

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

CENTRAL REGION

1234 EAST SHAW AVENUE

FRESNO, CALIFORNIA 93710

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OCT 12 2018

DEPARTMENT OF FISH & WILDLIFE



AMENDMENT NO. 3

(A Major Amendment)

California Endangered Species Act

Incidental Take Permit No. 2081-2015-024-04

California High-Speed Train Project Fresno to Bakersfield Section Permitting Phase 1

INTRODUCTION

On June 15, 2015, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2015-024-04 (ITP) to the California High-Speed Rail Authority (Permittee) authorizing take of California tiger salamander (*Ambystoma californiense*), Tipton kangaroo rat (*Dipodomys nitratoide nitratoide*), San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), Swainson's hawk (*Buteo swainsoni*), and San Joaquin kit fox (*Vulpus macrotis mutica*) (collectively, the Covered Species) associated with and incidental to the Permitting Phase 1 of the Fresno to Bakersfield Section of the High-Speed Train (HST) Project (Project). The Project as described in the ITP originally issued by CDFW includes HST alignment beginning on the south side of the G Street and San Benito Street intersection, north of Highway 41, in the City of Fresno, Fresno County, California. From this intersection, the Fresno to Bakersfield HST alignment extends south either along or adjacent to the Burlington Northern Santa Fe Railway (BNSF) for approximately 99 miles before reaching the section endpoint, at the intersection of 7th Standard Road, and Santa Fe Way, within the city limits of Shafter, in Kern County, California.

The total length of the Project is 99 miles. The Project is the second of the nine California HST sections to be constructed; each section will function independently, but once joined together will create a statewide HST system. The HST will be an electrically powered with steel-wheel-on-steel-rail technology and state-of-the-art safety, signaling, and automated train-control systems. The trains will be capable of operating at speeds of up to 220 miles per hour (mph) over a fully-graded, separated, dedicated track alignment. The Project will be built using a design/build (D/B) approach, a method of construction by which one D/B contractor works under a single contract with the Permittee to provide design and construction services. The Project as originally permitted in the ITP includes construction and installation of all Project components, including disturbance of up to 5,868.00 acres (hereafter, Construction Footprint). Construction may occur at any point along the Construction Footprint, and construction may occur at multiple locations simultaneously. The Project also includes operations, maintenance, inspection activities within the Construction Footprint (O&M), and Mitigation Activities.

In an email dated June 24, 2016, the Permittee requested a revision of the ITP Project Description to include an increase in the Construction Footprint to 5,970.58 acres, and in a subsequent email dated July 25, 2016, the Permittee requested the addition of a third designation of approvable project biologists to carry out small mammal habitat assessment and trapping activities. On March 7, 2017, CDFW issued Major Amendment No. 1 to the ITP incorporating these requested revisions along with corrections to the impacts acreage, changes to the required Habitat Management lands acreage, and clarifications to the reporting requirement language.

On July 5, 2018 and September 19, 2018, CDFW initiated, issued, and re-issued respectively Major Amendment No. 2 to the ITP incorporating a Baseline Map Book as Exhibit 6 and adding references to the map book throughout the ITP; further revising the Tracking Suitable Habitat Feature Disturbances, Map Updating, and Reporting requirements; adding a specific Covered Activity (pile driving) and a species-specific Take Avoidance Measure for that Covered Activity; adding the third category of Biological Monitor, Designated Small Mammal Trapper, to Condition of Approval 6.2; clarifying the Construction Monitoring Notebook requirement; adding Condition of Approval 7.13 requiring survey and reporting requirements in advance of initiating Covered Activities; revising Conditions of Approval 8.13.2, 8.14.1, 8.15.1, 8.16.1, 8.16.2, 8.16.3, 8.17.2; and adding Condition of Approval 8.15.6.

