6 “Conditions of Approval”** means the conditions of approval required by the Agency for the approval of this PSE Agreement, including but not limited to conditions relating to compliance with Chapter 6 of the SCVHP and all avoidance, minimization and mitigation measures that are specified in Exhibit 2 hereto.

- 3.7 “Covered Activities”** means those land uses and conservation and other activities described in Chapter 2.3 of the SCVHP to be carried out by the Agency or its agents that may result in Authorized Take of Covered Species during the term of the SCVHP, and that are otherwise lawful.
- 3.8 “Covered Species”** means the species, listed and non-listed, whose conservation and management are provided for in the SCVHP and for which incidental Take is authorized by the Wildlife Agencies pursuant to the Permits. Covered Species are specified in Exhibit A of the IA.
- 3.9 “Effective Date”** means the date when this Agreement is fully executed.
- 3.10 “Federal Listed Species”** means the Covered Species which are listed as threatened or endangered species under FESA as of the Effective Date, and the Covered Species which are listed as threatened or endangered pursuant to FESA during the term of the SCVHP as of the date of such listing.
- 3.11 “Federal Permit”** means the federal incidental Take permit issued by USFWS to the Agency and other local agencies pursuant to Section 10(a)(1)(B) of FESA (permit number TE 94345A-0), as it may be amended from time to time.
- 3.12 “FESA”** means the Federal Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.13 “Fully Protected Species”** means any species identified in California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515 that occur within the Plan Area.
- 3.14 “SCVHP” or “Plan”** means the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan.
- 3.15 “Implementing Agreement” or “IA”** means the “Santa Clara Valley Habitat Plan Implementing Agreement.”
- 3.16 “Jurisdictional Wetlands and Waters”** means State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from either the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or, from the State Water Resources Control Boards under either section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act, or CDFW under section 1602 of the Fish and Game Code, as further explained in Chapter 1.3.5 of the SCVHP.

- 3.17 “Listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under FESA or CESA.
- 3.18 “NCCPA”** means the Natural Community Conservation Planning Act (Fish & G. Code, § 2800 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.19 “Non-listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under FESA or CESA.
- 3.20 “Party” or “Parties”** means any or all of the signatories to this Agreement.
- 3.21 “Permit Area”** means the area within the Plan Area where the Agency has received authorization from the Wildlife Agencies for the Authorized Take of Covered Species while carrying out Covered Activities.
- 3.22 “Permits”** means the Federal Permit and the State Permit.
- 3.23 “Plan Area”** means the geographic area analyzed in the SCVHP, located in within Santa Clara County, specifically in portions of the Santa Clara Valley bounded on the east by the Diablo Range, on the west by the Santa Cruz Mountains, and on the North by the San Francisco Bay shoreline, as depicted in Figures 1-1 and 1-2 of the SCVHP. The Plan Area is further described in detail in Chapter 1.2.2 of the SCVHP.
- 3.24 “Planning Survey”** collectively means all of the land cover and species surveys required by Chapter 6.8 of the SCVHP.
- 3.25 “Preserve System”** means the land acquired and dedicated in perpetuity through either a fee interest or conservation easement intended to meet the preservation, conservation, enhancement and restoration objectives of the SCVHP.
- 3.26 “Project”** means the PG&E T-1065 Hydrotest Project, as described in Section 2.7 of this Agreement.
- 3.27 “State Permit”** means the state Take permit issued to the Agency and other local agencies pursuant to Section 2835 of the California Fish and Game Code (permit number 2835-2012-002-03), as it may be amended from time to time.
- 3.28 “Take”** has the same meaning provided by FESA and its implementing regulations with regard to activities subject to FESA, and also has the same meaning provided in the California Fish and Game Code with regard to activities subject to CESA and NCCPA.

- 3.29 “Unforeseen Circumstances”** under the Federal Permit means changes in circumstances affecting a Covered Species or geographic area covered by the SCVHP that could not reasonably have been anticipated by the Plan developers and USFWS at the time of the Plan’s negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species. “Unforeseen Circumstances” under the State Permit means changes affecting one or more species, habitat, natural community, or the geographic area covered by the Plan that could not reasonably have been anticipated at the time of Plan development, and that result in a substantial adverse change in the status of one or more Covered Species.
- 3.30 “USFWS”** means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.
- 3.31 “Wildlife Agencies”** means USFWS and CDFW collectively.

#### **4.0 PURPOSES**

This Agreement defines the Parties’ roles and responsibilities and provides a common understanding of actions that will be undertaken to avoid, minimize and mitigate the effects on the Covered Species caused by the Project, and to provide for the conservation of the Covered Species within the Plan Area. The purposes of this Agreement are to ensure implementation of each of the terms and conditions of this Agreement, and the relevant terms of the IA, the SCVHP, and the Permits, and to describe remedies and recourse should either Party fail to perform its obligations as set forth in this Agreement.

#### **5.0 AVOIDANCE, MINIMIZATION AND MITIGATION OF IMPACTS**

##### **5.1 General Framework**

As required by FESA and NCCPA, the SCVHP includes measures to avoid and minimize take of Covered Species and to conserve natural communities and Covered Species at the landscape-, habitat- and species-level. Chapter 6 of the SCVHP provides further instructions to determine which avoidance and minimization measures are applicable to particular Covered Activities. PSE shall implement all applicable avoidance and minimization measures as required by the SCVHP, including but not limited to those identified in Chapter 6, as described in this Agreement and Conditions of Approval (Exhibit 2).

##### **5.2 Surveys and Avoidance Measures**

Planning Surveys are required prior to carrying out any Covered Activity for which a fee is collected or land in lieu of a fee is provided. PSE has submitted

Planning Surveys with its application for approval by the Agency in accordance with Chapter 6.8 of the SCVHP. This Planning Survey report is contained within the Application, which describes the results of the Planning Survey and describes in detail the pre-construction surveys, construction monitoring, avoidance measures and mitigation measures that apply to the Project and shall be performed by PSE. Based on the Application, the Agency has incorporated specific Conditions of Approval in Exhibit 2 to this Agreement and has determined that PSE will implement and comply with all applicable preconstruction surveys and construction monitoring requirements described in Chapters 6.3, 6.4, 6.5 and 6.6 of the SCVHP and the Conditions of Approval hereto.

