

State of California
Department of Fish and Wildlife



Memorandum

Date: May 8, 2022

To: Ms. Caitlin De La Torre
California Department of Transportation
District 4
Office of Environmental Management
111 Grand Avenue
Oakland, CA 94623
Caitlin.DeLaTorre@dot.ca.gov

DocuSigned by:

Erin Chappell

From: Ms. Erin Chappell, Regional Manager
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: Incidental Take Permit for 2081-2019-059-03 State Route 84 Expressway Widening and SR-84/I-680 Improvements Project, EA 04-29763, Alameda County, Amendment No. 1

Enclosed you will find an electronic copy of the Incidental Take Permit Amendment for the above referenced Project, which has been digitally signed by the California Department of Fish and Wildlife (CDFW). Please read the permit carefully and sign the acknowledgement **no later than 30 days from CDFW signature** and prior to initiation of ground-disturbing activities. You may return an electronic copy of the permit with digital signature to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5. Alternatively, you may return a hard copy of the permit via mail to:

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

You are advised to keep the permit in a secure location and distribute copies to appropriate project staff responsible for ensuring compliance with the conditions of approval of the permit. **Note that you are required to comply with certain conditions of approval prior to continuation of ground-disturbing activities.** Additionally, a copy of the permit must be maintained at the project work site and made available for inspection by CDFW staff when requested.

The permit amendment will not take effect until the signed acknowledgment is received by CDFW. If you wish to discuss these instructions or have questions regarding the permit, please contact Mr. Robert Stanley, Senior Environmental Scientist (Specialist), at (707) 339-6534 or Robert.Stanley@wildlife.ca.gov; or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory) at (707) 339-6066 or Wesley.Stokes@wildlife.ca.gov.

Enclosures

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
BAY DELTA REGION
2825 CORDELIA ROAD, SUITE 100
FAIRFIELD, CA 94534**



AMENDMENT NO. 1

(A Major Amendment)

California Endangered Species Act

Incidental Take Permit No. 2081-2019-059-03

California Department of Transportation (Caltrans), District 4

State Route 84 Expressway Widening and SR-84/I-680 Improvements Project,

EA 04-29763, Alameda County, Alameda County

INTRODUCTION

On September 11, 2020, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2019-059-03 (ITP) to the California Department of Transportation (Permittee) for take of Alameda whipsnake a.k.a. Alameda striped racer (*Masticophis lateralis euryxanthus*) and California tiger salamander (*Ambystoma californiense*), the Covered Species associated with the State Route 84 Expressway Widening and SR-84/I-680 Improvements Project in Alameda County, California. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

This Major Amendment No. 1 (Amendment) makes the following changes to the existing ITP:

First, to update the Contact Person; Second, to update the Project Description; Third, to update the impacts section to reflect an increase on the taking of Covered Species within the Project limits for temporary impacts; Fourth, update Condition of Approval 9 as it pertains to Habitat Management Land Acquisition and Restoration; Fifth, update to the On-Site Restoration/Habitat Enhancement Plan for Temporary Impacts; Sixth, update to Condition of Approval 10 as it pertains to Security Performance; Seventh, to update the Findings Pursuant to CESA.

AMENDMENT

The ITP is amended as follows (amended language in ***bold italics***; deleted language in ~~strikethrough~~):

1. Contact Person Information

Contact Person: ~~John Yeaker, (510) 286-5618~~ ***Caitlin De La Torre, (510) 715-6247***