In issuing the ITP, Major Amendment No. 1, and Major Amendment No. 2 (collectively the ITP, as amended), CDFW found, among other things, that Permittee's compliance with the Conditions of Approval would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

In a letter dated June 25, 2018, the Permittee requested a revision of the ITP, as amended, to change the Mitigation Site Construction Elements from the Fagundes Compensatory Mitigation Site to a different location, now recognized as Cottonwood Creek. Because the Permittee will no longer be conducting riparian and wetland restoration at the Fagundes Compensatory Mitigation Site, all reference to riparian and wetland restoration at the Fagundes site would need to be removed and replaced with the Cottonwood Creek mitigation site. Due to the varying conditions at the Cottonwood Creek site, some of the Construction Elements are also changing with the changes in mitigation site location from Fagundes to Cottonwood Creek. Further, on September 25, 2018, the Permittee requested a 7-day extension provision be added for San Joaquin antelope squirrel relocation.

This Major Amendment No. 3 (Amendment) makes the following changes to the ITP, as amended:

First, this Amendment removes all reference to the Fagundes Compensatory Mitigation Site and its location along Cross Creek.

Second, this Amendment revises the Project Description to (1) remove reference to the specific impact area for each Mitigation Site Construction Element; (2) distribute the maximum total temporary impact of 17.32 acres throughout all of the Mitigation Site Construction Elements; (3) modify the low end of the range of depth of the created vernal pools to three inches at the shallowest point of the pool; (4) replace inoculum collection occurring in a specific impact area with inoculum collection occurring from within no more than ten percent of the total area of natural vernal pools on site; and (5) eliminate the size and location of the staging areas within the Wetland Restoration area of the Mitigation Site.

Third, this Amendment removes the specific location reference to the area where soil, seeds, and organic material will be collected from natural vernal pools.

Fourth, this Amendment removes the tier system for selecting vernal pools for inoculum collection.

Fifth, this Amendment eliminates Figure 12 entirely.

Sixth, this Amendment removes and adds equipment that will be used in the Mitigation Site Construction and the associated Work Areas.

Seventh, this Amendment modifies Condition of Approval 7.4.1 to further clarify the suitable habitat features that should be tracked and to ensure tracking is consistent with Table 9.

Eighth, this Amendment allows the Permittee to request 7-day extensions for San Joaquin antelope squirrel relocation through November 15.

Ninth, this Amendment adds a Compliance Monitoring requirement at the Mitigation Site which requires the Designated Biologist to lead equipment and vehicles along the Access Routes to and from each Work Area.

Tenth, this Amendment revises the requirement for the Permittee to document the cumulatively disturbed acreages of the inoculum collection area, staging areas and access routes at the Mitigation Site in addition to the Vernal Pool Establishment Area and Riparian Restoration Area.

Eleventh, this Amendment revises the Burrow Avoidance and Excavation at the Mitigation Site condition of Approval to so that all small mammal burrows within the Vernal Pool Establishment Area, Riparian Restoration Area, and Staging Areas will be (1) flagged and avoided by at least 50 feet during all Covered Activities within those areas; and (2) that burrows within 0.7 mile of known or potential CTS breeding habitat shall be excavated if they cannot be avoided by the 50-foot no-disturbance buffer.

Twelfth, this Amendment adds a new Condition of Approval for Burrow Avoidance on Access Routes at the Mitigation Site.

AMENDMENT

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

1. The first paragraph of the Fagundes Compensatory Mitigation Site Construction Elements section of the Project Description section on pages 51 and 52 of the ITP, as amended, shall be amended to read:

Fagundes Compensatory Mitigation Site Construction Elements:

Permittee will conduct riparian and wetland restoration at the Fagundes Compensatory Mitigation Site (Mitigation Site(s)). The Mitigation Site consists of two parcels along Cross Creek: Parcel A, which is approximately 250 acres, and Parcel B, which is approximately 155 acres. The Mitigation Site is located approximately 12 miles northwest of the city of Visalia, five miles east of the city of Hanford, and 18 miles northeast of the SR 43/Cross Creek area (Figure 12). These two parcels are surrounded by agricultural lands, and support grassland habitat with scattered vernal pool complexes. Both parcels are currently used as pasture land for cattle. Cross Creek, which flows intermittently with surface water and irrigation tailwater, forms the southern border for both parcels. Construction activities at the Mitigation Site(s) will consist of ***up to 17.32 acres of temporarily impacted areas for the*** establishment (creation) of up to 8.7 acres of vernal pools (areas of vernal pool creation are called the Wetland Restoration Area), and a 5.6-acre Riparian Restoration Area, ***Inoculum Collection Areas (e.g., areas within the Mitigation Site(s) where inoculum would be collected), Staging Areas, and Access Routes.*** Preservation of a 14.7-acre riverine habitat along Cross Creek will also occur, though this will not involve any construction activities. There will also be 1.51 acres of temporarily impacted areas that will consist of up to 0.76 acres of Inoculum Collection Areas (e.g. areas within the Mitigation Site where inoculum would be collected), a 0.25-acre temporary staging area for the riparian restoration, and a 0.5-acre temporary staging areas for the vernal pool establishment (Figure 12). The 0.76 acres of Inoculum Collection Areas will be located in the various existing vernal pools present on the Mitigation Site.

2. The second paragraph under the Land Grading and Contouring section of the Project Description on page 52 of the ITP, as amended, shall be amended to read:

Excavation depths will vary for each created vernal pool and will be determined by created vernal pool size, shape, slope, and position. Created vernal pools will include topographic outlet features that will limit ponding depth to better

mimic the natural features in the adjacent vernal pool landscape. Created vernal pool depths will range from ~~four~~ **three** to 15 inches.

3. The last bulleted paragraph under the Land Grading and Contouring section of the Project Description on page 52 of the ITP, as amended, shall be further amended to read:

- Within the ~~8.7-acre~~ Wetland Restoration Area, the top three to four inches of topsoil will be scraped down and salvaged where feasible. The salvaged topsoil will be stockpiled in an adjacent area for reapplication in restored upland areas around the created vernal pools.

4. The sixth bulleted paragraph under the Land Grading and Contouring section of the Project Description on page 53 of the ITP, as amended, shall be further amended to read:

- Inoculum will be collected from ~~up to 0.76 acres~~ **no more than ten percent of the total area of any given donor** natural vernal pools within the Inoculum Collection Area only and distributed within the created vernal pool basins.

5. The eighth bulleted paragraph under the Staging Areas section of the Project Description on page 53 of the ITP, as amended, shall be further amended to read:

- Staging Areas: Development of the Wetland Restoration Area will require the temporary establishment of ~~a 0.5-acre Staging Area(s), located off the major gate/ranch road at 36.400814, -119.488886 (Figure 12),~~ to provide a storage and laydown areas to support vernal pool creation. Similarly, development of the Riparian Restoration Area will require the temporary establishment of ~~a 0.25-acre Staging Area(s) located at 36.386506, -119.504377 (Figure 12).~~ These two staging areas within the Mitigation Site(s) are collectively referred to as the Staging Areas.

6. The last bulleted paragraph of the Project Description on page 53 of the ITP, as amended, shall be further amended to read:

- Wetland Vegetation Establishment, Inoculum Collection, and Inoculation: Created vernal pools will be inoculated with a mix of soil, seeds, and organic material collected from ~~up to two acres of~~ natural vernal pools in the Inoculum Collection Area.

7. The first paragraph of the Project Description on page 54 of the ITP, as amended, shall be deleted as follows:

~~To select vernal pools for inoculum collection, vernal pools will be divided into four tiers. The first three tiers will include vernal pools supporting federally-listed large branchiopods. Among these vernal pools, those that are deeper, with a high density of vernal pool indicator species, will be harvested first (Tier 1). If more inoculum is needed, it will be collected from vernal pools with a moderate density of vernal pool indicator species (Tier 2). If more inoculum is still needed, it will be collected from vernal pools with a low density of vernal pool indicator species (Tier 3). If yet more inoculum is needed, it will be collected from additional natural vernal pools that support a high to moderate density of non-listed vernal pool indicator plants and large branchiopods.~~