### **5.3 No-Take Conditions**

Nothing in this Agreement, the SCVHP or the Permits shall be construed to allow the Take of the following species as described below:

- 5.3.1** Burrowing Owl - Injury or death to Burrowing Owl, including, but not limited to, passive relocation occurring before a positive growth trend as described in Chapter 5.4.6 of the SCVHP is achieved.
- 5.3.2** Least Bells Vireo – Disturbance of active nests during the breeding season as described in Condition 16 of Chapter 6 of the SCVHP.
- 5.3.3** Tricolored Blackbird – Disturbance of nesting colonies as described in Condition 17 of Chapter 6 of the SCVHP.
- 5.3.4** San Joaquin Kit Fox - Injury or death to San Joaquin Kit Fox as specified in Condition 18 of Section 6.6.1 of the SCVHP (“San Joaquin Kit Fox – Avoidance and Minimization”).
- 5.3.5** Tiburon Indian Paintbrush - Loss of occurrences of Tiburon Indian Paintbrush, as described in Table 4-6 of the SCVHP.
- 5.3.6** Coyote Ceanothus - Loss of occurrences of Coyote Ceanothus, as described in Table 4-6 of the SCVHP.
- 5.3.7** Loma Prieta Hoita - Loss of occurrences of Loma Prieta Hoita until additional occurrences are found, as described in Table 4-6 of the SCVHP.
- 5.3.8** Contra Costa Goldfields - as described in Condition 1 of Chapter 6 of the SCVHP.
- 5.3.9** Fully Protected Species under California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515.

#### **5.4 Delineation of Jurisdictional Wetlands and Waters [if applicable]**

Jurisdictional Wetlands or Waters are present on the site of the Project, and PSE has provided to the Agency a jurisdictional delineation. PSE shall pay the Wetland Mitigation Fee based on the delineation, as specified in the Conditions of Approval.

#### **5.5 Fees and Dedications**

The payment of fees and charges, and/or dedication of land, must be made in full before any ground-disturbance associated with the Project occurs. PSE agrees to pay all fees, including all applicable mitigation fees (Subsection 5.5.1), any land in lieu (Subsection 5.5.2), and PSE charge (Subsection 5.5.4), or a combination thereof, that are required for the Project in the following manner and in the amounts specified in Exhibit 3 hereto:

**5.5.1 Mitigation Fees.** Pay the Agency a one-time payment of \$147,606.72, which amount includes all SCVHP mitigation fees necessary for the Project. The total payment amount is the sum of all applicable fees multiplied by the acres of impact or miles of stream or vehicle trips (as applicable) for each fee category listed in Table 9-6 of the SCVHP and as adopted by the Agency's Governing Board Ordinance No. 2013-01 and Governing Board Resolution No. G-2015-003 and as may be adjusted periodically. AND

**5.5.2 Additional Land in Lieu Mitigation.** PSE shall also dedicate a proportional acreage of land comensurate with their impacts to coyote ceanouthus to the Preserve System in addition to PSE mitigation fees specified in Section 5.5.1 of this Agreement and as ordinarily required under the SCVHP, as provided in Section 8.3 of the IA and further described in Chapters 8.6.1 and 8.6.7 of the SCVHP, in the location and manner described in the Conditions of Approval.

No later than 5 years from the time of the first impacts to Coyote Ceanothus resulting from the Anderson Dam seismic retrofit project, PG&E and the Santa Clara Valley Habitat Agency (SCVHA) shall work together to acquire an occurrence through a mechanism such as fee title or conservation easement to fulfill the mitigation obligations resulting from PG&E's hydrotest T-1065 on gas line 300B.

**5.5.3 Fee Adjustments.** Notwithstanding the above, the Parties acknowledge that (a) the Agency adjusts its fee schedule annually and may make other periodic adjustments to the



fees in accordance with the fee adjustment provisions of Chapter 9.4.1 of the SCVHP, and (b) fees that apply to the applicant's project may require adjustment as the result of refinement of the project, changes resulting from conditions that vary from those previously evaluated, or other similar conditions requiring an adjustment to fees. If the PSE pays in full and construction of the Project commences before any fee adjustment occurring after the effective date of this Agreement, the amount due will be as stated above. If PSE pays on or after any fee adjustment occurring after the effective date of this Agreement, or commences construction of the Project on or after any fee adjustment occurring after the effective date of this Agreement, then the amount due will be subject to all fee adjustments applicable at the time of payment and construction as authorized in Chapter 9.4.1 of the SCVHP and Ordinance No. 2013-01. Based on these adjustments, if PSE pays before any fee adjustment, but construction does not commence until after the fee adjustment or there are changes to the project pursuant to Section 5.5.3(b) herein following commencement of construction, PSE will either be required to submit an additional payment for any increases or be entitled to a refund without interest for any decreases.

## **5.6 PSE Charges**

In addition to the fees specified above in Section 5.5, Chapter 8.4 of the SCVHP authorizes the Agency to require PSEs to pay charges over and above those specified in Chapter 9 to cover indirect costs of extending permit coverage under the SVHCP, including the cost of Agency staff time to assist with permit coverage, a portion of the costs of Implementing Entity staff time to assist with permit coverage, a portion of the costs of the initial preparation of the Plan, and a portion of the costs of conservation actions designed to contribute to species recovery. Such charges have been adopted by the Agency Governing Board resolution, which may be amended from time to time, as follows:

**5.6.1 Administrative Costs.** PSE shall pay to the Agency all of Agency's actual costs of review and consideration of the PSE's application (including amendments thereto), including all costs of staff, consultants, legal counsel, and other costs including reproduction, public notice, publication, and any other cost necessary to process PSE's application for consideration of approval by the

Agency. The Agency may require the PSE to deposit a sum at the time of submission of PSE's application in an amount estimated to compensate Agency for all such administrative costs. In the event that such amount is insufficient to compensate the Agency for its costs of administration, then PSE shall deposit additional funds for such costs within 10 calendar days of receipt of a request for additional funds by the Agency. If the deposit exceeds the amount of the administrative costs, then Agency shall refund such excess deposit to the PSE within 60 calendar days of the final Agency determination on the PSE application. All such administrative fees shall be paid in full by PSE to Agency prior to the effective date of this Agreement.

**5.6.2** PSE Charge. In addition to the payment of all applicable Mitigation Fees (including land in lieu) in accordance with Section 5.5 herein, the PSE shall also pay to the Agency a PSE Charge in the amount of \$5,000 or ten percent (10%) of all applicable Mitigation Fees, whichever is greater. In this case \$13,418.79 is greater. Such PSE Charge shall be paid in full prior to any ground-disturbing activity and shall be based upon the Mitigation Fees in Section 5.5, including all adjustments to the Mitigation Fees in accordance with Subsection 5.5.3, of this Agreement.

**5.6.3** This Section 5.6 is not intended to, and shall not be construed to, limit PSE's duty to indemnify the Agency as provided in Section 7.7 of this Agreement.

## **6.0** TAKE AUTHORIZATION

### **6.1** Extension of Take Authorization to PSE

As provided in Chapter 8.4 of the SCVHP, after receipt of the Wildlife Agencies' written concurrence that the Proposed Activity complies with the SCVHP, the Permits and the IA, and after execution of this Agreement, payment of fees [*or dedication of land as set forth in Section 5.6 of this Agreement*], compliance with the California Environmental Quality Act (Public Resources Code section 21000, et seq.) ("CEQA"), the Agency shall issue a Certificate of Inclusion to PSE that specifically describes the Authorized Take and required conservation measures and extends Take authorization under the Permits to PSE. PSE is ultimately

responsible for compliance with all applicable terms and conditions of this Agreement, the IA, the SCVHP and the Permits.