E-Mail: ~~John.Yeakel@dot.ca.gov~~ **Caitlin.Delatorre@dot.ca.gov**

2. Project Description; New Auxiliary Road, Paragraph 1, Line 14.

The Project will construct an approximately 1,000-foot-long auxiliary lane on southbound I-680, to the south of Calaveras Road/Paloma Way. The Project will require acquisition along the frontage of a San Francisco Public Utilities Commission (SFPUC) property, located west of I-680 between Alameda Creek and Paloma Way, to accommodate widening along southbound I-680. The property is under a long-term mining lease [Surface Mining Permit No. 32 (SMP-32)]. To accommodate the widening, an existing dirt access road, a line of Pacific Gas and Electric Company (PG&E) and American Telephone and Telegraph Company (AT&T) poles, and three SFPUC water lines that are parallel to and west of I-680 will be relocated approximately 30 feet to the west of their current locations. The relocated access road will be constructed with aggregate base material placed on compacted native soil. As required by SMP-32 conditions, trees were planted west of the existing access road in the mid-1990s to screen views of SMP-32 mining activities from the highway. Approximately 100 trees adjacent to the existing access road will be removed and 9 will be relocated for the realigned access road and utilities. **Along retaining Wall 18, the overhead alignment and poles will be shifted slightly to the north to allow for additional construction access and avoid conflicts with existing overhead utilities during pole and overhead line relocation.**

3. Project Impacts; Habitat Management Land Acquisition and Restoration; Paragraph 2, Line 8.

Impacts on the Taking of Covered Species

The Project is expected to impact ~~98.22~~ **98.26** acres of suitable habitat for Covered Species (Figure 2 and 4) within the SR-84/I-680 corridor, impacts to California tiger salamander (CTS) suitable habitat include the permanent loss of 40.33 acres, the temporary loss of ~~38.42~~ **38.46** acres, and 15.095 acres of indirect impact resulting from additional light source installations (Figure 2 and 3). Within Collier Canyon Preserve, impacts to CTS suitable habitat resulting from aquatic breeding habitat creation include the permanent loss of 1.32 acres and the temporary loss of 3.06 acres (Figure 4). Impacts to Alameda whipsnake (AWS) suitable habitat include the permanent loss of 16.38 acres and the temporary loss 20.32 acres within the SR-84/I-680 corridor. All impacts to AWS suitable habitat overlap with CTS suitable habitat **with the exception of 0.04 acres of Covered Species habitat of additional temporary impacts notified in Major Amendment No. 1 that applies to CTS Covered Species only.**

4. Condition of Approval 9; Habitat Management Land Acquisition and Restoration

Major Amendment No. 1
Incidental Take Permit 2081-2019-059-03
CALIFORNIA DEPARTMENT OF TRANSPORTATION, DISTRICT 4
SR-84 Widening SR-84/I-680 Improvements Project

Habitat Management Land Acquisition and Restoration:

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

To meet this requirement, the Permittee shall either purchase ~~478.885~~ **178.925** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of ~~478.885~~ **178.925** acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. No less than ~~69.46~~ **69.50** acres or credits shall support both AWS and CTS (**0.04 acres of the 69.50 acres is Covered Species Habitat for CTS and not concurrent with AWS**). Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations. The Permittee shall also restore on-site ~~41.47~~ **41.51** acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.6 below.

The Permittee has fulfilled the AWS compensatory habitat requirement of 69.46 acres from a CDFW-approved mitigation or conservation bank with the purchase of 70 AWS/CTS multi-species credits from the Ohlone West Conservation Bank, as specified in Attachment 2 (Bill of Sale and Purchase Agreement). The Permittee has partially fulfilled the CTS compensatory habitat requirement of ~~478.885~~ **178.925** acres from a CDFW-approved mitigation or conservation bank with the purchase of 70 AWS/CTS multi-species credits from the Ohlone West Conservation Bank, as specified in Attachment 2 (Bill of Sale and Purchase Agreement). To meet the remaining requirement, the Permittee shall either purchase ~~408.885~~ **108.889** acres of CTS credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of ~~408.885~~ **108.889** acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

Cost Estimates. CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands and restoration of temporarily disturbed habitat as follows:

Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$31,645.00 per acre; for ~~408.885~~ **108.889** acres: ~~\$3,445,665.00~~ **\$3,445,792.00**. Land acquisition costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;

Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at ~~\$147,234.00~~ **\$147,238.00**;

Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at ~~\$283,601.00~~ **\$283,611.00**;

Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$7,306.00 per acre; for ~~408.885~~ **108.889**: ~~\$795,503.00~~ **\$795,543.00**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.

Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at **\$3,000.00**.

Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.6, calculated at \$2,175.00 per acre; for ~~41.47~~ **41.51** acres: ~~\$90,197.00~~ **\$90,284.00**.

Covered Species Credits. Permittee shall purchase ~~408.885~~ **108.889** acres of CTS Credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below.

5. Condition of Approval 9.6; On-Site Restoration/Habitat Enhancement Plan/Fish Passage Improvement Plan; Paragraph 1, Line 4.

On-Site Restoration/Habitat Enhancement Plan for Temporary Impacts. The plan shall be prepared by a Qualified Biologist or Habitat/Stream Restoration Specialist

and submitted for CDFW review and approval in writing a minimum of 30 days prior to the initiation of construction. The plan shall address restoration or enhancement of at least ~~41.47~~ **41.51** acres of Covered Species Habitat. The Permittee shall restore 3.06 acres of annual grassland habitat at Collier Creek Preserve and ~~38.41~~ **38.45** acres of Covered Species habitat shall be restored within the SR-84/I-680 corridor. The ~~38.41~~ **38.45**-acre total at the SR-84/I-680 corridor shall include a minimum of ~~35.27~~ **35.31** acres of annual grassland restoration, 2.93 acres of riparian and woodland restoration and 0.21 acres of aquatic habitat restoration as follows:

Annual Grassland Restoration and Enhancement. All exposed/disturbed soils left barren of vegetation in areas of temporary impact within the SR-84/I-680 corridor and at the Collier Creek Preserve Site including staging areas, access roads and upland areas shall be revegetated immediately following work activities. Impacted areas shall be revegetated with native plants and/or saplings, if feasible, or seeded with an erosion control seed mix consisting of native forbs, shrubs, wildflowers, and grasses. Revegetation shall be completed after construction has concluded and as soon as possible after earthmoving activities cease; however, plantings will be most successful if done during the rainy season. Seeding placed after October 15 shall be applied by hydroseed or fiber rolls. Erosion control blankets with monofilament or woven plastic strands shall not be used. The Annual Grassland section of the restoration and enhancement plan shall note areas of impact and proposed areas of seeding. Submission in the form of a map or figure that outlines areas of impacts and areas of re-seeding should also be included. At the discretion of CDFW, all exposed areas where seeding is unsuccessful after 90 days shall receive appropriate soil preparation and a second application of seeding or mulch as soon as is practical on a day mutually agreed upon with CDFW.

Riparian and Woodland Restoration and Enhancement. The riparian and woodland enhancement section of the Plan shall include an inventory of the native tree and shrub species known to occur on-site as well as a plant pallet of the proposed species for restoration and a map or plan set that illustrates the proposed areas of restoration plantings. All plantings replacement ratios shall be developed in consultation with CDFW and shall be derived from locally available genotypes. The Permittee shall monitor the survival and vigor of on-site plantings for a period of 10 years to ensure attainment of a 75% survivorship after 10 years, with the final two years occurring without supplemental watering. If success criteria are not achieved within 10 years, additional years of enhancement and monitoring shall be required until the criteria is met. Removal of invasive plant species rated as "High" by the

California Invasive Plant Council shall be removed from the site to achieve a 10% or less ground cover within the on-site restoration area(s) over a period of 10 years. All success criteria shall be subject to additional management actions occurring over additional years, if milestones are not achieved as noted herein.