8. The last paragraph on page 55 of the Project Description of the ITP, as amended, shall be further amended to read:

Permittee will conduct riparian and riverine restoration and enhancement along the ~~existing Cross Creek~~ a riparian corridor. Restoration of riparian cover will involve planting the appropriate riparian species (based on the species currently growing in the area), irrigating during plant establishment, and installing riparian exclusion fencing or fencing around plantings to protect them from cattle grazing after planting as established in the long-term management plan. Native riparian cover would be re-established by obtaining canes from donor trees (e.g., willow, cottonwood, valley oak, other native riparian trees, associated native shrubs) either onsite or within the ~~Cross Creek~~ watershed (maximum of ten canes per tree), a suitable ancillary collection site, or sourced from local nurseries with native species in containers. The constraints required for grazing will be described as part of the long-term management plan to ensure that grazing does not conflict with restoration and enhancement goals.

9. Figure 12 on page 56 of the ITP, as amended, shall be deleted.
10. The first paragraph under the Riparian Restoration section of the Project Description on page 57 of the ITP, as amended, shall be further amended to read:

Riparian habitat restoration would occur on ~~5.6 acres of riparian and 14.7 acres of riverine habitat along Cross Creek (Figure 12)~~. These activities would be accomplished by obtaining canes from donor trees (e.g., willow, cottonwood, valley oak, other native riparian trees, and associated native shrubs) either onsite or within the ~~Cross Creek~~ watershed. A maximum of ten canes per tree will be collected. It will be approximately 1,300 trees, 100 trees per acre in the riparian and 50 trees per acre in the riverine areas. Nursery container plants will be used to supplement if needed. Collection will occur between November and February.

11. The bulleted list under the Construction Methods of the Project Description on pages 57 and 58 of the ITP, as amended, shall be further amended as follows:

- ~~Backhoe (contouring and grading for vernal pool creation).~~
- ~~Grader (contouring and grading for vernal pool creation).~~
- Small dozer (contouring and grading for vernal pool creation).
- Paddle-wheel scraper (contouring and grading for vernal pool creation).
- ~~Dump truck (two, for transporting inoculum and moving local fill for vernal pool creation).~~
- Water truck **or tractor with trailer carrying 500-gallon water tank** (for dust control and inoculum watering to ensure inoculum is retained onsite).
- ~~Landscape tractor (contouring and grading for vernal pool creation).~~
- ~~Gannon box or harrow (inoculum collection).~~
- **Skip Loader (contouring and grading for vernal pool creation).**
- **Skid Steer Loader (contouring and grading for vernal pool creation; excavation).**

12. The last paragraph of the Project Description on page 58 of the ITP, as amended, shall be further amended to read:

Riparian restoration activities will be conducted primarily in the fall (October to December), before the winter rainy season. These activities will be limited to the use of hand tools, an auger mounted on a small tractor, and personal and light-duty trucks to transport and plant riparian trees and shrubs. The area ~~will~~ **may** be mowed or grazed but not scraped or otherwise cleared at the start of the planting activities. Irrigation is required immediately after planting and for two or three seasons after planting. As an alternative or supplement to the proposed temporary irrigation system, a water truck may be used to transport onsite well water, as required, during the dry season from late spring through late fall. All work will be limited to those areas ~~along the river channel corridor~~ where planting is deemed to have the greatest opportunity for success and that will provide the greatest benefit. During restoration activities on each site, equipment will be staged and stored within a designated area of ~~approximately 0.25 acres (100 feet by 100 feet), located at 36.386506, -119.504377 (Figure 12),~~ outside of the **any** created and existing waterbodies and riparian corridor.