### **6.1.1 Compliance with the California Environmental Quality Act**

The Agency's issuance of a Certificate of Inclusion to the PSE is a public agency action that must comply with CEQA. The work involves maintenance activities on an existing gas pipeline, with no discretionary permits required. It qualifies for a CEQA Class 1 categorical exemption (see CEQA guidelines Section 15301 et seq., paragraph (b)). The Habitat Agency prepared a Notice of Exemption for the Project. The Agency is a CEQA responsible agency for purposes of the Project and, as such, will rely on the NOE for purposes of fulfilling its responsibilities under CEQA.

## **6.2 Duration of Take Authorization**

**6.2.1** After the Take authorization has been extended to the Project, the project and/or activities for which it is granted shall commence and progress in a timely and consistent manner towards completion within 36 calendar months of issuance of the Take authorization, or the Take authorization will automatically expire at the end of that period. The time for commencement and progression of work or the expiration date of the Take authorization may be extended by the Parties by written amendment to this Agreement.

**6.2.2** Unless the Take authorization expires for failure to timely commence and progress the Project as described in Section 6.2.1, it shall remain in effect unless and until the Permits are revoked by USFWS or CDFW, in which case the Take authorization may also be suspended or terminated as provided in the SCVHP and the IA.

## **6.3 Section 7 Consultations with USFWS**

Nothing in this Agreement is intended to alter the obligation of a federal agency to consult with USFWS pursuant to Section 7 of FESA (16 U.S.C. §1536(a)). The PSE acknowledges that, if the Proposed Activities are authorized, funded, or carried out by a federal agency, the federal agency and the Proposed Activities must also comply with Section 7. As provided in Section 12.4 of the IA, USFWS has made a commitment that, unless otherwise required by law or regulation, it will not require any measures under Section 7 that are inconsistent with or exceed the requirements of the SCVHP and the Permits for activities covered by the SCVHP and the Permits.

The Project is not authorized, funded, or carried out by a federal agency and therefore PSE is not required to comply with Section 7 of FESA with regard to the Project.

## **7.0 RIGHTS AND OBLIGATIONS OF PSE**

### **7.1 Rights**

Upon the Agency's issuance of a Certificate of Inclusion to PSE, PSE may Take the Covered Species while carrying out the Project in the Permit Area, as further authorized by and subject to the conditions of this Agreement, the IA, the SCVHP, and the Permits. The authority issued to PSE applies to all of its elected officials, officers, directors, employees, agents, subsidiaries, contractors, and subcontractors, and their officers, directors, employees and agents to the extent that they participate in the implementation of the Project. PSE shall periodically conduct an educational program to fully inform all such persons and entities of the terms and conditions of the Permits, and PSE shall be responsible for supervising their compliance with those terms and conditions. All contracts between PSE and such persons and entities shall require their compliance with the Permits.

### **7.2 General Obligations**

The PSE will fully and faithfully perform all obligations assigned to it under this Agreement, the IA, the SCVHP, the Permits, including but not limited to the obligations assigned in the following chapters of the SCVHP: Chapter 6 (Conditions on Covered Activities), Chapter 8.4 (Participating Special Entities), and Chapter 9 (Funding). PSE shall implement all measures and adhere to all standards included in the Conditions of Approval, and PSE shall reserve funding sufficient to fulfill its obligations under this Agreement, the IA, the SCVHP and the Permits throughout the term of this Agreement. In addition, PSE shall ensure that the monitoring, reporting, and adaptive management measures described in the Conditions of Approval are adequately funded. PSE will promptly notify the Agency of any material change in its financial ability to fulfill its obligations under this Agreement.

### **7.3 Obligations In The Event of Suspension or Revocation**

In the event that USFWS and/or CDFW suspend or revoke the Permits pursuant to Section 16 of the IA, PSE will remain obligated to fulfill its mitigation, enforcement, management, and monitoring obligations, and its other SCVHP obligations, in accordance with this Agreement and applicable statutory and regulatory requirements for all impacts resulting from implementation of the Project prior to the suspension or revocation.

### **7.4 Interim Obligations upon a Finding of Unforeseen**

## **Circumstances**

If the Wildlife Agencies make a finding of Unforeseen Circumstances (as defined in Section 11.3 of the IA) with regard to a Federal Listed Covered Species, during the period necessary to determine the nature and location of additional or modified mitigation, PSE will avoid contributing to an appreciable reduction in the likelihood of the survival and recovery of the affected species. As described in Section 12.3 of the IA, the Wildlife Agencies shall be responsible for implementing such additional measures or modifications, unless PSE consents to do so.

### **7.5 Obligations In The Event Of Changed Circumstances**

Changed Circumstances, as described in 50 Code of Federal Regulations section 17.22(b)(5)(i), are adequately addressed in Section 11.3 of the IA and further described in Chapter 10.2.1 of the HCCP/NCCP of the SCVHP, and PSE shall implement any measures for such circumstances as called for in the SCVHP, as described in Section 11.3.1 of the IA.

### **7.6 Indemnification**

PSE agrees to defend, indemnify, and hold harmless the Agency and its board members, officers, contractors, consultants, attorneys, employees and agents from any and all claim(s), action(s), or proceeding(s) (collectively referred to as "Proceedings") brought against Agency or its board members, officers, contractors, consultants, attorneys, employees, or agents arising out of or resulting from any of the following:

- Decisions or actions of the Agency related to the Project, this PSE Agreement, or compliance with the California Environmental Quality Act of 1970, as amended ("CEQA") with regard to the Project; and
- The negligence, recklessness, or intentional misconduct of any representative, employee, or agent of PSE.

Notwithstanding the above, (i) PSE shall have no duty to defend, indemnify, or hold harmless the Agency to the extent damages are sought in a tort claim arising out of or resulting from the individual negligence, recklessness, or intentional misconduct of any representative, employee, or agent of the Agency and (ii) the indemnification obligations set forth above shall in no way limit the rights and remedies of PSE with respect to any breach of the terms and conditions of this PSE Agreement by the Agency.

PSE's duty to indemnify the Agency includes, but is not limited to, damages, fees and/or costs awarded against or incurred by Agency, if any, and costs of suit, claim or litigation, including without limitation attorneys' fees and other costs, liabilities and expenses incurred in connection with any Proceedings.

#### **7.6.1 Enforcement of Indemnification Provision**

PSE agrees to indemnify Agency for all of Agency's costs, fees, and damages incurred in enforcing the indemnification provisions of this Agreement.

### **7.6.2 Compliance Costs**

PSE agrees to defend, indemnify and hold harmless Agency, its officers, contractors, consultants, attorneys, employees and agents from and for all costs and fees incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as this Agreement or any document required for purposes of compliance with CEQA) if made necessary by any Proceedings.