Aquatic Breeding Habit Restoration and Enhancement. The aquatic breeding habitat section of the restoration and enhancement plan shall include a plant pallet for emergent freshwater vegetation to an area of 0.21 acres that shall be based on the native species of vegetation that currently exist on-site. Plantings shall occur along or above the top of bank within areas of temporary impact to aquatic habitat. The emergent freshwater vegetation shall be subject to a 50% ground cover success criteria over 10 years within the 0.21-acre restoration area. Verification that the restoration areas can hold water through the appropriate hydroperiods for Covered Species by using satellite imagery of past seasons and on-site photographic image comparisons of before and after construction during the rainy season from multiple angles shall be analyzed to determine if the areas are successfully holding water. If success criteria are not achieved within 10 years. Removal of invasive plant species designated by the California Invasive Plant Council as “High” shall be removed from the site to achieve a 10% or less ground cover within the restoration area over a period of 10 years. All success criteria shall be subject to additional management actions occurring over additional years, if milestones are not achieved as noted herein.

6. Condition of Approval 10.1; Performance Security, Security Amount, Line 1

Security Amount. The Security shall be in the amount of ~~\$4,765,920.00~~ **\$4,765,468.00**. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.

7. Findings Pursuant to CESA; Paragraph 2, Item 2, Line 8.

Findings Pursuant to CESA:

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

CDFW finds based on substantial evidence in the ITP application, SR-84 Expressway Widening and SR-84/I-680 Interchange Improvements Project, the results of site visits, consultations and meetings, and the administrative record of proceedings, that

issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of ~~178.885~~ **178.925** acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

All terms and conditions of the ITP and MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

FINDINGS

Issuance of this Amendment will increase the amount of take of the Covered Species compared to the Project as originally approved; however, by implementing additional habitat mitigation land acquisition and restoration for 0.04 acres of Covered Species habitat, it is not expected that this Amendment will increase Project impacts on these species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

Discussion: CDFW determined in September 2020 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because the Project and ITP as amended implements additional habitat mitigation land

acquisition and restoration on-site of 0.04 acres of Covered Species habitat. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP's Conditions of Approval and MMRP will minimize and fully mitigate impacts of the taking on the Covered Species.

None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.

Discussion: CDFW issued the ITP in September 2020 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the SR-84 Expressway Widening and SR-84/I-680 Interchange Improvements Project Rehabilitation Project Environmental Impact Report (SCH No. 2016052033) dated April 2018 that the California Department of Transportation adopted for the SR-84 Expressway Widening and SR-84/I-680 Interchange Improvements Project on June 5, 2018 prepared by the California Department of Transportation. as the lead agency for the Project. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment represents a major change in the Project as originally approved. However, for the reasons explained above, CDFW concludes this Amendment is not a change in the Project that has the potential to create a new significant effect not previously analyzed, a substantial change in the circumstances under which the Project is being undertaken requiring major revisions to previous CEQA documents, or new information of substantial importance. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required by CEQA as part of CDFW's approval of this Amendment.

CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Discussion: This Amendment increases the temporary impacts to Covered Species habitat by 0.04 acres and updates habitat land acquisition and restoration acreage and financial security monetary amounts. As described above, these changes have increased the temporary impacts to Covered Species habitat by 0.04 acres and may result in additional take to the Covered Species by relocation of utility poles as described above, the scope and nature of the mitigation funding has significantly changed. Therefore, this Amendment will significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or monitoring measures in the ITP. CDFW has determined that the change to the ITP constitutes a Major Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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

Alternatively, the Permittee shall email the digitally signed ITP to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5.

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 6/8/2022

DocuSigned by:
Erin Chappell
B77E9A6211EE486
Erin Chappell, Regional Manager
Bay Delta Region

ACKNOWLEDGMENT

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

By: *Caitlin De La Torre* Date: 6/13/2022

Printed Name: Caitlin De La Torre Title: Branch Chief

Major Amendment No. 1
Incidental Take Permit 2081-2019-059-03
CALIFORNIA DEPARTMENT OF TRANSPORTATION, DISTRICT 4
SR-84 Widening SR-84/I-680 Improvements Project