13. Table 9 on page 61 of the ITP, as amended, shall be further amended to read:

Table 9. Covered Species Habitat Impacts

Covered Species	Habitat Type	Impact Type	Impact Acres
California tiger salamander	Upland refugia (annual grassland, pasture, barren, fallow field, inactive agriculture, and ruderal) Aquatic breeding (vernal pool, open water, seasonal wetland)	Permanent	18.70
	Upland refugia (annual grassland at Mitigation Site)	Temporary	16.56
	Breeding habitat (vernal pools at Mitigation Site)	Temporary	0.76
		<hr/> Total	<hr/> 17.32
Tipton kangaroo rat	Annual grassland, Alkali desert scrub, barren, pasture, fallow field, and inactive agriculture, and ruderal	Permanent	349.34
San Joaquin Antelope squirrel	Annual grassland, Alkali desert scrub, barren, pasture, fallow field, and inactive agriculture, and ruderal	Permanent	349.34
Swainson's hawk	Foraging (California annual grassland, pasture, barren, fallow field, inactive agriculture, ruderal, field crops, row crops, and irrigated hay crops)	Permanent	2,122.11
	Foraging (annual grassland at Mitigation Site)	Temporary	17.32
	Nesting (riparian and eucalyptus woodland and individual trees)	Permanent	5 nesting tree(s)
San Joaquin kit fox	Alkali desert scrub, annual grassland, barren, pasture, fallow field, inactive agriculture, ruderal, field crops, row crops, and irrigated hay crops	Permanent	3,496.16
	Foraging and denning (annual grassland at Mitigation Site)	Temporary	17.32

14. Condition of Approval 7.4.1.3 on page 72 of the ITP, as amended, shall be further amended to read:

7.4.1.3 SJAS (Kings, Tulare, and Kern counties)

- California annual grassland
- Alkali desert scrub
- Pasture
- Barren
- Fallow field
- Inactive agriculture
- **Ruderal**

15. Condition of Approval 7.4.1.4 on page 72 of the ITP, as amended, shall be further amended to read as follows:

7.4.1.4 TKR (Kings, Tulare, and Kern counties)

- California annual grassland
- Alkali desert scrub
- Pasture
- Barren
- Fallow field
- Inactive agriculture
- **Ruderal**

16. Condition of Approval 7.7 beginning on page 74 of the ITP, as amended, shall be amended to read:

7.7 Monthly Compliance Report. For the duration of the construction-related Covered Activities within the Construction Footprint Activities and ~~Eagundes Compensatory~~ Mitigation Site Activities, the Designated Representative or Designated Biologist(s) shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall also include: 1) an accounting of the number of acres that have been disturbed within the Project Area, both for the prior month and a total since ITP issuance; 2) the cumulatively disturbed acreages of identified habitat features for each of the Covered Species within the Project Area, both for preceding 30 days and a total since ITP issuance; 3) the acreages of identified habitat features anticipated to be disturbed over the succeeding 30 days; and 4) the up-to-date GIS layers, associated metadata, and photo documentation used to track acreages disturbed during Covered Activities

and as identified in Conditions of Approval 7.4 and 7.5. Monthly Compliance Reports shall be submitted to CDFW's Regional Office no later than the 15th day of the month. The Monthly Compliance Report is due at the office listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative. At the time of this ITP's approval, the CDFW Regional Representative is ~~Dyana Valencourt~~ **Krista Tomlinson** (~~Dyana.Valencourt@wildlife.ca.gov~~) **(Krista.Tomlinson@wildlife.ca.gov)**. CDFW may at any time increase or decrease the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