### **7.6.3 Obligations in the Event of Litigation**

In the event that PSE is required to defend Agency pursuant to Section 7.6 of this Agreement in connection with any Proceedings, Agency shall have and retain the right to approve, which approval shall not be withheld unreasonably:

- the counsel to so defend Agency;
- all significant decisions concerning the manner in which the defense is conducted; and
- any and all settlements.

Agency shall also have and retain the right to decline to participate in the defense, except that Agency agrees to reasonably cooperate with PSE in the defense of the Proceedings. If Agency participates in the defense, all Agency fees and costs shall be paid by PSE.

PSE's defense and indemnification of Agency set forth herein shall remain in full force and effect throughout all stages of litigation including any and all appeals of any lower court judgments rendered in the Proceedings.

## **8.0 REMEDIES AND ENFORCEMENT**

If PSE fails to comply with the terms of this Agreement, the IA, the SCVHP, or the Permits, the Agency may withdraw the Certificate of Inclusion and terminate any Take authorization extended to PSE. The Agency shall also have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, the IA, the SCVHP and the Permits, and to seek redress and compensation for any breach or violation thereof. The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

## **9.0 FORCE MAJEURE**

In the event that a Party is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of Party (“Force Majeure”), including, but not limited to, acts of God, labor disputes, sudden actions of the elements not identified as Changed Circumstances, or actions of non-participating federal or state agencies or local jurisdictions, the Party shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this section shall be deemed to authorize either Party to violate FESA, CESA or NCCPA, and provided further that:

- The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;
- Within seven (7) days after the occurrence of the Force Majeure, the Party invoking this section shall give the other Party written notice describing the particulars of the occurrence;
- The Party shall use best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the Party is contrary to its interest); and
- When the Party is able to resume performance of their obligations, it shall give the other Party written notice to that effect.

## **10.0 MISCELLANEOUS PROVISIONS**

### **10.1 Calendar Days**

Throughout this Agreement and the SCVHP, the use of the term “day” or “days” means calendar days, unless otherwise specified.

## **10.2 Notices**

Any notice permitted or required by this Agreement shall be in writing, and delivered personally, by overnight mail, or by United States mail, certified and postage prepaid, return receipt requested. Notices may be delivered by facsimile or electronic mail, provided they are also delivered by one of the means listed above. Delivery shall be to the name and address of the individual responsible for each of the Parties, as follows:

For Agency:

Santa Clara Valley Habitat Agency  
c/o Executive Officer  
17555 Peak Avenue  
Morgan Hill, CA 95037  
Email: Edmund.Sullivan@scv-habitatagency.org  
Phone: 408-779-7261

For PSE:

Steve Willoughby  
Principal Land Planner  
6111 Bollinger Canyon Rd, #3210-C  
San Ramon, CA 94583  
Email: SEWB@pge.com  
Phone: (413) 314-2818

Notices shall be transmitted so that they are received within the specified deadlines. Notices delivered personally shall be deemed received on the date they are delivered. Notices delivered via overnight delivery shall be deemed received on the next business day after deposit with the overnight mail delivery service. Notice delivered via certified mail, return receipt requested, shall be deemed received as of the date on the return receipt or five (5) days after deposit in the United States mail, whichever is sooner. Notices delivered by facsimile or other electronic means shall be deemed received on the date they are received.

## **10.3 Entire Agreement**

This Agreement, together with the IA, the SCVHP and the Permits, constitutes the entire agreement among the Parties. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no



representation, inducement, promise of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

#### **10.4 Amendment**

This Agreement may only be amended with the written consent of both Parties.

#### **10.5 Attorneys' Fees**

If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be able to recover its attorneys' fees and costs.

#### **10.6 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California, as applicable.

#### **10.7 Duplicate Originals**

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

#### **10.8 Relationship to the FESA, CESA, NCCPA and Other Authorities**

The terms of this Agreement are consistent with and shall be governed by and construed in accordance with FESA, CESA, NCCPA and other applicable state and federal law.

#### **10.9 No Third Party Beneficiaries**

Without limiting the applicability of rights granted to the public pursuant to FESA, CESA, NCCPA or other applicable law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary thereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

#### **10.10 References to Regulations**

Any reference in this Agreement, the IA, the SCVHP, or the Permits to any regulation or rule of the Wildlife Agencies shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

#### **10.11 Applicable Laws**

All activities undertaken pursuant to this Agreement, the IA, the SCVHP, or the Permits must be in compliance with all applicable local, state and federal laws and regulations.

### **10.12 Severability**

In the event one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement.

### **10.13 Due Authorization**

Each Party represents and warrants that (1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable it to enter into and comply with the terms of this Agreement, and (3) the person executing this Agreement on behalf of each Party has the authority to bind that Party.

### **10.14 No Assignment**

The Parties shall not assign their rights or obligations under this Agreement, the Permits, or the SCVHP to any other individual or entity.

### **10.15 Headings**

Headings are using in this Agreement for convenience only and do not affect or define the Agreement's terms and conditions.

**IN WITNESS WHEREOF, THE PARTIES HERETO** have executed this Participating Special Entity Agreement to be in effect as of the date last signed below.

**SANTA CLARA VALLEY HABITAT AGENCY:**

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Edmund Sullivan, Executive Officer

Approved as to form:

By: \_\_\_\_\_  
Valerie J. Armento, Legal Counsel

**PG&E**

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
[Print Name and Title of Signatory]