17. Condition of Approval 8.16.2, on page 86 of the ITP, as amended, shall be further amended to read:

No more than 30 calendar days prior to the commencement of any ground disturbing activities in any areas occupied or potentially occupied by SJAS, the Designated Biologist, assisted (if needed) by the General Biological Monitor, shall conduct a visual survey for burrows occupied or potentially occupied by SJAS. Any burrows present within the portion of the Project Area to be disturbed by earthwork, that are suspected or known to be occupied by SJAS, and that cannot be avoided by the 50-foot avoidance buffer shall be live trapped by the Designated Biologist(s) prior to the initiation of ground-disturbing activities in the occupied location. SJAS shall be trapped and relocated to the CDFW-approved release site identified in the SJAS relocation plan (described in Condition of Approval 8.16.1). SJAS shall be relocated only after young of the year SJAS are observed above ground and during the main activity period for the species (April 1 to September 30). ***The Permittee may request a 7-day extension to the relocation period (through no later than November 15) if daytime temperatures (sunrise to sunset) are predicted by the National Weather Service to remain within the temperature criterion of 68 – 86 degrees Fahrenheit with no prediction of inclement weather (e.g., a predicted 40 percent or greater chance of precipitation). Subsequent 7-day extensions may be requested and approved by CDFW so long as weather conditions are predicted by the National Weather Service to remain within the above temperature criterion. The relocation extension request(s) shall be approved in advance and in writing by CDFW (email will suffice).*** The Designated Biologist(s) shall submit a report of the burrow survey to CDFW at least five business days prior to commencement of Covered Activities within the particular Work Area. Covered Activities will commence once written approval (email will suffice) is received from CDFW.

18. The heading **Fagundes Compensatory Mitigation Site Activities** on page 88 of the ITP, as amended, shall be amended to read:

Fagundes Compensatory Mitigation Site Activities

19. Condition of Approval 8.22 on page 89 of the ITP, as amended, shall be amended to read:

8.22 **Compliance Monitoring at the Mitigation Site.** The Designated Biologist(s) shall be on-site daily at each Work Area within the Mitigation Site when vegetation and soil disturbance Covered Activities occur ***and shall lead equipment and vehicles along the Access Routes to and from each Work Area.*** The Designated Biologist(s) shall conduct compliance inspections to: (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP, and that Covered Activities are only occurring in the Project Area. During initial vegetation and soil disturbance, the Designated Biologist(s) shall conduct compliance inspections continuously within each of the Work Area(s) where Covered Activities are occurring. After initial vegetation and soil disturbance, the Designated Biologist(s) shall conduct compliance inspections a minimum of once per day within each of the Work Area(s) where Covered Activities are occurring. The Designated Biologist(s) shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, and monitoring activities required by this ITP. The Designated Biologist(s) shall conduct compliance inspections a minimum of monthly during periods of inactivity and after clearing, grubbing, and grading are completed.

20. Condition of Approval 8.24 on page 89 of the ITP, as amended, shall be amended to read:

8.24 **Staging Areas at the Mitigation Site.** The 0.25-acre temporary staging area for the Riparian Restoration Area, and the 0.5-acre temporary staging area for the Wetland Restoration Area shall each be located at a distance of at least 100 feet from vernal pools and other aquatic habitat features, and shall include fixed containment devices that will preclude any fuel or other liquids from exiting the Staging Areas in the event of a spill or leak. Sufficient spill containment and cleanup equipment shall be present at the temporary Staging Areas. Permittee shall restore the temporary Staging Areas to pre-Project conditions upon the completion of vernal pool creation and riparian restoration.

21. Condition of Approval 8.34.1 on page 92 of the ITP, as amended, shall be amended to read:

8.34.1 Riparian habitat restoration shall be limited to ~~5.6 acres of riparian habitat and 14.7 acres of riverine habitat along Cross Creek.~~

22. Condition of Approval 8.34.2 on page 92 of the ITP, as amended, shall be amended to read:

8.34.2 Riparian Restoration Plan. The Permittee shall prepare and submit to CDFW a Riparian Restoration Plan (Plan) for review for proposed riparian restoration activities at the Mitigation Site. ~~The riparian habitat restoration plan shall be limited to 5.6 acres of riparian habitat and 14.7 acres of riverine habitat along Cross Creek.~~

23. Condition of Approval 8.34.4 starting on page 92 of the ITP, as amended, shall be amended to read:

8.34.4 Permittee shall document the cumulatively disturbed acreages of the Riparian Restoration Area, **Staging Areas, and Access Routes** at the Mitigation Site. Permittee shall provide the above information to CDFW with the Monthly Compliance Report.

24. Condition of Approval 8.34.10 on page 93 of the ITP, as amended, shall be amended to read:

8.34.10 During riparian restoration, equipment shall be stored within ~~an 0.25-acre area (100 feet X 100 feet)~~ outside the floodplain directly adjacent to the Riparian Restoration Area. The area shall not be scraped or otherwise cleared

25. Condition of Approval 8.35.1 on page 93 of the ITP, as amended, shall be amended to read:

8.35.1 Land grading and contouring shall occur only within the ~~8.7-acre~~ Wetland Restoration Area, where vernal pools will be created.

26. Condition of Approval 8.35.3 on page 94 of the ITP, as amended, shall be amended to read:

8.35.3 Permittee shall document the cumulatively disturbed acreages of the Vernal Pool Establishment Area, **Inoculum Collection**

Area, Staging Areas, and Access Routes at the Mitigation Site. Permittee shall provide the above information to CDFW with the Monthly Compliance Report.

27. Condition of Approval 8.36.1 on page 94 of the ITP, as amended, shall be amended to read:

8.36.1 Permittee may collect inoculum from ~~no more than 0.76 acres~~ **no more than ten percent of the total area of any given donor** natural vernal pools at the Mitigation Site. The inoculum shall be collected **only** for distribution within the created vernal pool basins at the Mitigation Site.

28. Condition of Approval 8.37.3 on page 95 of the ITP, as amended, shall be amended to read:

8.37.3 Burrow Avoidance and Excavation at the Mitigation Site. Prior to the commencement of any ground-disturbing activities ~~in any areas occupied by CTS~~, the Designated Biologist, assisted (if needed) by the General Biological Monitor, shall conduct a survey for burrows ~~occupied or potentially occupied by CTS~~ **flag all small mammal burrows within the Vernal Pool Establishment Area, Riparian Restoration Area, and Staging Areas.** ~~Potential CTS b~~ Burrows shall be avoided by at least 50 feet during all Covered Activities **within the Vernal Pool Establishment Area, Riparian Restoration Area, and Staging Areas** at the Mitigation Site to prevent the collapse of the burrow openings, the burrow system, or otherwise entombing or crushing CTS. If burrows **within 0.7 mile of known or potential CTS breeding habitat** cannot be avoided **by at least 50 feet**, then they shall be hand excavated in accordance with Condition of Approval 8.13.4 and any CTS uncovered during burrow excavation shall be captured and relocated in accordance with the CDFW-approved CTS Salvage and Relocation Plan as described in Condition of Approval 8.13.1 above.

29. Condition of Approval 8.37.8 is added to page 96 of the ITP, as amended, and shall read as follows:

8.37.8 **Burrow Avoidance on Access Routes at the Mitigation Site.** **Prior to the driving on the proposed Access Routes, the Designated Biologist, assisted (if needed) by the General Biological Monitor, shall flag all small mammal burrows**

within the proposed Access Routes. Burrows shall be avoided by at least 50 feet for Access Routes at the Mitigation Site to prevent the collapse of the burrow openings, the burrow system, or otherwise entombing or crushing CTS. Access Routes shall be sited in areas to avoid burrows to the greatest extent practicable. If burrows within 0.7 mile of known or potential CTS breeding habitat cannot be avoided, then plywood or metal sheets shall be placed on the Access Routes for equipment and vehicles exerting more ground pressure than 16 pounds per square inch to drive over with the Designated Biologist and/or General Biological Monitor leading them to and from each Work Area. Once each Access Route will no longer be used for Mitigation Site Activities, all flags and plywood or metal sheets shall be removed.