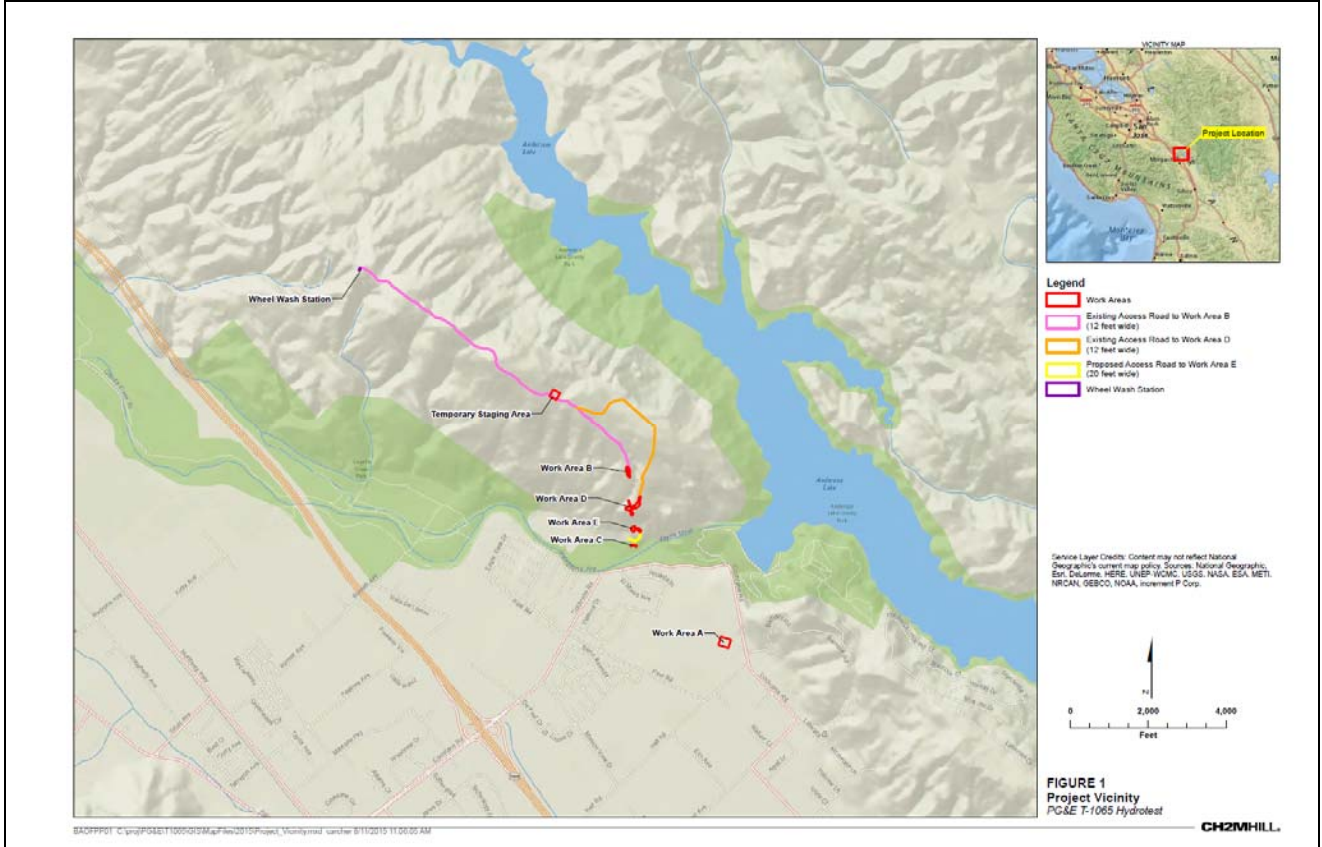
By: \_\_\_\_\_  
[Print Name and Title of Signatory]

**Attachments:**

- ATTACHMENT 1 (Location/Site Map of Project)
- ATTACHMENT 2 (Conditions of Approval)
- ATTACHMENT 3 (Fees and Charges)
- ATTACHMENT 4 (Table 6-2 Condition 3 Compliance Tables)

### ATTACHMENT 1

### LOCATION/SITE MAP OF PROJECT



## ATTACHMENT 2

### CONDITIONS OF APPROVAL

Based upon the information provided by the PSE in its application describing how the PSE will comply with the applicable conditions, the Agency requires compliance with the following conditions of this Agreement and the Permits:

1. The Agency hereby approves the manner of compliance with applicable conditions specified in the PSE's application.
2. Based upon Chapter 6 of the Habitat Plan, the following conditions shall apply to the PSE's Project:

- **Condition 1. Avoid Direct Impacts on Legally Protected Plant and Wildlife Species.**

Contra Costa goldfields, bald eagle, American peregrine falcon, southern bald eagle, white-tailed kite, California condor, and Ring-tailed cat have not been identified to occur within the project area. There are no suitable habitat links or corridors between known populations of these species and the project area. The project will comply with Condition 1 because the species will not be present in the project area and no direct impacts on these protected species would occur. The project is not expected to have any impacts on Contra Costa goldfields, bald eagle, American peregrine falcon, southern bald eagle, white-tailed kite, California condor, and ring-tailed cat.

If construction begins during the typical breeding season for raptors and migratory birds covered under the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act (February 15 to September 15), pre-construction surveys will be conducted by a qualified biologist within 72 hours prior to commencement of construction to determine presence/absence of nests in and within 500 feet of the study area. If no nests are found during the survey, no further actions will be necessary. If nests are found, California Department of Fish and Wildlife (CDFW) and/or U.S. Fish and Wildlife Service (USFWS) will be consulted to determine the appropriate avoidance measures. If construction begins outside of the breeding season, no pre-construction surveys are necessary. If active nests are identified during the pre-construction surveys, they will be protected during the breeding season while the nest is occupied with adults and/or young. The occupied nest will be monitored by a qualified biologist to determine when the nest is no longer in use. Protection will include the establishment of a no-disturbance buffer around the nest and highly visible temporary construction fencing will delineate the identified buffer zone. No construction will occur within this buffer zone unless approved by CDFW and or USFWS.

- **Condition 2. Incorporate Urban-Reserve System Interface Design Requirements.**

This condition applies to projects that Overlap the Urban Reserve System Interface Zones and helps lessen impacts that can result (e.g., through runoff, noise, introduction of invasive species) when development occurs near reserve areas. This project does not involve any new development. It is a mandatory maintenance activity on an existing gas pipeline. No new above-ground structures or structures will be installed by this project. This will have no effect on runoff, noise, or introduction of invasive species.

- **Condition 3. Maintain Hydrologic Conditions and Protect Water Quality.**

This condition applies to all Habitat Plan covered projects. All measures applicable to this project are included in the Conditions 3, 4, and 5 compliance tables in the application package. This project will implement a SWPPP and appropriate best management practices will be implemented around the perimeter of the work areas and the access road at Location E to minimize the potential for stormwater discharge, runoff, and erosion into adjacent areas.

- **Condition 8. Implement Avoidance and Minimization Measures for Rural Road Maintenance.**

This condition applies to projects that involve O&M activities (e.g., utility line maintenance, vegetation management, road maintenance) on or along rural roads and helps minimize sediment discharge, disturbance of nesting covered bird species, and the spread of nonnative invasive species. Vehicular trips along the access roads to Locations B, D, and E will be minimized to the extent feasible through carpooling and only essential personnel accessing the sites. To minimize the potential for spread of invasive species and *Phytophthora* wheel wash and vehicle undercarriage stations will be set up at the top of the landfill prior to the SCVWD gate and the access road to Locations B and D, and also at the Sheriff's facility at Location E. All vehicles will arrive at these wash stations clean and free of sediments, and will be cleaned another time before accessing the site, they will also be cleaned at the wheel wash station upon exiting the access road. Work activities will be conducted outside of the nesting bird season so impacts to nesting birds are not anticipated. No grading of the access roads to Locations B and D will occur, and only minimal existing erosional channels within these access roads will be filled with rock to minimize the potential for increased degradation of these areas.

- **Condition 10. Fuel Buffer.**

This condition applies to projects that are covered under the Habitat Plan and located within Preserve System lands; or in the Diablo Range or Santa Cruz Mountains; or in grassland, chaparral, oak woodland, or conifer woodland types; or in areas designated by the County as a very high fire hazard severity zones. This condition helps provide fire protection by establishing minimum standards for removing brush, flammable vegetation, or combustible growth near occupied structures. To minimize the potential for fire, the existing access road to Locations B and D will be string trimmed/mowed to a width of 12-feet, and the work areas at Locations B, D, and E will similarly be string trimmed/mowed. All vegetation down to the ground surface will be removed, and either offhauled from the site, or segregated within the work area that it was removed from. This vegetation will then be chipped/shredded, and used during site stabilization.

- **Condition 13. Serpentine and Associated Covered Species Avoidance and Minimization.**

This condition applies to projects that are located on sites with serpentine soils and helps to minimize or avoid impacts on serpentine soils by prescribing surveys, plant salvage, and other requirements. Extensive plant surveys and Bay checkerspot butterfly surveys have taken place within the access roads and work areas associated with the project, these survey reports and mapped occurrences of the covered plants and Bay checkerspot butterfly were included with the HCP application. The work areas associated with the project were designed to avoid as many covered species and the highest quality serpentine habitats to the extent feasible while still allowing for a safe working environment that allowed work to proceed. The HCP administrators and agencies were informed of the construction schedule so that plant salvage could be considered and potentially implemented.

- **Condition 19. Plant Salvage when Impacts are Unavoidable.**

This condition applies to projects that cannot avoid impacts on covered plants and helps protect covered plants by prescribing salvage whenever avoidance of impacts is not feasible. The work locations associated with the project will be temporarily impacted and only small numbers of covered species will be taken by construction activities. PG&E does not propose to salvage or transplant covered plants due to the limited work locations associated with the project and concerns regarding soil pathogens with transplanted plants. Plant salvage was discussed with the HCP administrators and resource agencies during initial project planning. This was determined to not be feasible and would result in a limited chance of survival of the transplanted plants. The resource agencies were also concerned about Phytophthora and the potential for spreading it during transplanting. As the covered annual plants have already

senesced, salvage of the plants and seed materials is not feasible. Where excavation will occur the top 2" of the topsoil will be segregated separately and respreads over the excavation site to aid in preservation of the native seedbank.

- **Condition 20. Avoid and Minimize Impacts to Covered Plant Occurrences.**

This condition applies to projects that are located in areas where covered plant species are likely to occur and within a covered plant survey area; this condition helps protect certain plant species by requiring plant surveys, specific avoidance and minimization practices (e.g., using seclusion fencing), and monitoring. The appropriate plant surveys were conducted during the appropriate blooming period for the covered plants. The results of these surveys are included in the HCP application. Covered plants were avoided to the extent feasible by designing the work areas to avoid as many plants as possible, and also avoiding the highest quality serpentine habitats. These work areas will be surrounded by high visibility fencing to minimize the potential to impact adjacent areas.

#### **Covered Plant Surveys**

Surveys for the relevant plant species were conducted in 2015 during the appropriate blooming periods for the species, and Figures 6 and 7 show the locations of the covered plant populations. Documentation on each population of the covered plants, and which occurrences they correspond to, is included in the Special-status Plant Survey Report included as Attachment 4. California Natural Diversity Database (CNDDDB) forms are also included for these populations, in Attachment 4.

#### **Avoidance and Minimization**

The work locations associated with the project have been minimized to the extent feasible, while still allowing the work to proceed in a safe manner. To further minimize any potential impacts to covered plants, the work areas at Locations B, D, E, and the temporary staging area will be surrounded by fencing to delineate the work area boundary. This fencing will consist of rope and t-posts, orange construction fencing, or similar high visibility fencing. On the steep slopes downslope of the Location D work area, silt fencing may be installed to minimize the potential for sediments to roll downslope.

#### **Site Monitoring, Assessment, and Management**

Work activities at Location D will take place within a population of smooth lessingia and most-beautiful jewelflower. These populations are very extensive as shown on Figures 6 and 7, and connect with documented occurrences for smooth Lessingia and for most-beautiful jewelflower at the Anderson Dam Spillway (CNDDDB Occurrences 6 and 87, respectively).



Impacts to these covered plant populations are expected to be less than 5% of the total occurrence as due to the limited number of plants within the work area relative to the larger occurrence and suitable habitat in the area. Per the HCP, impacts to less than 5% of the total occurrence for these plant species do not require monitoring, nor will it count as a permanent impact.

Coyote ceanothus impacts are expected to be less than 5% of the total occurrence, but per the HCP, follow up monitoring by the Implementing Entity (Santa Clara Valley Habitat Agency) is required. It is expected that this monitoring will occur for a 5-year period post-construction.

**ATTACHMENT 3**

**FEEES AND CHARGES**

Fee type	Impact type	Fee rate	Acres (or linear feet)	Fee Multiplication Factor	Total
<i>Land Cover Fees</i>					
Zone A	Permanent	\$18,004 per acre	1.8		\$32,407.20
	Temporary		2.5		\$1,800.40
Zone B	Permanent	\$12,482 per acre			
	Temporary		0.3	0.04	\$149.78
<i>Special Fees (fees are in addition to land cover fees)</i>					
Serpentine	Permanent	\$58,586 per acre	1.6		\$93,737.60
	Temporary		2.6	0.04	\$6,092.94
<b>Total Mitigation Fees</b>					<b>\$134,187.93</b>
<b>PSE Charge</b> (\$5,000 or 10% of mitigation fees, whichever is greater)					<b>\$13,418.79</b>
<b>Administrative Costs</b>					<b>Reimbursement of actual costs</b>

VHA-2015-008  
Pacific Gas & Electric Company  
T-1065 Hydrotest Project  
09/11/2015

**ATTACHMENT 4**

**TABLE 6-2 CONDITION 3 COMPLIANCE TABLES**

**Table 1. Conditions 3, 4, and 5 Avoidance and Minimization Measures – All Projects**

ID	Avoidance and Minimization Measure (AMM)	Project Type	Applies to Proposed Project		Documentation of compliance with AMM <sup>a</sup>
			Yes	No	
	<b>General</b>				
1	Minimize the potential impacts on covered species most likely to be affected by changes in hydrology and water quality.	All	X		A SWPPP will be implemented and sediment control BMPs will be installed around the perimeter of the work areas
2	Reduce stream pollution by removing pollutants from surface runoff before the polluted surface runoff reaches local streams.	All	X		BMPs will be installed around perimeter of the work areas to prevent pollutants from existing the work areas
3	Maintain the current hydrograph and, to the extent possible, restore the hydrograph to more closely resemble predevelopment conditions.	All		X	
5	Invasive plant species removed during maintenance will be handled and disposed of in such a manner as to prevent further spread of the invasive species.	All	X		Any invasive plant species will be handled and disposed of properly to prevent further spread
7	Personnel shall prevent the accidental release of chemicals, fuels, lubricants, and non-storm drainage water into channels.	All	X		Worker training and a SWPPP will be implemented
8	Spill prevention kits shall always be in close proximity when using hazardous materials (e.g., crew trucks and other logical locations).	All	X		Spill prevention kits will be kept at all work locations
11	Vehicles shall be washed only at approved areas. No washing of vehicles shall occur at job sites.	All	X		Vehicles will be washed offsite, and at designated wheel and undercarriage wash stations