All terms and conditions of the ITP, as amended, 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 not increase the amount of take of the Covered Species compared to the Project as originally approved and this Amendment will not increase Project impacts on the Covered Species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: This Amendment makes twelve specific changes to the ITP, as amended. First, this Amendment removes all reference to the Fagundes Compensatory Mitigation Site and location along Cross Creek; second, this Amendment revises the Project Description with respect to changes in the Mitigation Site Construction Element and distribution of impacts therein, including but not limited to how vernal pools will be constructed and how inoculum will be collected; third, this Amendment removes reference to the area where soil, seeds, and organic material collected from natural vernal pools will occur; fourth, this Amendment removes the tier system for selecting vernal pools for inoculum collection; fifth, this Amendment deletes and eliminates Figure 12 entirely; sixth, this Amendment removes and adds equipment to be used for Mitigation Site Construction; seventh, this Amendment further clarifies the suitable habitat features that should be tracked and ensures that tracking is consistent with Table 9; eighth, this Amendment allows the Permittee to request 7-day extensions for San Joaquin antelope squirrel relocation; ninth, this Amendment adds a Compliance Monitoring requirement at the Mitigation Site which requires the Designated Biologist to lead equipment and vehicles along the Access Routes to and from each Work Area; tenth, this Amendment revises the requirement for Permittee to document cumulatively

disturbed acreages of the inoculum collection area, staging areas and access routes at the Mitigation Site in addition to the Vernal Pool Establishment Area and Riparian Restoration Area; eleventh, this Amendment revises the Burrow Avoidance and Excavation at the Mitigation Site Condition of Approval so that all small mammal burrows will be flagged and avoided by at least 50 feet during all Covered Activities within those areas at the Mitigation Site and that those burrows within 0.7 mile of known or potential CTS breeding habitat that cannot be fully avoided will be excavated; and twelfth, this Amendment adds a new Condition of Approval for Burrow Avoidance on Access Routes at the Mitigation Site.

CDFW has determined that Amendment No. 3 will not result in an increase in take of the Covered Species, any additional impacts of the taking that would arise will be minimized and fully mitigated through implementation of the Conditions of Approval. Accordingly, there will be no increase in Project impacts to the Covered Species with this Amendment.

Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP, as amended 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 June 2015 upon approval of the ITP, in March 2017 upon approval of Major Amendment No. 1, and in September 2018 upon approval of Major Amendment No. 2 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, will not result in increased impacts to the Covered Species or Covered Species habitat. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the Conditions of Approval of the ITP, as amended, 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 original ITP in June 2015, Major Amendment No. 1 to the ITP in March 2017, and Major Amendment No. 2 in September 2018 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the California High-Speed Train: Fresno to Bakersfield Section Final Project Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (SCH No. 2009091126) certified by the lead agency,

California High-Speed Rail Authority, on May 7, 2014. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment represents a major change to the ITP, as amended. However, for the reasons explained above, CDFW concludes that approval of this Amendment will not result in and does not have the potential to create any new significant or substantially more severe environmental effects than previously analyzed and disclosed by California High Speed Rail Authority during its lead agency review of the Project, particularly with respect to the impacts authorized by CDFW pursuant to the ITP, as amended. As a result CDFW finds that no 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 removes all reference to the Fagundes Compensatory Mitigation Site and location along Cross Creek; revises the Project Description with respect to changes in the Mitigation Site Construction Element, including distribution of impacts and how inoculum will be collected; makes a number of clarifications to and revisions and additions of activity- and species-specific Conditions of Approval, clarifies suitable habitat features that should be tracked and allows the Permittee to request a 7-day extension of time for San Joaquin antelope squirrel relocation in the ITP, as amended. Therefore, this Amendment will substantially increase the scope or nature of the permitted Project or activity, or significantly modify the minimization, mitigation, or monitoring measures in the ITP, as amended. CDFW has determined that the changes to the ITP, as amended constitutes a Major Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

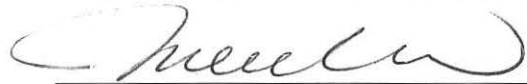
The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on

10/2/18



Julie A. Vance, Regional Manager
Central Region

Major Amendment No. 3
Incidental Take Permit 2081-2015-024-04
CALIFORNIA HIGH-SPEED RAIL AUTHORITY
CALIFORNIA HIGH-SPEED TRAIN PROJECT
Fresno to Bakersfield Section Permitting Phase 1

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: _____

Date: October 5, 2018

Printed Name: _____

Mark A. Meloughlin

Title: _____

Director of Environmental Services