ID	Avoidance and Minimization Measure (AMM)	Project Type	Applies to Proposed Project		Documentation of compliance with AMM <sup>a</sup>
			Yes	No	
14	If high levels of groundwater in a work area are encountered, the water is pumped out of the work site. If necessary to protect water quality, the water shall be directed into specifically constructed infiltration basins, into holding ponds, or onto areas with vegetation to remove sediment prior to the water re-entering a creek.	All		X	No groundwater is expected to be encountered due to elevations of the project sites
<b>Project Design</b>					
34	Use the minimum amount of impermeable surface (building footprint, paved driveway, etc.) as practicable.	All	X		No impermeable surfaces will be created by the project
35	Use pervious materials, such as gravel or turf pavers, in place of asphalt or concrete to the extent practicable.	All	X		See above
36	Use flow control structures such as swales, retention/detention areas, and/or cisterns to maintain the existing (pre-project) peak runoff.	All		X	
37	Direct downspouts to swales or gardens instead of storm drain inlets.	All		X	
38	Use flow dissipaters at runoff inlets (e.g., culvert drop-inlets) to reduce the possibility of channel scour at the point of flow entry.	All		X	
39	Minimize alterations to existing contours and slopes, including grading the minimum area necessary.	All	X		Grading will only take place at Location E at the access road. This will be kept to the minimum necessary and post-project the contour and slope will be restored to as near its pre-project condition as feasible
40	Maintain native shrubs, trees and groundcover whenever possible and revegetate disturbed areas with local native or non-invasive plants.	All	X		Vegetated areas were avoided to the extent feasible. Revegetation and restoration will be coordinated with USFWS and CDFW due to the concern of spreading <i>Phytophthora</i>

ID	Avoidance and Minimization Measure (AMM)	Project Type	Applies to Proposed Project		Documentation of compliance with AMM <sup>a</sup>
			Yes	No	
41	Combine flow-control with flood control and/or treatment facilities in the form of detention/retention basins, ponds, and/or constructed wetlands.	All		X	
42	Use flow control structures, permeable pavement, cisterns, and other runoff management methods to ensure no change in post-construction peak runoff volume from pre-project conditions for all covered activities with more than 5,000 square feet of impervious surface.	All		X	
51	All projects will be conducted in conformance with applicable County and/or city drainage policies.	All		X	
53	When possible, maintain a vegetated buffer strip between staging/excavation areas and receiving waters.	All	X		Vegetated areas will be maintained between all work areas and the nearest receiving waters
<b>Construction</b>					
61	Minimize ground disturbance to the smallest area feasible.	All	X		Ground disturbance has been minimized to the extent feasible
62	Use existing roads for access and disturbed area for staging as site constraints allow. Off-road travel will avoid sensitive communities such as wetlands and known occurrences of covered plants.	All	X		Existing roads will be used to access Locations B and D. Staging and work areas were chosen to avoid as many special-status plants as feasible
63	Prepare and implement sediment erosion control plans.	All	X		SWPPP prepared for the project
64	No winter grading unless approved by City Engineer and specific erosion control measures are incorporated.	All	X		Grading will occur in September following project approvals

ID	Avoidance and Minimization Measure (AMM)	Project Type	Applies to Proposed Project		Documentation of compliance with AMM <sup>a</sup>
			Yes	No	
65	Control exposed soil by stabilizing slopes (e.g., with erosion control blankets) and protecting channels (e.g., using silt fences or straw wattles).	All	X		Sites will be stabilized post construction and BMPs will be installed around the project sites. Final stabilization will be coordinated with USFWS, CDFW, and the RWQCB
66	Control sediment runoff using sandbag barriers or straw wattles.	All	X		BMPs will be installed per the SWPPP
67	No stockpiling or placement of erodible materials in waterways or along areas of natural stormwater flow where materials could be washed into waterways.	All	X		Soil will be stockpiled outside of waterways of along natural stormwater flow channels
68	Stabilize stockpiled soil with geotextile or plastic covers.	All	X		Stockpiled soil will be stabilized per the SWPPP
69	Maintain construction activities within a defined project area to reduce the amount of disturbed area.	All	X		Work areas will be surrounded by high-visibility fencing and all work will occur within these areas
70	Only clear/prepare land that will be actively under construction in the near term.	All	X		All work areas associated with the project will be actively used in the near-term
71	Preserve existing vegetation to the extent possible.	All	X		Existing vegetation has been avoided to the extent feasible through the design of the work areas and use of existing access roads
72	Equipment storage, fueling and staging areas will be sited on disturbed areas or non-sensitive habitat outside of a stream channel.	All	X		Equipment storage will be within the work areas in the application package

ID	Avoidance and Minimization Measure (AMM)	Project Type	Applies to Proposed Project		Documentation of compliance with AMM <sup>a</sup>
			Yes	No	
73	Avoid wet season construction.	All		X	To meet the CPUC requirements for the pipeline work must continue past October 15.
74	Stabilize site ingress/egress locations.	All	X		Ingress and egress locations will be stabilized per the SWPPP
75	Dispose of all construction waste in designated areas and prevent stormwater from flowing onto or off of these areas.	All	X		Construction waste will be disposed at an appropriate offsite location
76	Prevent spills and clean up spilled materials.	All	X		Spills will be cleaned up immediately and their cleanup will be documented
77	Sweep nearby streets at least once a day.	All	X		If trackout occurs associated with the project, it will be swept up at least once per day
83	Sediments will be stored and transported in a manner that minimizes water quality impacts. If soil is stockpiled, no runoff will be allowed to flow back to the channel.	All	X		Soil will be stockpiled in an appropriate manner per the SWPPP
84	Fiber rolls used for erosion control will be certified as free of noxious weed seed.	All	X		Only certified weed-free fiber rolls will be used for erosion control
85	Seed mixtures applied for erosion control will not contain invasive nonnative species and will be composed of native species or sterile nonnative species. If sterile nonnative species are used for temporary erosion control, native seed mixtures must be used in subsequent treatments to provide long-term erosion control and slow colonization by invasive nonnatives.	All	X		Site stabilization will be coordinated with CDFW and USFWS. At the moment, they are requesting that no seeding occurs at Locations B, D, and E



ID	Avoidance and Minimization Measure (AMM)	Project Type	Applies to Proposed Project		Documentation of compliance with AMM <sup>a</sup>
			Yes	No	
86	Topsoil removed during soil excavation will be preserved and used as topsoil during revegetation when it is necessary to conserve the natural seed bank and aid in revegetation of the site.	All	X		Excavated topsoil will be stockpiled separately and spread over the excavation site post-construction
88	Vehicles and equipment will be parked on pavement, existing roads, and previously disturbed areas.	All	X		Vehicles will park only in the work areas included in the application, or within existing access roads
89	The potential for traffic impacts on terrestrial animal species will be minimized by adopting traffic speed limits.	All	X		Speed limits on the unpaved access roads will be implanted. Established speed limits on public roads will be adhered to
90	All trash will be removed from the site daily to avoid attracting potential predators to the site. Personnel will clean the work site before leaving each day by removing all litter and construction-related materials.	All	X		Trash will be removed from the work locations on a daily basis
93	When accessing upland areas adjacent to riparian areas or streams, access routes on slopes of greater than 20% should generally be avoided. Subsequent to access, any sloped area should be examined for evidence of instability and either revegetated or filled as necessary to prevent future landslide or erosion.	All		X	No access roads are immediately adjacent to riparian areas or streams
94	Personnel shall use existing access ramps and roads if available. If temporary access points are necessary, they shall be constructed in a manner that minimizes impacts to streams.	All	X		Existing access roads will be used to access Locations B and D. The access to Location E will be constructed in a manner to minimize impacts to streams
95	To prevent inadvertent entrapment of animals during excavation, all excavated, steep-walled holes or trenches more than 2-feet deep will be covered at the close of each working day by plywood or similar materials, or provided with one or more escape ramps constructed of earth fill or wooden planks.	All	X		Excavations will either be plated at the end of the day or provided with an escape ramp for wildlife

ID	Avoidance and Minimization Measure (AMM)	Project Type	Applies to Proposed Project		Documentation of compliance with AMM <sup>a</sup>
			Yes	No	
97	Erosion control measures shall be in place at all times during construction. Do not start construction until all temporary control devices (straw bales, silt fences, etc.) are in place downstream of project site.	All	X		Erosion control BMPs per the SWPPP will be installed prior to construction but after vegetation removal
<b>Post-Construction</b>					
99	Conduct street cleaning on a regular basis	All	X		If trackout associated with the project occurs, it will be cleaned on a regular basis
100	Potential contaminating materials must be stored in covered storage areas or secondary containment that is impervious to leaks and spills	All	X		Materials will be stored appropriately to minimize the potential for leaks and spills
101	Runoff pathways shall be free of trash containers or trash storage areas. Trash storage areas shall be screened or walled	All	X		Trash will not be stored within runoff pathways, and will be removed from the project sites daily
103	All disturbed soils will be revegetated with native plants and/or grasses or sterile nonnative species suitable for the altered soil conditions upon completion of construction. Local watershed native plants will be used if available. If sterile nonnative species are used for temporary erosion control, native seed mixtures must be used in subsequent treatments to provide long-term erosion control and slow colonization by invasive nonnatives. All disturbed areas that have been compacted shall be de-compacted prior to planting or seeding. Cut-and-fill slopes will be planted with local native or non-invasive plants suitable for the altered soil conditions.	All	X		Revegetation will be coordinated with USFWS, CDFW, and RWQCB. Currently USFWS and CDFW are recommending that no planting or seeding takes place due to the potential to spread <i>Phytophthora</i>
104	Measures will be utilized on site to prevent erosion along streams (e.g., from road cuts or other grading), including in streams that cross or are adjacent to the project proponent's property. Erosion control measures will utilize natural methods such as erosion control mats or fabric, contour wattling, brush mattresses, or brush layers. For more approaches and detail, please see the <i>Bank Protection/ Erosion Repair Design Guide</i> in the Santa Clara Valley Water Resources Protection Collaborative's <i>User Manual: Guidelines &amp; Standards for Land Use Near Streams</i> (Santa Clara Valley Water Resources Protection Collaborative 2006).	All		X	

ID	Avoidance and Minimization Measure (AMM)	Project Type	Applies to Proposed Project		Documentation of compliance with AMM <sup>a</sup>
			Yes	No	
112	Pumps and generators shall be maintained and operated in a manner that minimizes impacts to water quality and aquatic species.	All	X		Equipment will be maintained and operated to minimize the potential for impacts to water quality and aquatic life
114	Erosion control methods shall be used as appropriate during all phases of routine maintenance projects to control sediment and minimize water quality impacts.	All	X		Appropriate BMPs as identified in the SWPPP will be implemented
115	All construction pipes, culverts, or similar structures with a diameter of 4 inches or greater that are stored at a construction site for one or more overnight periods will be thoroughly inspected for wildlife by properly trained construction personnel before the pipe is subsequently buried, capped, or otherwise used or moved in anyway.	All	X		Pipes and similar structures will be capped at the end of the work day, or thoroughly inspected for wildlife by trained personnel before it is moved or used

<sup>a</sup> Documentation may be provided as a separate document and referenced here.

**Table 7. Conditions 3, 4, and 5 Avoidance and Minimization Measures – Trails**

ID	Avoidance and Minimization Measure (AMM)	Project Type	Applies to Proposed Project		Documentation of compliance with AMM or rationale for why AMM does not apply <sup>a</sup>
			Yes	No	
<b>General</b>					
29	Existing native vegetation shall be retained by removing only as much vegetation as necessary to accommodate the trail clearing width. Maintenance roads should be used to avoid effects on riparian corridors.	Trails	X		Existing roads will be used to access Locations B and D, these roads will be trimmed to the ground surface to allow for safe access to the construction sites. The access road to Location E was chosen to avoid as much native vegetation as feasible
<b>Project Design</b>					
48	Trails will be sited and designed with the smallest footprint necessary to cross through the in-stream area. Trails will be aligned perpendicular to the channel and be designed to avoid any potential for future erosion. New trails that follow stream courses will be sited outside the riparian corridor.	Trails		X	
57	When parallel to a stream or riparian zone and not located on top of a levee, new trails shall be located behind the top of bank or at the outside edge of the riparian zone except where topographic, resource management, or other constraints or management objectives make this not feasible or undesirable.	Trails		X	
58	Existing access routes and levee roads shall be used if available to minimize impacts of new construction in special status species habitats and riparian zones.	Trails	X		Existing access roads will be used to Locations B and D. The access road to Location D was chosen to avoid as many native plants as possible
59	Trails in areas of moderate or difficult terrain and adjacent to a riparian zone shall be composed of natural materials or shall be designed (e.g., a bridge or boardwalk) to minimize disturbance and need for drainage structures, and to protect water quality.	Trails		X	
60	Trail crossings of freshwater stream zones and drainages shall be designed to	Trails		X	

	<p>minimize disturbance, through the use of bridges or culverts, whichever is least environmentally damaging. Structures over water courses shall be carefully placed to minimize disturbance. Erosion control measures shall be taken to prevent erosion at the outfalls of drainage structures.</p>				
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<sup>a</sup> Documentation may be provided as a separate document and referenced here.